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NEW YORK CITY CAMPAIGN FINANCE BOARD HEARING  
RE: CAMPAIGN CONTRIBUTIONS

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New York City  
Campaign Finance Board  
40 Rector Street  
New York, New York

January 31, 2005  
9:00 a.m.

B E F O R E:

FREDERICK A.O. SCHWARZ, CHAIRMAN  
NICOLE A. GORDON, EXECUTIVE DIRECTOR  
ALAN RECHTSCHAFFEN, MEMBER  
JOSEPH POTASNIK, MEMBER  
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DALE C. CHRISTENSEN, JR., MEMBER

PAUL BECKER, C.S.R., P.C.  
222 WELLINGTON ROAD  
MINEOLA, NEW YORK 11501  
(718) 939-5742 (516) 739-8843

PAUL BECKER, C.S.R., P.C.

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1

2 STAFF:

3

4 CAROLE CAMPOLO, DEPUTY EXECUTIVE DIRECTOR, CFB

5 ANDREA LYNN, PRESS AIDE

6 SUE ELLEN DODELL, GENERAL COUNSEL

7

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9 P R E S E N T:

10 ANTHONY CROWELL, Special Counsel to the Mayor

11 ELISA VELAZQUEZ

12 HENRY STERN, New York Civic

13 PAUL RYAN, Associate Legal Counsel, Campaign  
Legal Center

14

MEGAN QUATTLEBAUM, Common Cause/New York

15

RACHAEL YOUNG, Executive Director, Common  
Cause/New York

16

17 DICK DADEY, Executive Director, Citizens Union

18 NEAL ROSENSTEIN, Government Reform Coordinator,  
NYPIRG

19

ADAM MORSE, Associate Counsel, Brennan Center for  
Justice

20

21 MARCY BENSTOCK, Executive Director, Clean Air  
Campaign, Inc.

22

MARK DAVIES, Executive Director, Conflicts of  
Interest Board

23

24 WAYNE HAWLEY, General Counsel and Executive  
Deputy Director of Conflicts of  
Interest Board

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2 PRESENT: (Cont'd)

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4 MARTHA MAHAN HAINES, Assistant Director, Division  
5 of Market Regulation,  
6 Securities and Exchange  
7 Commission

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7 HARRY POZYCKI, ESQ., Chairman, Center for Civic  
8 Responsibility

8 HEATHER TAYLOR, Director of Communications and  
9 Lobbyist for Center for Civic  
10 Responsibility

10 THE PUBLIC

11 THE PRESS

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2 CHAIRMAN SCHWARZ: Let's come to order  
3 here.

4 Anthony, if you want to come up, sit, I  
5 will make a little statement first.

6 Good morning. Good morning to the  
7 other people who are coming later to testify  
8 as well. Andrea, you'll give them a copy of  
9 the statement.

10 I welcome you to the first hearing on  
11 the subject of candidates accepting  
12 contributions from those who do business  
13 with the City.

14 This particular hearing will focus on  
15 two subjects. The first is to examine the  
16 general issue of pay to play. Here we are  
17 interested in hearing testimony or  
18 receiving, as we did from former CSE  
19 commissioner, Arthur Levine, about the scope  
20 of the problem and possible ways to address  
21 it.

22 Second, we will focus on doing business  
23 with respect to contracts with the City,  
24 specifically, the overlap between those who  
25 seek and who receive contracts to do City

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2 work and those who give contributions to  
3 candidates for City offices.

4 In later hearings we'll examine  
5 lobbying as well as land use, franchises,  
6 licenses and other business relations with  
7 the City.

8 There are two substantive issues,  
9 disclosure and regulation. There are two  
10 ways to address it, by disclosure and  
11 regulation.

12 Disclosure, with disclosure, the  
13 public, the press and candidates can know  
14 the who, when and how much about  
15 contributions that persons doing business  
16 with the City made to candidates for City  
17 office.

18 As you know, the Board has been working  
19 closely with the Department of Information  
20 and Technology and Telecommunications, and  
21 we're grateful for that cooperation, to  
22 develop a way to make the City's VENDEX  
23 system, which contains information about who  
24 has certain contracts with the City,

25           searchable and available to the public.

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2                           The Board would ultimately like to see  
3                           a comprehensive database covering not only  
4                           contracts, but all other ways of doing  
5                           business, such as lobbying, land use and  
6                           franchises and licenses. The objective is  
7                           that all these sets of data be searchable  
8                           and compatible with the Board's own  
9                           computerized and instantly available  
10                          searchable database of contributions to  
11                          candidates.

12                         Regulation, disclosure of who does  
13                         business with the City is a desirable end in  
14                         and of itself. In your statement you  
15                         concentrate on disclosure. In addition, a  
16                         searchable database is, we believe,  
17                         necessary if there is to be other real and  
18                         effective regulation, whatever form that  
19                         regulation takes.

20                         Disclosure is highly likely, also, to  
21                         inform the evaluation of regulatory options,  
22                         such as lower contribution limits for  
23                         contributors who do business with the City,  
24                         banning such contributions or denying

25 matching funds for those contributions.

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2 Now, I am cutting out some of the  
3 things in my written remarks to move them  
4 along.

5 The current administration has decided  
6 to help establish a database. This will be  
7 a major achievement, one that has been  
8 sought by the Board and others since the  
9 1980s. No other jurisdiction we know of has  
10 a comprehensive, searchable, publicly  
11 available database. In light of these  
12 efforts, which we hope to hear about in  
13 detail today as applied to contracts, the  
14 Board resolved to proceed with these  
15 hearings, recognizing that, quoting now from  
16 a letter of mine, "The issue of potential  
17 influence peddling when candidates accept  
18 contributions from those doing business with  
19 the City is one that requires serious  
20 attention."

21 From these hearings, increased  
22 knowledge of how, and indeed whether, to  
23 regulate should emerge. As indicated by the

24 questions distributed to potential witnesses  
25 before the hearing, there are many

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2 significant issues to explore. We're having  
3 those questions marked as an exhibit for the  
4 hearing.

5 The task of regulating contributions  
6 from those who do business with the City is  
7 enormously difficult. Even defining who  
8 does business with the City is a complex  
9 question and it is only the first of many  
10 complex questions as the list of questions  
11 distributed to witnesses demonstrates.

12 First, the subject of doing business  
13 contributions is extremely challenging.  
14 Second, the Board is not a repository of  
15 data or other information about those who do  
16 business with the City. The Board has  
17 decided to approach a potential rulemaking  
18 in a manner that goes beyond the  
19 requirements of the usual rulemaking process  
20 under the City charter.

21 As to disclosure, there seems to be no  
22 reason to delay making information available  
23 to the public once the new City doing



24 business database can communicate with our  
25 contribution database. However, I should

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2 caution that once VENDEX is on line and  
3 searchable, Board regulation may not be  
4 automatic, may not be easy. Both our  
5 database and VENDEX system contain data that  
6 change frequently, sometimes on a daily  
7 basis.

8 In the short-term, the two systems may  
9 not be automatically comparable, and  
10 instead, comparison of data may require  
11 laborious searches, whether by the public,  
12 the Board or the candidates. Also, as I  
13 hope we will learn today, we must be very  
14 clear about the limitations on the  
15 information available to us, whether from  
16 VENDEX or any other of the many systems the  
17 City has in place, which were developed for  
18 purposes other than disclosure and campaign  
19 financing regulation.

20 As to when we should aim to resolve the  
21 questions concerning other kinds of  
22 regulation in the absence of legislation, we

23 think is still the best solution. We're  
24 going to proceed if there is no  
25 legislature. We join with others, including

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2 the Mayor, in believing this cannot be  
3 accomplished in this election season. The  
4 available data need to be collected and  
5 analyzed. Various possible solutions need  
6 to be posited and debated. That remark is  
7 with respect to the regulation as opposed to  
8 the disclosure.

9 In closing, the ultimate goal of these  
10 hearings, therefore, is to capture an  
11 accurate picture of pay to play practices so  
12 as to develop a meaningful and effective way  
13 of controlling it. The right laws or  
14 regulations will instill confidence in our  
15 government without discouraging citizens  
16 from demonstrating their legitimate support  
17 for candidates through financial  
18 contributions or discouraging vendors from  
19 competing legitimately for City work. Thank  
20 you for your time.

21 We'll begin with our first witness.

22 Appearing on behalf of the administration,

23 Mr. Anthony Crowell. I apologize for my low  
24 voice.

25 MR. CROWELL: Anthony Crowell, Elisa

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2 Velazquez, the Mayor's office of contract  
3 services. It's a great honor to be here. I  
4 am glad the administration and Campaign  
5 Financing Boards are working together  
6 towards these important goals.

7 I think that the Chairman's remarks  
8 this morning are very helpful in terms of  
9 confidence we'll be able to achieve some  
10 very historic things in the near future.

11 Good morning, Chairman Schwarz and  
12 Members of the Board. I am Anthony Crowell,  
13 Special Counsel to Mayor Bloomberg. Thank  
14 you for the opportunity to testify today on  
15 the Board's new efforts to implement the  
16 Charter amendment passed by City voters in  
17 1998. As you know, that amendment requires  
18 candidates in the campaign finance program  
19 to disclose contributions from individuals  
20 and entities doing business with the City,  
21 and it directs the Board to further regulate

22 or prohibit such contributions as it sees  
23 fits. The Bloomberg administration is  
24 pleased that the Board has convened a  
25 hearing to receive public comment on how

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2 those rules should be shaped.

3 In my testimony today, I will provide  
4 an update on the administration's efforts to  
5 improve access to information about those  
6 who do business with the City. In addition,  
7 I will discuss a modest proposal that we  
8 believe takes an important first step toward  
9 implementing the 1998 charter mandate and  
10 greatly enhances our ability to fully  
11 implement it for the 2009 elections.

12 Two months ago I testified before the  
13 City Council on behalf of a bill submitted  
14 by the Bloomberg administration to  
15 effectuate the 1998 charter mandate. Thus  
16 far, however, the Council has not expressed  
17 an interest in moving forward. The  
18 importance of this charter mandate, as I  
19 explained in my Council testimony, bears  
20 some repeating. The primary reason the  
21 campaign finance program was adopted 15

22 years ago was to reduce corruption and  
23 diminish the sway that special interests  
24 hold over candidates and elected officials  
25 who seek campaign contributions from them.

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2 Yet today, the City's matching funds  
3 enhances the value of contributions from  
4 special interests by matching them at a four  
5 to one rate.

6 New Yorkers might reasonably ask why  
7 they should have to pay \$1,000 every time a  
8 lobbyist or a developer donates \$250. Is  
9 subsidizing contributions from lobbyists  
10 consistent with the intent of the program?  
11 No, it seems it is an unintended consequence  
12 that undermines the program and leaves the  
13 taxpayer footing the bill.

14 Since candidates receive generous  
15 public subsidies, New Yorkers might also  
16 reasonably ask why such candidates are  
17 permitted to receive large contributions  
18 from individuals and entities that have  
19 business before them, such as executives of  
20 telecommunications companies who are seeking

21           lucrative contract terms, or real estate  
22           developers who are seeking land use  
23           approval, or private equity executives who  
24           seek a share of the City's \$85 billion  
25           pension system. And each time these sources

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give big contributions, the taxpayers are

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forced to kick in \$1,000.

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New Yorkers might reasonably ask:

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Don't these contributions present a

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potential conflict of interest for elected

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officials? Don't they create at least the

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possibility for inappropriate influence?

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Undoubtedly, these are exactly the kinds of

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questions that led voters to pass the

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referendum in 1998.

12

When those who do business with the

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City make campaign contributions to gain

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access and influence, it is called pay to

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play. At a minimum, this practice can

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create the appearance of impropriety. And

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beneath those appearances lies a potential

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to corrupt government decisions. Campaign

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finance reform advocates have long held that

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campaign contributions from those with

21 pending governmental interests can create  
22 the appearance of and potential for  
23 impropriety. And increasingly, New York  
24 City lobbyists and contributors are  
25 complaining of a squeeze that is getting out

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2 of hand. That is from a recent New York  
3 Post article from May of 2004.

4 Real estate developer Bruce Ratner  
5 stopped contributing to candidates because  
6 of these pressures, which he spoke about in  
7 a book on campaign finance reform called  
8 Selling Out, which is by Mark Green, former  
9 public advocate and mayoral candidate.

10 "When you do business with the City,  
11 you get solicited by everyone from U.S.  
12 Senators down to members of the City  
13 Council. There was an anxiety that if we  
14 didn't give, we might not be able to get a  
15 meeting, that it might hurt our development  
16 efforts, hurt our access. There was a sense  
17 that if you contributed, you were a friend.  
18 You knew your competitors were doing it, and  
19 so when someone would call, it was hard to

20 say no. For businesses that do a lot of  
21 business with the City, it was expected. I  
22 didn't want to be a person on the outs, nor  
23 could my business afford to be a person on  
24 the outs given how much business we do with  
25 government. It was very unpleasant. I

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2 didn't enjoy it. It's very difficult to ask  
3 people to give to someone that they may not  
4 believe in, and very few people want to  
5 contribute the amounts being requested. I  
6 would much rather ask people to give to a  
7 charity that I'm involved with."

8 When Ratner quit making campaign  
9 contributions after the 1997 elections, his  
10 colleagues in the industry were amazed.  
11 Ratner said, "When I stopped contributing,  
12 people said I was crazy. 'You're going to  
13 get yourself killed. It's a mistake.  
14 You're going to regret this.'"

15 Prior to the SEC's adoption of its G-37  
16 rule, the securities industry felt the same  
17 pressures as those who have business  
18 dealings with New York City government.

19 Robert Lamb, a professor at New York



20 University's Stern School of Business, said,  
21 "It was like an ante in a poker game, where  
22 in order to play, different firms felt like  
23 they needed to make some kind of  
24 contribution. If you didn't give, you  
25 wouldn't sit at the table."

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2 Ending pay to play in New York City's  
3 local government will protect those who do  
4 business with the City from feeling  
5 pressured to give. It will protect elected  
6 officials from feeling pressured to act in  
7 the favor of contributors doing business  
8 with the City and from accusations that they  
9 did so. And it will protect taxpayers from  
10 being forced to kick in \$1,000 every time a  
11 special interest makes a large  
12 contribution. It will also go a long way  
13 toward bolstering public confidence in  
14 elected officials and government.  
15 The wisdom of New York City's voters  
16 has been confirmed by recent campaign  
17 finance scandals in New Jersey and  
18 Connecticut. Last fall, then Governor

19 McGreevey, freed from the need to raise  
20 campaign contributions, issued an executive  
21 order prohibiting government contractors  
22 from making campaign contributions. In a  
23 statement that accompanied his executive  
24 order, Governor McGreevey explained the  
25 urgent need for action.

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2 "Today, the relationship between  
3 political fund-raising and government  
4 operations has become corrosive and  
5 cancerous. Legitimate lines of behavior are  
6 blurred, ethical ambiguities are the norm  
7 and the need to sustain an all consuming  
8 fund-raising effort has become almost as  
9 important as the function of government  
10 itself. The wall, the separation, between  
11 politics and government, between campaign  
12 finance and government operations, between  
13 state interest and personal interests has  
14 disintegrated. Today it has become  
15 increasingly challenging to distinguish  
16 between the world of political fund-raising  
17 and government and between what we do and  
18 why we do it. It has become a

19 self-sustaining system with no beginning and  
20 no end."

21 McGreevey closed by challenging his  
22 fellow elected officials: "To my colleagues  
23 in government, I know that this may cause  
24 consternation and anger. Change can be  
25 uncomfortable. The goal is to liberate

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2 those who seek to serve to do so unfettered  
3 by these possible conflicts and it will  
4 reassure the people we serve that we do so  
5 honestly and decently."

6 The City of New York does not have the  
7 same legal authority granted to the State  
8 Executive of New Jersey. The outcome in a  
9 recent case in the New Jersey federal courts  
10 confirms the wisdom of New York City's  
11 approach to the pay to play issue, which  
12 seeks to regulate candidates, not  
13 contributors. Deviating from that approach,  
14 as some have suggested, would not only pose  
15 legal hurdles, but it would be contrary to  
16 the plain language of the charter amendment  
17 adopted by the voters in 1998.

18                   CHAIRMAN SCHWARZ: Let me interrupt  
19                   you.

20                   Obviously, the City campaign finance  
21                   Board has no power to do anything other than  
22                   affect people who participate in the  
23                   program. I personally believe there clearly  
24                   is legal authority in the City to affect  
25                   donors, that is the businesses, and that

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2                   that is by far the best way to proceed for  
3                   many reasons, including it's the only way, I  
4                   believe, to be able to address people who  
5                   seek business with the City as opposed to  
6                   people already having business with the  
7                   City.

8                   In the short-term, this commission does  
9                   not have power to do anything other than  
10                  address people who are in the campaign  
11                  finance program. We can leave for another  
12                  day disagreements on what you have just  
13                  said.

14                  MR. CROWELL: Fine.

15                  CHAIRMAN SCHWARZ: I personally believe  
16                  if we passed good, tough regulations, the  
17                  likelihood is that that will induce a new

18 City Council to feel they want to act  
19 legislatively. Who knows if I am correct on  
20 that. We don't need now, you and I or  
21 others, to debate the legal questions.

22 MR. CROWELL: I wanted to get that  
23 out. We know that has been a question that  
24 is present in all the discussions on pay to  
25 play. Certainly, the administration's main

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2 goal is to effectuate the voters will from  
3 the '98 charter referendum. Different than  
4 the approach New Jersey took.

5 CHAIRMAN SCHWARZ: It isn't your main  
6 goal. I would assume the administration's  
7 main goal is to get the most effective  
8 regulation of pay to play that can possibly  
9 be developed. In the short-term, this  
10 group, our commission, can only do something  
11 that relates to the campaign finance.

12 MR. CROWELL: The administration's  
13 goals, we believe working with the '98  
14 referendum and getting a set of rules  
15 consistent with that mandate is the most  
16 appropriate and best way to go for the

17 City. All legal arguments aside, on a  
18 policy level, yes, obviously, legal issues  
19 need to be resolved.

20 CHAIRMAN SCHWARZ: Yes. It's healthy  
21 to interrupt you anyway.

22 MR. CROWELL: It is.

23 Okay. At the City Council hearing last  
24 November I discussed our initial legislative  
25 proposal, Intro. 467. I am sure you are

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2 familiar with the bill. I will not spend  
3 too much time discussing details, but I  
4 would like to quickly summarize it.

5 The bill is modeled on the G-37  
6 concept. It would prohibit candidates in  
7 the program from accepting contributions  
8 from those who do business with the City,  
9 with one important exception. Contributors  
10 with business before the City could still  
11 give up to \$250 for any candidate for whom  
12 they are eligible to vote, but these  
13 contributions would not be matched with  
14 public dollars.

15 CHAIRMAN SCHWARZ: A question there.

16 Was the view that a contribution of up

17 to 250 should be allowed, one that was based  
18 on first amendment prudence, in other words,  
19 that it's, perhaps, easier to survive a  
20 first amendment challenge if one allows  
21 something to be given than prohibits  
22 altogether, or was it based on some policy  
23 judgment that a 250 figure doesn't lead to  
24 any appearance of impropriety?

25 MR. CROWELL: Looking at the G-37, I

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2 think it's both a legal and policy rationale  
3 we took, obviously. G-37 contemplates the  
4 idea when a municipal securities broker or  
5 dealer lives in the jurisdiction, they can  
6 give something. Your question is obviously  
7 one in which all those factors were  
8 considered.

9 CHAIRMAN SCHWARZ: Do you have a view  
10 on whether there would be a greater legal  
11 risk if one simply barred contributions from  
12 people doing business with the City?

13 MR. CROWELL: I don't have a legal  
14 opinion at this time.

15 CHAIRMAN SCHWARZ: Yes.

16 MR. CROWELL: I would be happy to sit  
17 down with you and discuss it in corporation  
18 counsel's office.

19 Contributors with business before the  
20 City could still give up to \$250 to any  
21 candidate for whom they are eligible to  
22 vote, but these contributions would not be  
23 matched with public dollars. This ensures  
24 that even those who have business with the  
25 City may financially support candidates who

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2 seek to represent them.

3 The current law requires candidates in  
4 the campaign finance program to ask  
5 contributors for numerous pieces of  
6 information, including information about  
7 their workplace. Our proposal simply takes  
8 this disclosure a step further by requiring  
9 candidates to ask contributors whether they  
10 have had business dealings with the City  
11 within the last 12 months. The definition  
12 of the term business dealings includes  
13 contractors, lobbyists, pension investors,  
14 developers who seek land use approval and  
15 firms who seek franchises and concessions.



16                   This definition, as with all proposed  
17                   legislation, requires fine tuning to ensure  
18                   that it is not overly broad. For instance,  
19                   homeowners who seek approvals from the  
20                   Department of Buildings should not be  
21                   covered by the law. The administration is  
22                   anxious to work with the Board and willing  
23                   members of the Council to arrive at an  
24                   appropriate definition.

25                   As I said, our proposal provides for

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2                   exemptions. All entities with contracts  
3                   valued at under \$100,000, and all  
4                   contractors who went through a sealed  
5                   competitive bidding process would be exempt  
6                   from the law. We believe that these  
7                   exemptions, coupled with the G-37 model, set  
8                   a reasonable definition of doing business.  
9                   We look forward to hearing others suggest  
10                  possible parameters and to arriving at an  
11                  appropriate definition.

12                  Now, as promised, let me provide you  
13                  with an update of the administration's  
14                  efforts to make information about those who

15 do business more readily available and offer  
16 a modest proposal for a first step that will  
17 begin to implement charter mandate and  
18 improve our ability to implement it fully  
19 for the 2009 elections. From what I heard  
20 from the Chair, our proposal is in sync with  
21 what the Board is thinking.

22 First, an update. Since the Council's  
23 November hearing, the Bloomberg  
24 administration and the Department of  
25 Information Technology and

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2 Telecommunications, DoITT, have had a number  
3 of constructive meetings with Campaign  
4 Finance board staff. Together, we have  
5 wrestled with the challenges that this issue  
6 presents and a new spirit of determination  
7 has been infused into the process. CFB  
8 staff has helped DoITT understand the  
9 agency's technical needs and concerns, and a  
10 dialogue has taken shape that we believe  
11 will lead New York City to be, once again, a  
12 national pioneer in government ethics.

13 As a result of these meetings, DoITT is  
14 working to create a web enabled interface

15           that will provide the CFB, and every member  
16           of the public, with access to the City's  
17           VENDEX system which houses every City  
18           contract with a value of more than  
19           \$100,000. The online information will  
20           include the names of each company's  
21           principals and it will include a search  
22           function that will allow users to look up  
23           individual principals and companies.

24                   CHAIRMAN SCHWARZ: How are principals  
25           defined?

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2                   MR. CROWELL: Principals are defined  
3           as --

4                   MS. VELAZQUEZ: Principals for VENDEX  
5           purposes are defined as CEO, CFO, COO, or  
6           anyone with like titles in the submitting  
7           vendors if it's a company or not for  
8           profit. It also includes someone that has  
9           ten percent or more ownership of the  
10          company.

11                   We also collect principal  
12          questionnaires from, let's just say there is  
13          a project manager, a huge corporation, a

14 project manager for the northeast working  
15 directly on the project. We would get a  
16 principal questionnaire from them. It  
17 depends, essentially, on the size of the  
18 organization and the structure of the  
19 organization how many principal  
20 questionnaires we do receive.

21 CHAIRMAN SCHWARZ: That's basically  
22 quite helpful information that you are  
23 already collecting which I didn't realize  
24 you were already collecting.

25 MR. CROWELL: Vast amount.

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2 MS. PATTERSON: Immediate family, does  
3 it include?

4 MS. VELAZQUEZ: No.

5 CHAIRMAN SCHWARZ: In connection with  
6 that question, Mr. Crowell, your bill, and I  
7 know something I wrote in 1986 on the same  
8 subject, covers spouses, there are questions  
9 about spouses in an era when spouses are  
10 emancipated and the law doesn't look kindly,  
11 assuming they are the tool, the capture,  
12 captive of their other spouse.

13 Also, Nicole Gordon informed me a while

14           ago that the original law, campaign finance  
15           law provided that spouses would be treated  
16           as one, and then shortly after that law was  
17           passed, the law was changed to provide that  
18           spouses would not be treated as one, but  
19           rather as independents.

20                   I am not asking you, unless you are  
21           prepared to answer the question now, I would  
22           like the administration's views,  
23           particularly the corporation counsel's  
24           views, on whether, as a legal matter, that  
25           history of breaking spouses apart in

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2           contrast to the original law abides on  
3           whether it would be appropriate to cover  
4           spouses in a doing business regulation.

5                   MR. CROWELL: I think we contemplated  
6           having that discussion.

7                   CHAIRMAN SCHWARZ: I also welcome  
8           comments on the general subject of spouses  
9           from brilliant analysts Henry Stern, Marcy  
10          Benstock and others who have come in here  
11          since you started testifying.

12                   MR. CROWELL: (Continuing) As I said,

13 the online information will include the  
14 names of each company's principals and it  
15 will include a search function that will  
16 allow users to look up individual principals  
17 and companies. This database will go a long  
18 way toward meeting CFB's request for a  
19 searchable data warehouse and we expect to  
20 have it up and running in April.

21 In addition, by that time or sooner, we  
22 expect to put the City Clerk's list of  
23 registered lobbyists online and we are  
24 beginning discussions with other agencies,  
25 including the Department of City Planning,

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2 to determine how we might be able to  
3 effectively capture the universe of  
4 individuals and entities with which each  
5 does business.

6 Making VENDEX and the City Clerk's data  
7 on registered lobbyists, as well as other  
8 possible data sets, fully compatible with  
9 the CFB's own database systems is a major  
10 project that will require significant  
11 technical collaboration, significant  
12 resources and a significantly longer period

13 of time. Developing this more comprehensive  
14 system is a long-term project that this  
15 administration is committed to, but which  
16 cannot be completed, unfortunately, for use  
17 in the 2005 elections.

18 Still, the problem of pay to play cries  
19 out for urgent action. In order to avoid  
20 waiting until 2009 before implementing a  
21 vital reform that the voters passed in 1998,  
22 and in order to improve our ability to  
23 create the comprehensive database that the  
24 CFB seeks, the Bloomberg administration has  
25 a modest proposal that we hope will receive

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2 support from the Board.

3 Beginning with the May 16th disclosure  
4 statement, at which time the CFB and the  
5 public should have access via the web to  
6 VENDEX and the City Clerk's lobbying data,  
7 candidates in the campaign finance program  
8 would be required to make a good faith  
9 effort to disclose, as the charter amendment  
10 requires, which of their contributors do  
11 business with the City.

12 I want to emphasize that, in deference  
13 to the CFB's enforcement concerns, the  
14 administration is not suggesting that  
15 acceptance of such contributions be  
16 restricted for the election cycle, nor is  
17 the administration suggesting that failure  
18 to disclose such contributions on the part  
19 of the candidate result in automatic  
20 penalties. The proposal is merely an  
21 extension of the current rules which require  
22 candidates to make a good faith effort to  
23 obtain each contributor's employment  
24 information.

25 Currently, each contributor fills out a

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2 contribution card. We propose that the  
3 contribution card include a question asking  
4 whether the contributor does business with  
5 the City. If so, the contributor would be  
6 asked to provide some basic information  
7 about the nature of their business. The  
8 administration is anxious to provide any  
9 assistance necessary to the CFB in crafting  
10 such a question.

11 Not only would this first step go a



12 long way towards achieving the disclosure  
13 that the voters mandated, it would, by  
14 identifying contributors who do business  
15 with the City, provide invaluable assistance  
16 to the City in its efforts to create the  
17 comprehensive database that the CFB seeks.

18 If the CFB were to allow 2005 to go by  
19 without requiring candidates to seek and  
20 disclose information on contributors who do  
21 business with the City, it would certainly  
22 be a missed opportunity that would hinder  
23 both our understanding of the universe of  
24 affected contributors and our efforts to  
25 construct a database in a way that makes

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2 sense for all involved.

3 Over its 15 years, the Board's mantra  
4 has been that reform must be viewed as an  
5 evolutionary progress, a work in progress.  
6 Our modest proposal is in keeping with that  
7 mantra. We must not let the perfect be the  
8 enemy of the good. Let's demonstrate our  
9 own good faith to the voters of New York  
10 City by taking a first step toward

11 implementing the referendum that they  
12 approved more than six years ago. And we  
13 can do it by requiring candidates to make a  
14 good faith effort to abide by that  
15 referendum's minimum requirements.

16 Thank you. I would be happy to take  
17 questions.

18 CHAIRMAN SCHWARZ: I interrupted. All  
19 of my colleagues, none of my colleagues have  
20 had a chance to ask questions.

21 Could I say to the other people in the  
22 audience who have come to testify, this  
23 witness, being from the administration, is  
24 bound to be the longest of our witnesses.  
25 We have lots of gap time. I don't think all

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2 of you are going to be particularly  
3 delayed.

4 Henry, you are the next witness. You  
5 might be a little bit delayed. You are the  
6 next witness.

7 MR. CHRISTENSEN: Just a couple of  
8 questions, Mr. Crowell.

9 You are putting forward today some  
10 fairly modest proposals for the next

11 election cycle, trying to go beyond those.  
12 Where do you feel, since there are many  
13 public policy concerns in this issue area,  
14 the appropriate venue is for determining  
15 what legal structures should be implemented,  
16 is it really the CFB that should be doing  
17 that, in your opinion, or should the  
18 legislative body of the City be promulgating  
19 these rules?

20 MR. CROWELL: Our position has been  
21 clear. When we put forward the legislation  
22 in the City Council it is not moving. At  
23 this point, absent getting the Council to  
24 act, certainly effectuating the will of the  
25 voters in the '98 referendum was

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2 contemplated to be done through rulemaking  
3 by the Campaign Finance Board. I think we  
4 can achieve that goal using CFB's rulemaking  
5 process, absent some legislative problem.

6 MR. CHRISTENSEN: Beyond 2005?

7 MR. CROWELL: Certainly. Anything to  
8 get the program up and running and most  
9 effective as possible.

10 MR. CHRISTENSEN: What are you doing to  
11 try to move the legislation in the City  
12 Council?

13 MR. CROWELL: Intergovernmental office  
14 has been working with the Council. It  
15 doesn't seem to be moving at this point.  
16 The normal legislative process, and it's  
17 obviously -- it's more than well-known this  
18 is a high priority for the Mayor to ensure  
19 integrity in government. Administration in  
20 joining forces with the Board has  
21 demonstrated, absent the Council acting on  
22 the bill, some sort of administrative  
23 program and rulemaking is necessary.

24 MR. CHRISTENSEN: Some of us have  
25 concerns there are limitations on the powers

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2 of the CFB, not notwithstanding what you  
3 characterized as a voter mandate in the 1998  
4 charter revision.

5 While there are things that can be  
6 done, and I very much appreciate the modesty  
7 with which you are presenting these interim  
8 proposals, it seems to me major issues of  
9 public policy are properly determined by

10 legislative bodies, particularly when we're  
11 dealing with issues such as it may seem  
12 simple to be talking about a term of doing  
13 business with the City. The practical  
14 reality of that is a lot of the devils is in  
15 the details in terms of how you define that.

16 Do you have a point of view of whether  
17 the CFB has the power under its current  
18 mandates to define as a matter of public  
19 policy what doing business should be?

20 MR. CROWELL: I do. I think the '98  
21 referendum gave clear authority to the Board  
22 to promulgate rules as deemed necessarily  
23 would include defining doing business. I  
24 think the authority is there and, obviously,  
25 we have proposed a definition in our bill

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2 before the Council what doing business is.  
3 We have always taken the position that is  
4 something that needs to be fine tuned and  
5 negotiated between all the parties  
6 involved.

7 CFB, we are counsel, having counseled  
8 the Board to refine it as needed. Absent

9 legislative action, the CFB has an  
10 opportunity to take the bill and fashion  
11 them as appropriately as possible into rules  
12 that in charge measure the bill, can be  
13 drafted into rule form.

14 MR. CHRISTENSEN: Beyond the '98  
15 charter revision process, is there any other  
16 charge you feel we have?

17 In other words, but for that charter  
18 revision, what you call a mandate, some of  
19 us would disagree whether it was that broad,  
20 are there any other repositories of power in  
21 the CFB to do what you are suggesting should  
22 be done here beyond 2005?

23 MR. CROWELL: I think the most  
24 important thing to look at is the '98  
25 referendum, which gave explicit authority.

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2 MR. CHRISTENSEN: Understand.

3 Beyond the '98 referendum, is there  
4 anything else you can point to in the  
5 charter that gives us the power to do what  
6 you are suggesting needs us to do in the  
7 long run?

8 MR. CROWELL: I have to go back and

9 further look to advise you.

10 CHAIRMAN SCHWARZ: Kitty was next, I  
11 think.

12 MS. PATTERSON: Modest proposal, what  
13 you are suggesting, that there would be  
14 disclosure of entities that are currently  
15 doing business, the VENDEX system and  
16 lobbyists are of people and entities that at  
17 this very moment are doing business with the  
18 City, I think under anybody's definition; is  
19 that right?

20 MR. CROWELL: Correct.

21 MS. PATTERSON: The issue of authority  
22 is I don't think at all relevant for  
23 disclosure for the purposes you are  
24 suggesting would be operational this  
25 spring.

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2 MR. CROWELL: His question was beyond  
3 2005.

4 MS. PATTERSON: I wanted to clarify  
5 that. Full authority to require disclosure  
6 with respect to entities and people and  
7 principals that are entities registered in

8 the VENDEX system or registered lobbyists.

9 MR. RECHTSCHAFFEN: I am trying to  
10 understand the scope of the problem. Nobody  
11 thinks of pay to play as a good thing. I am  
12 trying to understand. Somebody who works  
13 for a company that has a contract with the  
14 City over \$100,000 is giving \$250. I am not  
15 sure that is going to have affect on the  
16 actual renewal of that contract.

17 I was wondering if you have anything  
18 beyond sort of anecdotal evidence. Is there  
19 real problem here? If disclosure is not  
20 enough, the voters can take care knowing  
21 these people are doing business with the  
22 City. My concern, there shouldn't be a  
23 chilling effect on people who work for a  
24 company giving money that is clearly not a  
25 pay to play situation.

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2 MR. CROWELL: I think the problem is,  
3 we have seen and largely, there is a large  
4 part of anecdotal evidence where  
5 corporations can certainly filter money to  
6 candidates through various principals, high  
7 level employees or other employees, as well



8 as through family members. That's the  
9 spirit in which the '98 charter commission  
10 put forth its mandate. Certainly, what our  
11 bill reflects is a way to make sure that  
12 that is not happening.

13 Now, of course, as I have said, fine  
14 tuning the definition what doing business  
15 means, what is affected can be a topic of  
16 negotiation and discussion. As a baseline,  
17 you need to look at this well within the  
18 realm of possibility of how improper  
19 influence is done.

20 CHAIRMAN SCHWARZ: Seeing if we can do  
21 a little bit to define, your answer, already  
22 in defining principal, seemed to me to limit  
23 the word principal quite sharply so it does  
24 not cover every vice president of a bank,  
25 for example, or investment concern. It is

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2 the people who are COO, CFO or CEO and  
3 anybody who has a ten percent share or more  
4 of the entity.

5 I wonder if there is not another --  
6 this is directed to you, Mr. Crowell --

7 limiting principal. Just as a matter of  
8 common sense. An example of a contribution  
9 made by the Mayor, to help illustrate the  
10 point.

11 Is it not the fact that what one is  
12 concerned about is contributions from people  
13 who have a personal financial stake in the  
14 action of the government, and I told you I  
15 was going to use a contribution of the Mayor  
16 to sharpen that point. There was a major  
17 story in the paper last summer, the Mayor  
18 made a \$500 contribution to a congressman in  
19 order to try and influence that congressman  
20 to give more money out of homeland security,  
21 a higher percentage of homeland security to  
22 those places like New York City that are  
23 actually vulnerable to terrorists' attacks.  
24 By that action, the Mayor was trying to use  
25 his money to influence the vote of a public

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2 official in order to help the entity for  
3 which the Mayor works.

4 In my mind, that isn't within the scope  
5 of something somebody should be worried  
6 about or specifically we should be worried

7           about. The contributor in that case had no  
8           personal financial stake in the vote that he  
9           was seeking to increase the likelihood of  
10          obtaining.

11                 Do you accept that distinction, where  
12           personal financial stake is an important  
13           part of trying to get one's mind around the  
14           breadth of the definition?

15                 MR. CROWELL: That is certainly part of  
16           it. In terms of getting it, when someone  
17           who may work for a corporation is trying to  
18           influence certain government processes that  
19           will affect a corporations bottom line,  
20           development, permitting, other licenses or  
21           just general friendly business climate, tax  
22           incentives, things like that, that's  
23           obviously what we're talking about here in  
24           terms. Saying it will trickle down to a  
25           personal financial advantage --

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2                 CHAIRMAN SCHWARZ: Be careful about  
3           words like tax incentives, a narrow term  
4           but, obviously, we cannot try and regulate  
5           every contribution someone makes because

6           they think a public official's tax policy,  
7           broad tax policy is a good thing. Again, it  
8           has to be some way from an entity that has  
9           an individual or specific financial stake as  
10          opposed to the same general stake everybody  
11          has in their taxes and so forth.

12                 MR. CROWELL: I think that's what we're  
13           talking about. Also, the ban on corporate  
14           contributions, as well.

15                 MR. RECHTSCHAFFEN: One quick  
16           follow-up.

17                 I am trying to get my mind around how a  
18           \$250 contribution which becomes a \$1,000  
19           contribution can influence a contract of any  
20           scope and magnitude. \$1,000 is a lot of  
21           money, but I don't know how much information  
22           that \$250 of the giver's money and the \$750  
23           matching money can actually have an effect.

24                 MR. CROWELL: What about if there is  
25           ten employees who each give 250, it becomes

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2           1,250.

3                 MR. RECHTSCHAFFEN: Isn't that  
4           prohibitive to have concertive giving in  
5           that way?

6 MR. CROWELL: The idea, being able to  
7 detect it. Having a system where you can  
8 readily identify and have an understanding  
9 who is giving what and hopefully discern for  
10 what purposes.

11 MR. RECHTSCHAFFEN: Wouldn't disclosure  
12 take care of that? I am trying to  
13 understand if we need to go beyond  
14 disclosure is where I am stuck. I agree  
15 disclosure is important. If there is  
16 disclosure, we understand 12 people are  
17 giving together to influence a contract,  
18 that already is prohibited.

19 MR. CROWELL: These are the very issues  
20 we have to sit down and have discussions  
21 about. We do contemplate that. Certainly,  
22 things discretionary in nature, how you  
23 would actually look at these issues. We  
24 would welcome further discussion.

25 CHAIRMAN SCHWARZ: Commissioner, do you

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2 have any questions?

3 MR. POTASNIK: No.

4 MR. CHRISTENSEN: Has there been any

5 economic impact analysis?

6 I understand the proposal you are  
7 making for 2005, which we have characterized  
8 as a modest proposal. I am again thinking  
9 long-term on this.

10 Has there been any internal economic  
11 impact analysis by the Mayor's office on  
12 what will happen if these kinds of broader  
13 pieces of legislation -- I am thinking  
14 specifically about procurement. I  
15 understand at the top levels it is probably  
16 not going to dissuade people who do business  
17 with the City; the paperwork, the exposure.  
18 There may be people who are more interested  
19 in a particular political candidate's future  
20 than they are in their more limited doing  
21 business with the City.

22 Could that have a negative effect on  
23 pricing of goods or services that the City  
24 is looking for? Has anyone looked at that  
25 issue?

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2 MS. VELAZQUEZ: We haven't looked at  
3 that, no.

4 CHAIRMAN SCHWARZ: Nicole will have

5 questions on VENDEX in a minute. I have one  
6 more. It is not a question, but a request.

7 We need help not only on thinking  
8 through -- well, A, should there be  
9 regulation?

10 B, assuming there is regulation, what  
11 form should it take?

12 A lot of our questions have been  
13 directed toward that latter point and Alan's  
14 question to the first point, too.

15 Assuming we act, there surely will be a  
16 challenge. It is important the most  
17 powerful record possibly can be built. I  
18 would hope, Mr. Crowell, that you have  
19 thought about this subject. I would hope  
20 you would sort of do a memory dump and  
21 literature dump of materials that are  
22 relevant to establishing the nature of the  
23 problem. Continue that as something that we  
24 have a continuing request for.

25 Nicole?

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2 MS. GORDON: I would like to echo

3 Mr. Crowell's comments about the project on

4 computerizing VENDEX and other computer  
5 systems. This has been an extremely  
6 collegial and aggressive effort. It has  
7 been a great pleasure working together with  
8 DoITT on it. I do believe, and maybe there  
9 are others here who will speak later on  
10 about the experience of other jurisdictions,  
11 I believe when this becomes operational it  
12 will be an historic event. I don't think  
13 there are other jurisdictions that have  
14 anything comparable.

15 In the interests of making sure that  
16 the public understands a lot about this, I  
17 wondered if either one of you could describe  
18 briefly the purpose of the VENDEX system,  
19 what it does contain, so people understand  
20 clearly. I know in Chairman Schwarz'  
21 introduction remarks it pointed out it was  
22 also for purposes other than the purposes  
23 that we at least and at the beginning are  
24 seeking to use it for. Not to get lost as  
25 we go forward, we ought not to have, be

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2 having a public think that it is getting  
3 something different. I thought it would be



4 helpful for us to be clear in this public  
5 arena what it is we're talking about.

6 MS. VELAZQUEZ: Hi.

7 VENDEX is essentially required by  
8 statute. The New York City administrative  
9 code section 6-112 point something -- I  
10 don't remember. Two. Thank you -- mandates  
11 that the City maintain a computerized public  
12 database of essentially 26 points of  
13 information about a perspective contractor  
14 or subcontractor or principals within those  
15 entities.

16 The statute mandates that we collect  
17 this information for anybody that is doing  
18 business with the City that gets a contract  
19 of \$100,000, or if they do an aggregate,  
20 \$100,000 worth of business in a 12-month  
21 period, contractors and subcontractors. The  
22 statute requires a submitting vendor submit  
23 a full submission, if you will, VENDEX  
24 submission once every three years. That  
25 information be updated with each award.

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2 There is certain information, kind of

3 garden variety information about the  
4 vendors, places of business, business  
5 addresses, phone numbers, whether they have  
6 it Dunn & Bradstreet number, the size of the  
7 board, all sorts of things. Then the  
8 statute also asks about what we call  
9 integrity information, have they been  
10 debarred, found non responsible, suspended,  
11 arrests, conflict question. All told, 26  
12 points of information. That is collected  
13 through VENDEX and principal  
14 questionnaires. That's how we collect that  
15 information.

16 The purpose of VENDEX is to enable the  
17 agency chief contracting officers, ACCOs as  
18 we call them, every agency contains to make  
19 a responsibility determination. We're only  
20 supposed to give contracts to responsible  
21 vendors. Responsibility is defined to be  
22 able to perform the contract and have the  
23 requisite technical ability to perform the  
24 contract, requisite business integrity to  
25 justify the award of public tax dollars.

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2 Essentially, VENDEX is the main tool that

3 the ACCOs use to see whether or not their  
4 vendors are responsible.

5 Essentially, it is a huge main frame  
6 system, all of the agencies, not only our  
7 City agencies, but City affiliated agencies,  
8 state and federal, have access to the system  
9 and are able to see what is on there. It is  
10 public again.

11 They look at the information and  
12 basically say "Yes, this vendor is  
13 responsible, this vendor isn't responsible."  
14 They are required by procurement policy  
15 board's rules to do other things aside from  
16 responsibility. That is the essential tool  
17 they use. The information it asks is geared  
18 at making those determinations.

19 Sometimes, like you mentioned, spouses  
20 or children, that kind of information on  
21 principals was available. It isn't, that  
22 isn't really something that the ACCOs are  
23 looking at in terms of the responsibility of  
24 the vendors.

25 MS. GORDON: You mentioned earlier,

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2           whether entities are responsible, their  
3           history, what their history has been. Those  
4           are relevant to someone who is trying to  
5           judge whether appropriate to go forward with  
6           a contract from a pure finance campaign  
7           information. That might or might not be  
8           relevant as to whether disclosure or certain  
9           kinds of contributions should be regulated.

10                   The agencies required to require the  
11           entities they contract with to go through  
12           the VENDEX process, do they include the  
13           so-called non covered agencies or is it,  
14           strictly speaking, City agencies, mayoral  
15           agencies? Expand on that.

16                   MS. VELAZQUEZ: The statute requires,  
17           they require VENDEX, that the VENDEX be felt  
18           out for procurements that are City, mayoral  
19           agencies or City procurements. Affiliated  
20           agencies, health and hospitals, New York  
21           City Housing Authority, School Construction  
22           Authority, MTA and Department of Education,  
23           even though the Department of Education is  
24           now a merit agency. It is the state  
25           legislature kept it under state procurement

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2 laws. It doesn't fall under our procurement  
3 system. It is also not included in VENDEX.

4 I should say, the main frame, the  
5 system is actually divided into four  
6 subsystems. There is contract information,  
7 related entity information, cautionary  
8 information, some of the things I described  
9 to you, when a vendor essentially has  
10 problems and that stuff is posted, and  
11 performance evaluations and performance  
12 history.

13 The two kinds of subsections of the  
14 main frame that are going to be made public  
15 as part of the first phase of this project  
16 we are working on with CFB are the related  
17 entity and contract information subsections  
18 of the database. Those are the things that  
19 are relevant to what we're working on here.

20 No, you'll not capture information from  
21 those City affiliated agencies.

22 MS. GORDON: Does VENDEX cover  
23 contracts done competitively and not --

24 MS. VELAZQUEZ: Yes.

25 MS. GORDON: Both?

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2 has to draw a line, whether it's a \$100,000  
3 contract, a million dollar contract, one  
4 wants to be able to draw that line. We  
5 would assume -- and I gather from the  
6 answer -- could have the information limited  
7 to those contracts above a certain size.

8 MS. VELAZQUEZ: Yes.

9 MR. CHRISTENSEN: Would labor unions in  
10 contracts with the City be included in  
11 VENDEX?

12 MR. CROWELL: VENDEX is goods and  
13 services.

14 MR. CHRISTENSEN: Unlike the teachers'  
15 union?

16 MS. VELAZQUEZ: No.

17 MR. CHRISTENSEN: They are not  
18 included.

19 Healthcare, not for profit  
20 organizations, are they?

21 MS. VELAZQUEZ: Yes.

22 MR. POTASNIK: I understand pay to play  
23 and the influence potential. Might it not  
24 be possible to have a scenario someone can  
25 pay without the play? Someone can make a

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2                   significant contribution to the City as a  
3                   result of that leveraging himself or herself  
4                   into a position of influence?

5                   MR. CROWELL: No.

6                   MR. POTASNIK: Can't happen?

7                   MR. CROWELL: I am aware of the news  
8                   reports you are probably referring to.

9                   MR. POTASNIK: I wasn't referring to  
10                  news reports.

11                  MR. CROWELL: You are talking about  
12                  contributions to whom, for what purpose?

13                  MR. POTASNIK: A charitable gift to the  
14                  City.

15                  MR. CROWELL: It's a different arena.  
16                  Here we're talking about contributions  
17                  accepted by candidates from those already  
18                  doing business or may continue to seek  
19                  business from the City as part of what you  
20                  are trying to avoid, a quid pro quo. "If  
21                  you help to keep me in office or get me in  
22                  office," then there is a responsibility or  
23                  some sort of an obligation to give back to  
24                  them, to the contributor in some way or  
25                  another.

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2                                       What you are talking about, if somebody  
3                                       through a program where the City may be  
4                                       trying to have good corporate citizenship  
5                                       and give money, especially to the City in  
6                                       physically strapped times, charitable  
7                                       purposes, I think it's totally different.

8                                       MR. POTASNIK:   What if that person  
9                                       decides to be a lobbyist?

10                                      MR. CROWELL:    If that person is a  
11                                      lobbyist?

12                                      MR. POTASNIK:   Decides to become a  
13                                      lobbyist, is that initial contribution  
14                                      reflected anywhere?

15                                      MR. CROWELL:    Well, it actually is.

16                                      In 2003, the conflicts of interest,  
17                                      2003-4, developed a new system for the  
18                                      clearance of what they call City affiliated,  
19                                      not for profit organizations for which funds  
20                                      can be raised from private sources to  
21                                      support otherwise public functions.   The  
22                                      Conflicts of Interest Board set up a  
23                                      specific set of criteria that needs to be  
24                                      followed, including disclosure of donations  
25                                      above a certain amount.   Any donation above

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2           \$5,000 has to be reported to Conflicts of  
3           Interest Board for a given period. It's  
4           semiannual reporting and then cumulative for  
5           24 months. It is an intricate process of  
6           reporting. It's out there. That  
7           information is available.

8                   MS. PATTERSON: That information would  
9           not be part of the database?

10                   MR. CROWELL: No reason. To the extent  
11           some of these people -- no. As a matter of  
12           course it is not part of it.

13                   MS. PATTERSON: VENDEX and the  
14           lobbyist, apropos to what Commissioner  
15           Potasnik raised, those deal only with  
16           institutions that are already under contract  
17           with the City or already registered,  
18           correct?

19                   MS. VELAZQUEZ: Yes, but individuals,  
20           you have information in VENDEX where we have  
21           information that is on file. Everything is  
22           pretty much in there for ten years. Things  
23           don't get purged until after ten years.  
24           Information where someone might have filled  
25           out forms, had a contract seven years ago,

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2 hasn't done business since. Yes, that would  
3 be.

4 MS. PATTERSON: That would be  
5 accessible, that data?

6 MS. VELAZQUEZ: Yes.

7 Number two, because we actually last  
8 year streamlined the forms, changed our  
9 process a little bit, we actually had  
10 vendors being proactive, in contemplation of  
11 doing business with the City, filling out  
12 forms but might not have gotten an award.  
13 Wanted to have their forms done so they  
14 didn't have to do it four or five months  
15 from now.

16 MS. PATTERSON: It is not a  
17 prerequisite to getting a contract to do  
18 business?

19 MS. VELAZQUEZ: If you are getting a  
20 contract over \$100,000, or if you have done  
21 an aggregate amount of business and this  
22 current award kicks you over the \$100,000  
23 threshold, you must do VENDEX. The agency  
24 would not be able to award the contract  
25 without it.

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2 MS. PATTERSON: VENDEX system would  
3 pick up people and institutions that may not  
4 currently be doing business, but are seeking  
5 to do business with the City. It is not  
6 perfect, but it can pick them up, as well?

7 MS. VELAZQUEZ: Correct. There will be  
8 gaps of information, obviously. You'll have  
9 people in there that haven't done business  
10 with the City six years and people that are  
11 hoping to do business with the City. Those  
12 are kind of the outliers. I don't think  
13 that's true of the data that is in there.

14 CHAIRMAN SCHWARZ: Nicole has one more  
15 question. If we send you a few questions in  
16 writing about some of the issues about the  
17 operation of VENDEX, the definition and so  
18 forth, you can get back to us?

19 MS. VELAZQUEZ: Absolutely.

20 MS. GORDON: I wanted to pose a  
21 question about the immediate proposal about  
22 putting a question on the card whether the  
23 contributor does business with the City.

24 Down the road, as the Board thinks  
25 about what to do, I am sure one question

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2                   that is going to come up, whether posing  
3                   that question will either discourage people  
4                   from making contributions or whether it will  
5                   confuse them because they don't really know  
6                   what it means to do business.

7                   I take it from your comments about the  
8                   later, bigger question about defining who  
9                   does business with the City, that the  
10                  administration would also work together with  
11                  us in trying to, if the Board chose to go in  
12                  this direction, find a way to pose that  
13                  question that was least likely to frighten  
14                  people or to confuse them. I think that's a  
15                  very tall order. I am not suggesting for a  
16                  moment it could be easily solved. I thought  
17                  that on the surface it has a nice appeal to  
18                  be able to ask that simple question, I  
19                  wonder what the reaction of the average  
20                  contributor as opposed to the sophisticated  
21                  ones who do business with the City and  
22                  others who do not.

23                  A lot of people have various anxious  
24                  transactions they bring forward. They might  
25                  not know the answer to that question. "I

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2                   can't be bothered with us this, I don't want  
3                   to get myself into trouble, I won't make my  
4                   average contribution to my local council  
5                   member." I think this is a tall order.

6                   MR. CROWELL: We can have discussions  
7                   to address your concerns, achieve what we're  
8                   trying to achieve.

9                   CHAIRMAN SCHWARZ: As a matter of  
10                  record, it is fine to have discussions and  
11                  so forth. I think we want to get formal  
12                  material from you guys. There is a record  
13                  here, it is important we act punctiliously.  
14                  I would prefer to get formal responses from  
15                  you on questions of that kind.

16                  MR. CROWELL: We can reflect the  
17                  discussions in letters. As lawyers, we do  
18                  that quite frequently.

19                  MR. RECHTSCHAFFEN: Is there anything  
20                  in the bill, I guess disclosure does this,  
21                  maybe you can flesh it out a little, that  
22                  would address the non incumbent contractor,  
23                  somebody who does no business with the City,  
24                  will only do business if their candidate  
25                  gets elected? That could be a real

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2 problem.

3 Any way to address that issue?

4 CHAIRMAN SCHWARZ: If I can help.

5 Through legislation. One of the reasons --  
6 even though we're going to act if there  
7 isn't legislation. One of the reasons  
8 legislation is the better solution, through  
9 legislation, can you get at the person  
10 seeking to do business with the City and not  
11 already doing so?

12 Thank you very much. You were both  
13 helpful witnesses. We appreciate what the  
14 administration is doing to help on the  
15 database. I would hope the compatibility  
16 between your database and ours could be  
17 accelerated. Once that is done, it removes  
18 the chilling effect problem Nicole brought  
19 up.

20 MR. CHRISTENSEN: Mr. Crowell is  
21 willing to come back here if we need answers  
22 to questions.

23 MR. CROWELL: Absolutely.

24 CHAIRMAN SCHWARZ: Our next witness is

25 Henry.

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2 MR. STERN: Not wishing to provoke  
3 anyone, I want to give you my sense of the  
4 45 minutes I spent listening to Mr. Crowell  
5 and the questions.

6 That was, some rules come in,  
7 basically it is a good idea. A lot of smart  
8 lawyers pick it to pieces, ask so bright  
9 questions which have some validities. The  
10 net effect of them, whatever it is they want  
11 to do can never be done.

12 He said it, Tony Crowell, Rule 29P,  
13 which he said by accident, the perfect is  
14 the enemy of the good.

15 Let me come fresh to it. I am not part  
16 of the administration of any group. I am  
17 New York Civic, independent City group. We  
18 have a terrible system of pay to play that  
19 operates in the City and even worse in the  
20 State of New York. I consider it legal  
21 bribery of our public officials. For every  
22 Vilella who goes to jail for taking money  
23 personally, there are dozens of people who  
24 legally accept money legally for campaign



25 funds and are guided in their actions by the

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2 money they have received.

3 It is not only money -- if I look at my  
4 notes here -- it is not only money to a  
5 particular contractor, it is money from a  
6 union. For example, the most egregious  
7 state legislators, state legislators are  
8 reelected forever, 20 years, 30 years, until  
9 they retire, die, become judges or go to  
10 jail. Those are the four ways out.

11 These legislators have fund-raisers  
12 twice a year, like milking the cow. They  
13 have no need of money to be reelected. They  
14 are all in gerrymandered districts. They  
15 receive 70, 80, 90 percent of the vocation.  
16 The phoney elections you are figuring how to  
17 avoid subsidizing because the taxpayers pay  
18 for these. Campaign finance in the former  
19 Soviet Union.

20 VENDEX, I remember when it was  
21 initiated by Carolyn Maloney, the City  
22 councilwoman. I was on the Council at the  
23 same time.

24 CHAIRMAN SCHWARZ: I thought you were  
25 Parks Commissioner?

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2 You have been everything.

3 MR. STERN: City Council member for  
4 nine years and Parks Commissioner for 15.

5 Anyway, it is to our credit because  
6 people thought at the time it was foolish,  
7 unenforceable, all objections came up. It  
8 turned out to be useful. As Commissioner,  
9 have you have to decide whether to avoid  
10 contracts. A lot of people who apply for  
11 City contracts are low bidders. I may be  
12 totally unsatisfactory for any one of three  
13 reasons: One, they are mobbed up,  
14 widespread, especially in certain parts of  
15 the construction City.

16 Two is that they have a record of  
17 screwing the City and other contracts they  
18 have had. They low ball. Once they get in,  
19 they charge you for everything as an extra.  
20 If you fight with them, it delays the  
21 project.

22 The third, they don't have the capacity  
23 to build a contract, it's two guys with a

24 wheelbarrow, maybe a pickup truck. You give  
25 them the contract and find out, month, two

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2 months after the starting date they haven't  
3 begun because they have another contract  
4 from somebody else.

5 It is really important to have the  
6 VENDEX system to keep track of the  
7 contractors, sort out the bad ones. They  
8 all reopen under other names. ABC Corp.,  
9 which you declared nonresponsive, comes back  
10 as the DEF Corp., using, hiding behind a  
11 woman so they can be a minority. That's  
12 what happened.

13 What you have is such regular  
14 contributions by groups like the UFT,  
15 Associated Business Contractors and so on.  
16 You get to a matter that affects them, the  
17 state legislators believe it would be  
18 unethical for them to go against unions.  
19 They have been taking these people's money  
20 20 years. They come and they want  
21 something, you are going to kick them in the  
22 face. They can get reelected. It almost

23 becomes immoral in their minds, they would  
24 be cheaters if they acted in what we think  
25 is the public interest. That's the

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2 conditions of pay for play. It is  
3 obscenity. You know it when you see it.  
4 You have great difficulty defining it.

5 Let me give you the worst case.

6 MR. CHRISTENSEN: And to regulate it.

7 MR. STERN: Not to mention, difficult,  
8 initiative is much better than nothing. The  
9 honest people will comply. There will  
10 always be chiselers. This would make it a  
11 little more difficult. Everything is a race  
12 between the cops and the robbers. That  
13 shouldn't stop you from cleaning up to the  
14 extent you can.

15 Years ago, on the Board of Estimate,  
16 there was a member of the Board of Estimate  
17 who financed his campaign by lending a  
18 million dollars or more to his campaign  
19 committee. Then, when matters came up at  
20 the Board of Estimate in which this person  
21 had a crucial vote, he would receive a  
22 contribution from the developer involved

23 payable to the campaign committee, which is  
24 perfectly legal. A few days later, the  
25 campaign committee would send him a check

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2 for that amount as repayment of the loan.  
3 This went on routinely. This was the MO of  
4 this person.

5 CHAIRMAN SCHWARZ: Some of those were  
6 contributions of enormously large amounts.

7 MR. STERN: Twenty to 40,000 was the  
8 going rate, maybe more. If it's a big  
9 building, major project, maybe 100 million  
10 dollars. This is small change. Less than  
11 one-tenth of one percent to see it was  
12 accomplished. To me, that is an outrage.  
13 That's skirting the criminal law by the skin  
14 of your teeth.

15 It goes down from that. There are  
16 organizations that are seeking to have City  
17 contracts. There are organizations who seek  
18 intervention or nonintervention from City  
19 regulatory agencies. There are  
20 organizations which one City's subsidies --  
21 in this case, cultural institutions. The

22 way it works, the Mayor, who is the greatest  
23 friend culture ever had, he always cuts them  
24 by 100 million dollars. Always cuts the  
25 culture institutions. Council always

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2 restores the cut. If the Mayor didn't cut  
3 the cultural, the Council may give them  
4 another 100 on top of what he was giving  
5 them. This becomes ritual. It's  
6 nerve-wracking to get 100 million dollars  
7 restored by the Council cultural  
8 institutions and officers contributed to  
9 those Council members who have had a  
10 significant role in restoring their funds.

11 It is the right thing to do to restore  
12 the funds. You don't know that the funds  
13 wouldn't be restored if the contributions  
14 weren't made because there is widespread  
15 support for it. As a matter of common  
16 decency, people tip the waiter to some  
17 extent.

18 The Wildlife Conservation Society,  
19 formerly New York Zoological Society, when  
20 it was NYZS had a system whereby employees,  
21 because they bought tickets to various

22 dinners in the Bronx and elsewhere -- there  
23 was also a system where these employees were  
24 compensated by their employer for the money  
25 they laid out for tickets. Again, a screen

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2 was used to justify so they wouldn't be  
3 out-of-pocket. Each step of this may not be  
4 outrageous, but the net effect of it is that  
5 people are getting paid to do their jobs.

6 Pay for play also has the effect,  
7 everyone who doesn't give the honest, cheap,  
8 whatever you call them, legitimate  
9 businessmen are disadvantaged. If the  
10 donors receive preferential treatment that  
11 can only be at the expense of those people  
12 who don't give.

13 You can't say I operate out of pay for  
14 play. I don't believe in it. You'll find  
15 that the results may be very damaging to  
16 your bottom line.

17 There are also payments that are made  
18 to stop legislation from being passed. The  
19 biggest donor in this report is the tobacco  
20 industry. People don't only pay money to

21 get bills passed, they pay money not to get  
22 bills passed. I don't refer to anyone in  
23 New York City at this point, these are  
24 called shakedown bills. A bill is  
25 introduced in Congress, say, that would have

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2 particularly adverse outcome for a  
3 particular company or trade. Then people  
4 take in order to see this bill never sees  
5 the light of day.

6 I might like New York City to be a  
7 national leader in this field as we are in  
8 other fields. I know no solution is  
9 perfect. It will be the best that can be  
10 done. There are ways people are trying to  
11 get around everything you do, we know that.  
12 You have to accept the fact this one will  
13 make it more difficult and, two, send an  
14 invitation to the honest people they will  
15 not lose opportunities for failure to  
16 comply.

17 I talked about the fund-raisers, which  
18 is another problem. The idea of multiplying  
19 the gifts. The guy gives \$250, whatever he  
20 gives to get a leg up, a favor. The City



21 has to match it with \$1,000. You are  
22 quadrupling the bribe.

23 MR. CHRISTENSEN: Insult to injury.

24 MR. STERN: Yes. It means we have to  
25 pay for it.

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2 There are intermediate steps, you can  
3 ban these contributions or you can make them  
4 ineligible for funding. I don't know what  
5 effect that will have. They may get  
6 legitimate contributions to reach funding  
7 maximum. That may not have an effect.

8 Certainly, the most egregious thing  
9 that happens, as you put it, insult to  
10 injury, when we have to pay for somebody  
11 else's bribe.

12 I think that's it. My conclusion is, I  
13 really hope you act. The situation is  
14 really rotten, corrupt, corrosive, leads to  
15 an atmosphere of cynicism about government.  
16 It leaves a stench.

17 It is all starting, like good  
18 fellowship, you are a nice fellow, I will  
19 give you this and so on. As one criterion,

20 somebody gives you 50, I don't know if he is  
21 legitimate, wants to advance the candidate  
22 or if he is doing it for his company. There  
23 is an inquiry as to whether he is a friend,  
24 relative, has a prior relationship with the  
25 candidate. If the candidate is your

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2 brother-in-law, even a distant cousin, that  
3 doesn't mean you should be stopped from  
4 giving money to him because your company  
5 happens to do business with the City.

6 CHAIRMAN SCHWARZ: I am sure that must  
7 violate your rules about don't be overly  
8 complex.

9 MR. STERN: Let's keep it simple. There  
10 are always situations which will fall  
11 through the cracks, not between the cracks.  
12 Nothing solid falls within the cracks.  
13 There are always situations which may be  
14 hard to get at. You may not get at them.  
15 The bulk of them which is open and what is  
16 blatant as it is conducted, is something you  
17 can take a big slice out of by appropriate  
18 legislation.

19 MR. POTASNIK: Employees for not for

20 profit, giving the 250, hoping a cut will be  
21 restored, can we go back to that.

22 What would be your solution for that  
23 scenario?

24 MR. STERN: I don't think I would allow  
25 that if money is given with the expectation

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2 of specific legislative acts being performed  
3 economically beneficial to them or the  
4 employer. You don't prove it, you don't  
5 send them to jail. A lot of people,  
6 especially, who work for culturals are  
7 naturally law abiding. They won't do it,  
8 especially in areas like this.

9 Like the seat belt law. At first they  
10 didn't. Anti tobacco. Laws against race  
11 prejudice. You don't stop people from  
12 disliking other races. In time, their  
13 attitude changes, they know it is not  
14 allowed, can't be taught to their kids.

15 This is not the kind of evil that has  
16 to be absolutely wiped out from the face of  
17 the earth otherwise the heavens will fall.  
18 It is a bad practice which I want to get rid

19 of as far as possible.

20 MR. CHRISTENSEN: I appreciate your  
21 admonition about not letting legalisms get  
22 in the way of obstructing doing the right  
23 thing. That's important to keep in mind.

24 There is one point I probably should  
25 have asked Mr. Crowell. Looking at the

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2 attendance list of the people here, you are  
3 the only other one that has worked in the  
4 executive branch.

5 MR. STERN: Or legislative branch.

6 MR. CHRISTENSEN: If the Mayor seems to  
7 be extremely committed to this policy  
8 objective, why can't it be approached from  
9 the procurement end?

10 If you are so inclined to do this, why  
11 can't you not, just refuse to accept  
12 contracts from people who contribute to the  
13 candidates, wouldn't that stop the same  
14 problem in its tracks rather than enmesh it  
15 in the electoral process?

16 MR. STERN: I think you have a real  
17 problem with the legality of the Mayor's  
18 issuing such an executive order on the

19 grounds it is the subject of regulation or  
20 legislation.

21 For example, the Council wants to  
22 require contractors not to discriminate, not  
23 to deal with anyone who discriminates to  
24 give people getting pensions and benefits,  
25 those are all done by legislation. I don't

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2 know -- Mayor Koch did some of it by  
3 executive order number four, which was  
4 issued when you were corporation counsel.

5 CHAIRMAN SCHWARZ: The under 21 case  
6 where Mayor Koch prohibited the City from  
7 entering into contracts with organizations  
8 that discriminated against, in that instance  
9 gays, was struck down by the New York Court  
10 of Appeals as beyond the power of the  
11 Mayor. On the disclosure front, though,  
12 probably the limitation on the Mayor's  
13 unilateral power are not as great.

14 MR. CHRISTENSEN: It's just a thought.  
15 It seemed that you were comfortable more  
16 with prohibitions on the not for profit  
17 sector than I gathered Mr. Crowell was; am I

18 wrong?

19 MR. STERN: You are right. I am in the  
20 not for profit sector. I shouldn't give  
21 money, my organization can't.

22 MR. CHRISTENSEN: In your mind, doing  
23 business does not equal profit?

24 MR. STERN: That's right.  
25 Organizations like the Red Cross, great

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2 universities which are in every sense multi  
3 build businesses, they buy and sell  
4 property, do all kinds of things which have  
5 legal effect and they are allowed to. Why  
6 should they be -- they are exempt from real  
7 estate taxes, a reasonable decision, why  
8 should they be exempt from what you might  
9 call bribery every time but gaining undue  
10 influence as a result of financial  
11 contributions to individuals?

12 MR. CHRISTENSEN: Same thing is true  
13 for City unions, in your opinion?

14 MR. STERN: I think so. That's more  
15 complicated. Classically, that's one of the  
16 weapons of unions. If they couldn't give  
17 money -- you have a first amendment issue

18 with unions, expressing the will of their  
19 members. You could not apply it there.

20 MS. GORDON: What do you think about  
21 issue of contributions for entities like the  
22 Central Park Conservancy?

23 MR. STERN: That should be encouraged,  
24 unless there is any hint that the person or  
25 organization that contributes to the Central

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2 Park Conservancy in any way receives  
3 favorable treatment from the Conservancy or  
4 anybody else.

5 MS. GORDON: Maybe it's not the  
6 Conservancy, but some other unrelated  
7 business.

8 MR. STERN: Let me say this  
9 prohibition -- there is an interesting thing  
10 whether this prohibition for legislators  
11 should apply to the executive branch. In  
12 the executive branch there are occasions you  
13 solicit or receive contributions from your  
14 contractors or concessionaires. None of it  
15 goes for any personal benefit, unless you  
16 are a crook. It can go to build something,

17 open a facility or inform some public  
18 purpose not immediately provided by City  
19 funds.

20 I don't think you can include that in  
21 the law because it's such a difficult  
22 thing. It is more, even more difficult to  
23 track down. In many cases these are  
24 entirely voluntary. A person who owns a  
25 restaurant, the City owns, a person with a

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2 permit to operate a restaurant, wants to  
3 give the City \$50,000 to cut the shrubbery  
4 around the restaurant, keep it trimmed so  
5 people will have a better view of his  
6 restaurant. It is a reasonable thing.

7 MR. CHRISTENSEN: The whole concept  
8 behind bids, actually, in a way.

9 MR. STERN: Yes.

10 MR. RECHTSCHAFFEN: I want to thank  
11 you. I still wear my park name on  
12 occasion.

13 MR. STERN: I have mine in my pocket.

14 MR. RECHTSCHAFFEN: My question is, the  
15 same question I posed to Mr. Crowell, how  
16 much influence does a \$1,000 contribution --



17 actually, only \$750 additional contribution,  
18 250 would still be allowed under new  
19 legislation, how much influence could \$750  
20 have on the awarding? Concerted giving is  
21 already prohibited.

22 MR. STERN: There are other favors  
23 besides awarding. The \$1,000, 750 plus,  
24 whatever it is, is a door opener. The great  
25 thing that people seek is access to public

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2 officials. I provide access free to people  
3 who have problems, people I know who can't  
4 get problems resolved, they can't get  
5 beyond.

6 I don't mind charging. They make their  
7 living. They are not pensioners like I am.  
8 They have to feed their families so they do  
9 that for a living. It's a profession.  
10 Called lobbying. \$1,000 will get you  
11 access, a call return, would get someone to  
12 work on a matter. It may or may not result  
13 in a contract, at least you can find out  
14 what has happened.

15 One anecdote --

16 CHAIRMAN SCHWARZ: Then we have to  
17 move.

18 MR. STERN: This involves someone with  
19 whom I worked and his name is Stanley  
20 Friedman. When I was Parks Commissioner,  
21 former Bronx County leader. He was in  
22 private life. Deputy Mayor under Mayor  
23 Beam. Then when Mayor Koch was elected he  
24 was no longer Deputy Mayor. Despite the  
25 rumor, the opposite was true.

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2 He called me on behalf of a particular  
3 client who wanted a concession. I would  
4 say, "Well, did you know that," and I would  
5 tell him all the reasons why the guy didn't  
6 get a concession. Stanley Friedman would  
7 thank me.

8 He would call the guy back and say,  
9 "You didn't tell me," you know, all the  
10 things I told him. "How do you expect me to  
11 get you a concession if you have done  
12 that?" He never made an improper request.

13 The point is, he was able to show  
14 through that call he had access. That  
15 justified the payment that was made by the

16 lobbyist. Yet, nothing was done that  
17 injured the City in any way. I give that  
18 story because it has a certain charm,  
19 because it tells the ramifications. That's  
20 why a \$1,000 contribution can do a lot of  
21 good.

22 CHAIRMAN SCHWARZ: We appreciate your  
23 testimony. We are always looking to build  
24 our record. As other facts come to your  
25 mind that are relevant, either put them in

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2 your column, we will read it, or send it to  
3 us.

4 MR. STERN: By the way, have any of you  
5 not received my e-mails?

6 CHAIRMAN SCHWARZ: No. This is not an  
7 opportunity to solicit business.

8 MR. STERN: Unfortunately, my market is  
9 saturated. Thank you.

10 CHAIRMAN SCHWARZ: How many people are  
11 on that list?

12 MR. STERN: 11,500.

13 CHAIRMAN SCHWARZ: Paul Ryan is here  
14 from Campaign Legal Center. We very much

15 appreciate it. We appreciate your coming  
16 here. Give our regards to Trevor Prada.

17 Prada, who I know from the  
18 McCain-Feingold litigation, has been a hero  
19 on campaign finance reform issues.

20 MR. CHRISTENSEN: If you are not  
21 already planning on doing so, this will go  
22 for any of the presenters, tell us a little  
23 bit about who they are representing when  
24 they get up to speak. It would be helpful.

25 MR. RYAN: Good morning to all of you

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2 Board Members and Ms. Gordon. I am Paul  
3 Ryan, associate legal counsel of the  
4 Campaign Legal Center. It is a nonprofit,  
5 nonpartisan organization which works on  
6 matters of public policy related to  
7 McCain-Feingold finance and ethics.  
8 Combination of litigation and legislation  
9 drafting. Working with government  
10 officials, community organizations in their  
11 capacity to promote good government laws.

12 We're currently jumping into a lawsuit  
13 in New Jersey in which the State of New  
14 Jersey is suing the Federal Highway

15 Administration in defense of the state's  
16 recently adopted executive order related to  
17 pay to play. We haven't had a whole lot of  
18 involvement in pay to play laws. Before  
19 joining, I was working in Los Angeles,  
20 Center for Governmental Studies, which has  
21 done a tremendous amount of work.

22 In a memo circulated with invitations  
23 to this hearing, you posed a series of  
24 questions related to this topic. For the  
25 sake of efficiency and clarity, I will

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direct my comments to several of these

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questions.

4

Courts throughout the United States,

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including the U.S. Supreme Court, have

6

consistently recognized the threat of real

7

and apparent corruption posed by large

8

contributions to candidates and elected

9

officials. Although some individuals make

10

campaign contributions for ideological

11

reasons, most donors make political

12

contributions to obtain access to public

13

decision makers. These access seekers pose

14 the greatest threat of corruption, and at  
15 the core of this group are entities doing  
16 business with the government.

17 This political economic reality is not  
18 the fault of candidates or contributors, but  
19 is rather the predictable result of a  
20 political system that typically forces  
21 candidates to raise huge sums of money from  
22 private sources to run competitive  
23 campaigns.

24 New York City has taken great strides  
25 toward remedying this problem by providing

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2 partial public financing to candidates. But  
3 the City's high contribution limits continue  
4 to allow large contributions from entities  
5 doing business with the City. This may, at  
6 the very least, feed public perception that  
7 government is corrupt.

8 Nevertheless, because candidates here  
9 have access to public funding for their  
10 campaigns, the City is in the best position  
11 imaginable to further address real or  
12 apparent corruption in City politics by  
13 prohibiting or strictly limiting

14 contributions and increasing disclosure from  
15 entities doing business with the City.

16 CHAIRMAN SCHWARZ: On the public  
17 perception point, my recollection of the  
18 record we made in the McCain-Feingold  
19 litigation was that it included poles of  
20 citizens with cynicism about government and  
21 voting that arises from contributions.

22 Would you be able, because I know your  
23 organization was deeply involved in that  
24 litigation, to provide us with what material  
25 you have about poles showing public concern

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2 on the subject?

3 MR. RYAN: I would certainly be willing  
4 to scour the records for both the  
5 legislative process and the litigation to  
6 get you whatever I could find.

7 (Continuing) Such restrictions are  
8 often referred to as pay to play regulations  
9 and have been adopted by the federal  
10 government, the states of New Jersey, West  
11 Virginia, Ohio, Kentucky and South Carolina  
12 and by several local governments in

13 California and New Jersey.

14 You've asked whether contributors or

15 candidates should be regulated. The federal

16 government and most other jurisdictions

17 adopting pay to play laws have chosen to

18 regulate would-be contributors rather than

19 candidates. Federal law, for example,

20 prohibits contributions to federal political

21 parties, committees and candidates from any

22 person who enters a contract for which

23 Congress appropriates funds. The

24 prohibition applies from the commencement of

25 contract negotiations until performance of

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2 the contract is complete.

3 The rationale behind this common

4 approach is that prospective contributors

5 are in a better position to know whether

6 they are doing business with the government

7 than are candidates. The development of a

8 database of contractors here in New York

9 City may ease the burden on candidates

10 should the City choose to regulate their

11 activities rather than the activities of

12 contractors. To be certain, the database



13 will be an invaluable tool for enforcing any  
14 pay to play regulations the City chooses to  
15 adopt.

16 One complicating factor here in New  
17 York City which might dictate the City's  
18 approach is that the charter authorizes this  
19 Board to regulate candidate activities, not  
20 contractor activities. This leads to  
21 another specific question you've posed.

22 You've asked whether legislation by the  
23 City Council or regulation by the Board is  
24 the better avenue for addressing the  
25 problem. The charter appears to grant

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2 limited authority to the Board with regard  
3 to regulation in this area, leaving City  
4 Council legislation as the only open avenue  
5 for some types of pay to play restrictions.

6 The charter provision added by  
7 referendum in 1998 authorizes the Board to  
8 require disclosure of contributions from  
9 entities doing business with the City from  
10 any candidates who file disclosure reports  
11 with the Board, and to promulgate such rules

12 as it deems necessary to implement and  
13 administer this provision. Under current  
14 City law, as amended late in 2004, all  
15 candidates for City office are required to  
16 file disclosure reports with the Board, and  
17 consequently, the Board may require specific  
18 disclosure related to contributions from  
19 entities doing business with the City from  
20 all City candidates.

21 The same section of the Charter  
22 authorizes the Board to promulgate such  
23 rules as it deems necessary to regulate the  
24 acceptance by candidates participating in  
25 the voluntary system of campaign finance

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2 reform of campaign contributions from  
3 individuals and entities doing business with  
4 the City. By contrast to the charter  
5 authorized promulgation of disclosure rules  
6 for all City candidates, the Board's  
7 authority to adopt rules restricting  
8 contributions from entities doing business  
9 with the City seems to extend only as far as  
10 participating candidates.

11 In other words, under charter chapter

12 46, the Board may impose pay to play  
13 disclosure requirements on all City  
14 candidates but may impose pay to play  
15 contribution restrictions only on candidates  
16 participating in the public financing  
17 program.

18 For this reason, the Board might enact  
19 pay to play disclosure requirements for all  
20 candidates through its rulemaking process.  
21 The Board should propose to the City Council  
22 adoption by local law pay to play  
23 regulations beyond candidate disclosure  
24 requirements, including restrictions on  
25 contributions to both participating and

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2 nonparticipating candidates from entities  
3 doing business with the City.  
4 Should the public financing program,  
5 you've asked, offer any benefits to  
6 participating candidates who agree to not  
7 take money from entities that do business  
8 with the City? The current public financing  
9 program structure seems sufficiently  
10 generous to participating candidates and the

11 threat of corruption posed by contributions  
12 from government contractors exists  
13 regardless of whether or not the receiving  
14 candidate is a program participant. Any  
15 adopted pay to play regulations should not  
16 be tied to program participation.

17 With regard to your question of whether  
18 contributions from entities doing business  
19 with the City should be banned entirely or  
20 only limited in amount, my answer depends on  
21 the scope of the regulation. The broader  
22 the scope, the stronger the reason to limit,  
23 rather than prohibit, contributions. The  
24 dependence on my answer on the scope of  
25 regulation is rooted in legal considerations

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2 rather than policy considerations.

3 The U.S. Supreme Court made clear in  
4 its recent Beaumont decision, upholding the  
5 federal prohibition on political  
6 contributions from corporate treasury  
7 funds. Restrictions on political  
8 contributions have long been treated as  
9 marginal speech restrictions subject to  
10 relatively complaisant First Amendment

11 review because contributions lie closer to  
12 the edges than to the core of political  
13 expression. Thus, a contribution limit  
14 passes muster if it is closely drawn to  
15 match a sufficiently important interest.  
16 The time to consider the difference between  
17 a ban and a limit is when applying scrutiny  
18 at the level selected, not in selecting the  
19 standard of review itself.

20 But in its discussion of whether the  
21 federal corporate contribution prohibition  
22 is closely drawn to match a sufficiently  
23 important interest, the Court made clear  
24 that the constitutionality of the federal  
25 law rested largely on the fact that federal

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2 law leaves open an alternative avenue of  
3 political participation by individuals  
4 related to corporations. Corporations are  
5 permitted to form separate segregated  
6 political committees and make contributions  
7 through these committees.  
8 Should the City choose to block  
9 entirely one avenue of political

10 participation through enactment of an  
11 outright ban on contributions from one or  
12 more identified groups, the City should  
13 consciously determine that sufficient  
14 alternative avenues of political  
15 participation remain open. However, should  
16 the City choose to impose an amount limit on  
17 contributions rather than an outright ban,  
18 then no avenues of political participation  
19 will have been blocked.

20 To put this analysis in more concrete  
21 terms, if the scope of the City's pay to  
22 play regulation is narrow, including only  
23 government contractors, for example, then an  
24 outright prohibition on contributions might  
25 be deemed by a court to be closely drawn to

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2 match a sufficiently important City interest  
3 in avoiding real and apparent corruption.  
4 The more broad the City's regulatory  
5 net, the less closely drawn it will  
6 inherently be. If the City were to cast a  
7 very broad net to include entities seeking  
8 land use permits and entities with business  
9 before boards of public authorities, for

10 example, then the City might consider  
11 imposing an amount limit rather than an  
12 outright prohibition on contributions in  
13 order to decrease the burden on First  
14 Amendment activity and increase the  
15 likelihood of surviving judicial scrutiny.

16 Furthermore, the City should determine  
17 a dollar value of the business dealings that  
18 trigger the pay to play regulations. The  
19 New Jersey pay to play executive order  
20 currently in effect, for example, applies  
21 only to contracts valued above \$17,500. The  
22 pay to play ordinance pending in the City of  
23 Los Angeles would apply only to contracts  
24 valued at \$100,000 or more.

25 The federal pay to play law does not

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2 contain a contract value trigger. Federal  
3 contracts, however, always involve large  
4 appropriations. Such is not the case at the  
5 state and local government level and a  
6 contract value trigger seems a wise way to  
7 ensure that the regulation is closely drawn  
8 to an important government interest.

9           A pay to play contribution limit or  
10           prohibition should apply to subcontractors  
11           and also to agents of the entity doing  
12           business with the City, with the term agent  
13           defined to include officers of the entities,  
14           any person --

15           CHAIRMAN SCHWARZ: When you say every  
16           officer, take a bank, a bank will have a  
17           thousand vice presidents.

18           Alan, is that right?

19           MR. RECHTSCHAFFEN: Yes.

20           CHAIRMAN SCHWARZ: One has to be a  
21           little careful, as the people who testified  
22           from VENDEX were, what sort of officer.

23           MR. RYAN: That determination should be  
24           based on whether you choose to adopt an  
25           outright prohibition or a limit. If you go

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2           with limit, you can expand the scope a  
3           little broader. If you go with prohibition,  
4           you need to be careful.

5           The Board should not allow the ideal or  
6           perfect pay to play regulation to be the  
7           enemy of an attainable pay to play  
8           regulation. As with all of the laws you



9 administer and implement, pay to play laws  
10 will inevitably require near constant fine  
11 tuning and adjustment. This Board is known  
12 nationwide for its willingness to reevaluate  
13 and adjust the City's campaign finance laws  
14 on a regular basis. This public hearing is  
15 a striking example of this quality.

16 Regulation of entities doing business  
17 with the City should be approached with the  
18 same attitude. The City should consider  
19 beginning its pay to play regulation with a  
20 focus on contractors and lobbyists,  
21 regulations of the sort that have been  
22 implemented successfully in other  
23 jurisdictions. The City may then identify a  
24 need to expand its regulation into areas  
25 such as land use, areas that have not yet

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2 been subject to pay to play regulations in  
3 other jurisdictions.

4 I thank you for this opportunity to  
5 comment on these important matters of public  
6 policy and would be happy to answer, to the  
7 best of my abilities, any questions you

8 might have.

9 CHAIRMAN SCHWARZ: It was thoughtful  
10 and helpful.

11 Questions? Comments?

12 MR. CHRISTENSEN: I wanted to thank you  
13 for your presentation and the written  
14 summary. It was helpful to us. What you  
15 have honed in on are some of the major  
16 issues we're struggling with.

17 If you can step back for a second. It  
18 is clear your organization has looked at  
19 these issues at some breadth.

20 One of my concerns is, let's assume  
21 legislation or regulation can be implemented  
22 in these areas, what is the conditions of  
23 that?

24 Obviously, we understand pay to play,  
25 it's a bad thing. It's easy to comprehend

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2 that. One of my concerns, we're dealing  
3 with a problem in a sort of micro economic  
4 issue of contributors to campaigns. Real  
5 influence in government extends beyond  
6 people who contribute to the campaigns. It  
7 consists of major employers who can barge

8           into a Mayor's office at any time and say,  
9           "We need this or that." It includes major  
10          labor unions who have significant impact  
11          without having significant contribution to  
12          any candidates because of the need for the  
13          City to cooperate.

14                 If you remove the abilities of other  
15          institutions in government to have access,  
16          so to speak, are you, in some instances, not  
17          enhancing the power of the macro players in  
18          this that don't even have to make political  
19          decisions? Have you thought about those  
20          issues?

21                 MR. RYAN: I haven't thought about them  
22          in a formal context. I haven't studied the  
23          issue specifically or gathered data. Your  
24          concerns are legitimate. I think this Board  
25          needs to not allow the perfect pay to play

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2           law or perfect elimination of corruption to  
3           become an enemy of the attainability.  
4                 There are specific examples. I am not  
5           familiar with them here in New York City.  
6           There are pay to play scandals that can be

7           addressed. You have the ability as  
8           regulators of CFB to address the core that  
9           pose the greatest threat. You can't reach  
10          every potential avenue. That excerpt  
11          influence, I believe it should not paralyze  
12          you from attempting to attack the core of  
13          the problem.

14                 MR. CHRISTENSEN: I don't disagree.

15                 You have financial institutions that  
16                 are not dependent on contributions to gain  
17                 access to legislators who can influence City  
18                 policy in a thousand ways, getting  
19                 variances, permits to operate a branch bank  
20                 or something in that location. Someone who  
21                 is running a competing, let's say, credit  
22                 union that doesn't have the ability to gain  
23                 a voice or get access can only do that  
24                 through political contributions, maybe.

25                 Are we indirectly, possibly, enhancing

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2                 the power of major institutions to influence  
3                 government by trying to go at this problem  
4                 with campaign contributions?

5                 MR. RYAN: I personally don't believe  
6                 so. In order to make a more definitive

7 assessment, it is necessary to look at the  
8 specific nature of the influence you believe  
9 and is quite possibly excerpted by large  
10 institutions.

11 For example, City government outside of  
12 the campaign contributions, I don't know the  
13 precise nature of that influence. If it's  
14 related most specifically to a large number  
15 of people, that is not particularly bad  
16 activity. It's the type of influence on  
17 government that the notion of democracy  
18 strives for, large numbers of people  
19 influencing public policy development. If  
20 it's built to aggregate to their ability to  
21 impact areas of wealth, there might be  
22 avenues that need to be developed for that  
23 area of influence.

24 MR. POTASNIK: There is a scenario I  
25 ran by Nicole. 250 for a lobbyist would not

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2 be matchable. If I were the same lobbyist,  
3 why wouldn't I turn around and say, "Here's  
4 1,250"? Not worry about the matchability.  
5 I am not.

6 MR. RYAN: You hit the nail on the  
7 head, what I consider to be one of the most  
8 significant problems in the City of New York  
9 and State of New York. It is the large  
10 contribution limits. It is legal in this  
11 jurisdiction for a lobbyist to do that.  
12 That's a problem you won't be able to get to  
13 by enacting pay to play regulations  
14 necessarily, unless you outright prohibit  
15 contributions from these sources.

16 I have been advocating on reduction for  
17 the last five or six years in New York City,  
18 since I have been studying. I don't have an  
19 answer beyond lower contributions that apply  
20 to everyone.

21 CHAIRMAN SCHWARZ: As I have said to  
22 every witness, to the extent you have record  
23 information, we know the problem. I have  
24 thought about this problem personally since  
25 1985 or six. We want to build the best

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2 record that can be made to determine what to  
3 do. To the extent you have record  
4 information about New York City, it would be  
5 helpful to get that to us.

6           A comment about your suggestion land  
7           use ought to be delayed. My experience in  
8           City government is that land use is the most  
9           important thing to address because there are  
10          larger amounts at stake, and the action by  
11          the government is more discretionary.

12           MR. CHRISTENSEN: It's here in the City  
13          more local. The City is in a situation  
14          where it has less power. We're very much a  
15          creature of the state for historical  
16          reasons, legislatively. Land use powers,  
17          taxing powers on land are one of the things  
18          that still resides here with the City. The  
19          potential here is a little different than  
20          some other areas.

21           MS. GORDON: Just to add, in Mr. Ryan's  
22          testimony he talks about interpreting the  
23          charter in a way that suggests the Board  
24          could have authority at least on the  
25          disclosure front to reach all candidates.

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2           We have had some of that discussion here, if  
3           that is a correct analysis, it is because of  
4           the report that he wrote some years back on

5 the New York City campaign finance system in  
6 which he recommended that the City adopt  
7 more far-reaching disclosure and  
8 contribution limit rules. He triggered a  
9 reconsideration of what had been accepted  
10 wisdom in the City, those issues were pre  
11 cemented by state law.

12 Recently, the Council did act on those  
13 two fronts and expanded the scope. Paul has  
14 an intimate familiarity, more than most, on  
15 New York City's charter and other subjects  
16 covered in that report.

17 CHAIRMAN SCHWARZ: Other comments or  
18 questions?

19 Thank you.

20 I didn't know you had been responsible  
21 for that report. That was very influential  
22 in our thinking.

23 MR. RYAN: Thank you for being of  
24 service.

25 CHAIRMAN SCHWARZ: Are you testifying?

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2 MS. GORDON: We have Megan  
3 Quattlebaum.

4 MS. QUATTLEBAUM: Common Cause/New York



5 is a citizens' lobby whose goal is open and  
6 accountable government. We appreciate the  
7 opportunity to present testimony to you  
8 today.

9 Common Cause/New York has long decried  
10 the all too common practice of pay to play  
11 in which large campaign contributions are  
12 traded for lucrative government contracts.  
13 In a public contract system driven by  
14 political contributions, merit and  
15 cost-effectiveness fall by the wayside, and  
16 those who really pay are taxpayers who are  
17 forced to spend more for lower quality  
18 services. We agree with the administration,  
19 even in the absence of contracting scandals  
20 like those we have seen in other states and  
21 localities in which political contributions  
22 appear to have been explicitly traded for  
23 government contracts, the fact that those  
24 who receive City contracts are, in some  
25 cases, also major campaign contributors can

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2 create an appearance of favoritism that in  
3 itself erodes public confidence in

4 government.

5 Common Cause/New York wholeheartedly  
6 supports restrictions on political  
7 contributions from those seeking or holding  
8 contracts with the City. We are heartened  
9 that the Mayor has taken an interest in  
10 remedying this problem and appreciate recent  
11 efforts to begin creating a database that  
12 identifies contractors doing business with  
13 the City.

14 Nevertheless, while the  
15 administration's focus on pay to play is  
16 highly commendable, we feel that the current  
17 proposal being supported by the Mayor and  
18 considered by the City Council contains  
19 serious flaws in its approach to the  
20 problem. The Mayor's proposal points out  
21 that the public has supported reforms that  
22 would address the pay to play problem, and  
23 criticizes the Campaign Finance Board for  
24 failing to devise effective solutions.

25 However, as national pay to play expert

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2 Craig Holman of Public Citizen has stated,

3 "Pay to play reform should be viewed as

4 reform of government regulated contracting  
5 procedures, not as campaign finance law."  
6 Pay to play is most effectively and  
7 appropriately regulated when legislation is  
8 passed that restricts contributions from  
9 those holding or seeking contracts from the  
10 City, with the City's chief procurement  
11 officer serving as the enforcement agent.  
12 The penalty for contractors who violate  
13 these restrictions could then be that their  
14 current contract is canceled and the entity  
15 is barred from seeking additional contracts  
16 for a period of some years into the future.  
17 This is the model that New Jersey has  
18 pursued, and we believe it is the  
19 appropriate avenue for New York City, as  
20 well.

21 Intro 467 requires individual  
22 candidates for city office who participate  
23 in the City's campaign finance program to  
24 determine whether or not their contributors  
25 doing business with the City, and then to

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2 reject contributions from entities or

3 individuals who are. This places a sizable  
4 and we think potentially unsupportable  
5 burden on individual candidates given the  
6 number of City agencies and vendors, and we  
7 are concerned that it may have the  
8 unintended consequence of actually  
9 discouraging candidate participation in the  
10 campaign finance program. Because the  
11 contribution restriction does not apply to  
12 candidates who do not participate in the  
13 campaign finance program, the proposed  
14 legislation could create a strong financial  
15 incentive for candidates to actually opt out  
16 of our public financing system.

17 We believe that this proposal also has  
18 serious weaknesses in terms of its  
19 enforcement mechanism. Under the proposal,  
20 if the Campaign Finance Board determined  
21 that a contribution had been made to a  
22 participating candidate by an entity or  
23 individuals who has or within the last six  
24 months has had business dealings with the  
25 City, the Board will consider this a

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2 violation of its rules and may choose to

3 issue a fine to the participating  
4 candidate's campaign. In our view, this  
5 incorrectly penalizes the candidate as  
6 opposed to the contributor and provides  
7 little to no deterrent to the contractor who  
8 made the inappropriate contribution.

9 The Campaign Finance Board has no  
10 authority to cancel a contract for an entity  
11 that has made inappropriate political  
12 contributions or to see that this entity be  
13 barred from seeking future contracts for a  
14 specified period of time, an approach that  
15 has been pursued in New Jersey and that  
16 gives the pay to play restriction more teeth  
17 than the current proposal being considered  
18 in New York City.

19 We believe the proposal currently under  
20 consideration by the Mayor and the City  
21 Council represents an inefficient and  
22 burdensome approach to solving the pay to  
23 play problem. At worst, it could actually  
24 undermine the health of the nation's leading  
25 municipal public financing program.

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2           We have a number of practical  
3           suggestions for how this legislation might  
4           be amended and improved to effectively  
5           reform the City's contracting process to  
6           address the issue of pay to play. We  
7           believe pay to play legislation should be  
8           written as a reform to the City's  
9           contracting process rather than a new aspect  
10          of our campaign finance law. The City's  
11          chief procurement officer should serve as  
12          the enforcing agent and the Campaign Finance  
13          Board should play the important and  
14          appropriate role of informing potential  
15          contributors of the fact that making a  
16          contribution may bar them from seeking City  
17          contracts and hopefully joining their online  
18          campaign finance disclosure database with  
19          the administration's database of those  
20          seeking or doing business with the City to  
21          make full information about contributors  
22          available to the public. The Board should  
23          also be vested with the authority to fine  
24          candidates who knowingly encourage  
25          contractors to violate the law.

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2           We believe contributions from those  
3           seeking or holding business in the City  
4           should be restricted for every citywide  
5           candidate, whether or not he or she  
6           participates in the campaign finance system,  
7           and political party committees and  
8           leadership PACs should be included in the  
9           ban, as well.

10           We believe contributions should be  
11           restricted starting at latest with the  
12           commencement of negotiations for the  
13           contract or agreement throughout the term of  
14           the contract and for at least six months to  
15           a year after the contract expires.  
16           Restricting contributions only from entities  
17           that are already doing business with the  
18           City attacks the problem too late to  
19           effectively eliminate any pressure  
20           contractors may feel to contribute so as to  
21           receive favorable consideration of their  
22           bid. The City should also consider the  
23           possibility of limiting contributions in a  
24           specific pre-negotiation period, as New  
25           Jersey has done.

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2                         Before the awarding of any contract,  
3                         the contractor should be required to provide  
4                         a written certification to the City or to  
5                         the relevant purchasing agent or agency  
6                         stating that it has not made a contribution  
7                         that would bar the award of the contract  
8                         pursuant to the City's legislation.

9                         If a contractor is found to have made a  
10                         contribution in breach of this legislation,  
11                         this should be considered a breach of the  
12                         relevant contract or agreement. The  
13                         contract should be canceled and the entity  
14                         should be prohibited from seeking future  
15                         contracts for a period of some years.

16                         We also finally believe the legislation  
17                         should include a reasonable cure for  
18                         violations. Occasionally, agents of a  
19                         business entity may be unaware that a  
20                         campaign contribution early in the  
21                         negotiation process would violate the  
22                         regulation. If such a violation occurs  
23                         prior to the contract agreement, the  
24                         contractor should be given a reasonable  
25                         opportunity to seek the return of the

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2 proposal in looking at the charities issue.  
3 In terms of your general understanding.

4 We believe that the definition of  
5 entities doing business with the City should  
6 include lobbyists hired by contractors  
7 wishing to do business with the City; legal  
8 firms hired by a contractor to develop their  
9 proposal or represent them before City  
10 agencies; lobbyists seeking budgetary,  
11 administrative, regulatory or legislation  
12 action from City government; and those  
13 seeking zoning variances, tax breaks or who  
14 are involved with real estate transactions  
15 with the City, a broader definition that you  
16 think would enhance the database and would  
17 include folks like ourselves. If we have  
18 legislation before the City, at least it's a  
19 broader definition who could be in the  
20 database.

21 We believe that all partners and  
22 officers, as well as other individuals with  
23 a substantial ownership interest in the  
24 entity, as well as their spouses and  
25 unemancipated children should be included in

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2 the restriction on contributions. New  
3 Jersey has set ten percent as the floor for  
4 substantial ownership interest while Intro  
5 467 places the floor at five percent. We  
6 are open to further discussion and debate  
7 about the exact percentage interest that  
8 will be considered.

9 Common Cause/New York does not yet have  
10 a position on whether contributions from  
11 those who do business with the City should  
12 be banned or simply limited. We are still  
13 discussing and debating the relative merits  
14 of the approaches and we welcome further  
15 discussion of the issue. We see pros and  
16 cons with both. We do believe, however,  
17 that these contributions should not be  
18 considered matchable under the program's  
19 guidelines.

20 It does raise the question, in the  
21 Mayor's proposal they cite \$250. If we  
22 could lower our contribution limit you can  
23 get at this from a different way. It raises  
24 the question, is there another way to get at  
25 it. That is something we certainly will

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2 consider.

3 We believe New York City should  
4 determine a reasonable dollar value of doing  
5 business dealings as a threshold that  
6 triggers the doing business regulation.  
7 Again, we are open to further discussion of  
8 what that should be. For your information,  
9 there is a discussion about that at the  
10 state level in terms of registering a  
11 lobbyist, that threshold is \$2,000. The  
12 temporary commission on lobbying has  
13 proposed \$50,000, the assembly proposed  
14 \$5,000. These are all subject to  
15 interpretation. We consider the \$1,000  
16 threshold currently being considered strikes  
17 us as unusually low.

18 We believe that the Campaign Finance  
19 Board should first produce a report  
20 detailing what percentage of current  
21 contributions to candidates would be  
22 affected under various pay to play  
23 regulatory scenarios before deciding what  
24 level of additional matching funds might be  
25 considered to compensate for the decreased

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2 ability of campaigns to raise funds.

3 I would think that would be a good  
4 way. If we could get a better sense of what  
5 is happening, we might be able to come up  
6 with a good number.

7 CHAIRMAN SCHWARZ: Rachael, if you  
8 leave out the generous idea of an individual  
9 contractor spending piles of their own  
10 money, what if a reform did lead to lower  
11 aggregate amounts being contributed and it  
12 affected incumbents and challengers equally,  
13 which may be something worth challenging,  
14 then why would one need to consider  
15 compensating for reduction in compensation?

16 MS. YOUNG: You wouldn't if you set  
17 lower contribution limits.

18 MS. GORDON: Historically, although our  
19 limits may seem high compared with other  
20 jurisdictions, they are much lower than New  
21 York State limits. I believe one of the  
22 reasons the local legislation was passed was  
23 as a solution to the pay to play problem.  
24 They may have had too high a number in  
25 place. It certainly was one of the reasons

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2 this local law was passed.

3 MS. YOUNG: We get to the problem about  
4 this being only participants. If you make  
5 it difficult for folks participating in  
6 campaign finance, if they leave that  
7 program, we don't want to set up that  
8 scenario. Keeping you guys strong is very  
9 important.

10 In addition to these concerns, we are  
11 concerned limiting pay to play restrictions  
12 to those candidates who participate in the  
13 City's public financing program will not be  
14 adequate to address the appearance of  
15 contracting decisions being tainted by  
16 favoritism. There have been a lot of news  
17 reports about the Bloomberg administration,  
18 how they have been aggressively raising  
19 private money for good causes. But again,  
20 who is to say what is pay to play and what  
21 is doing business with the City?

22 We are concerned that while much of the  
23 funds raised were given by those with no  
24 business before the City, some donors who  
25 have made substantial donations have sought

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2 or are seeking contracts with the City.

3 Other press stories have focused on the  
4 administration's solicitation of  
5 contributions for NYC2012, the City's  
6 Olympic committee. On their website it says  
7 they "pledged to bring the Olympic Games to  
8 New York City without relying on public  
9 funds." The site goes on to say that "New  
10 York's bid is being entirely financed by  
11 private contributions from corporations,  
12 unions, individuals and foundations."

13 The pay to play ordinance that was  
14 passed in Los Angeles last year prohibits  
15 contractors from making contributions or  
16 participating in fund-raising activities on  
17 behalf of political party committees, ballot  
18 measures or charities. There are places  
19 that have looked at this and have taken a  
20 broader definition.

21 While we have absolutely no doubt that  
22 the administration has only the best  
23 interests of the City at heart when  
24 soliciting these contributions, and while we  
25 are aware of the fact that the Conflicts of

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2 Interest Board issued a ruling specifically  
3 allowing the administration to solicit funds  
4 for NYC2012, the fact that some of the  
5 contributors have business before the City  
6 does raise concerns about the appearance of  
7 the same pay to play issues that arise with  
8 contributions made directly to candidates or  
9 elected officials.

10 For this reason, we believe that the  
11 administration and the City Council should  
12 seriously investigate the feasibility of  
13 including a provision that would restrict  
14 contributions from those seeking or holding  
15 contracts with the City to a charity at the  
16 request of an elected official or candidate  
17 for City office. A more limited provision  
18 than was passed in Los Angeles, but one that  
19 could conceivably go a long way toward  
20 addressing the current public concerns.

21 I will note that we have been  
22 discouraged by what is going on in New  
23 Jersey with the Federal Highway  
24 Administration's challenge to the pay to  
25 play regulations and agree with Acting



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2 Governor Codey that the federal government  
3 is dead wrong in their position.

4 Nevertheless, before we implement a pay to  
5 play regulation in New York City, we should  
6 see how this particular debate is resolved  
7 in the courts. By doing so, we improve our  
8 chances of having an effective and  
9 unassailable pay to play reform. In the  
10 interim, we agree with our colleagues at  
11 NYPIRG that any legislation should include a  
12 severability clause exempting contracts that  
13 utilize federal dollars.

14 We don't believe you should change the  
15 rules in the middle of the game. We like  
16 the notion of changing the database, not  
17 changing the rules until after the next  
18 election cycle. We think a preliminary  
19 database could be helpful.

20 We are eager to work together with you,  
21 the administration, the City Council. We  
22 thank you for the opportunity to appear  
23 before you.

24 Lastly, the Mayor could do a lot to

25 address these concerns by opting into this

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2 program, if he were looking into this  
3 program.

4 CHAIRMAN SCHWARZ: Dale?

5 MR. CHRISTENSEN: The Mayor's speaker  
6 earlier put forth a modest proposal about  
7 requiring candidates to make a good faith  
8 effort. Acknowledge they make a good faith  
9 effort to check it with the database.

10 Do you have a position on that proposal  
11 for the 2005?

12 MS. YOUNG: Yesterday, New York Post  
13 had a scathing piece about Gifford Miller  
14 taking \$165,000 in contributions. If this  
15 gets used, it is not against the law right  
16 now.

17 Starting a database, having it be as  
18 broad. The devil is in the details. It is  
19 going to have to apply to everybody to be  
20 fair.

21 MR. CHRISTENSEN: In your presentation  
22 you had an issue about what could be done  
23 through use of the government contracting  
24 procedures, procurement issues.

25 Have you looked more closely at what

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2 this Mayor's powers are to prevent contracts  
3 being awarded to people who are paying to  
4 play without any involvement of the Campaign  
5 Finance Board?

6 MS. QUATTLEBAUM: We have looked into  
7 this somewhat. I know the administration  
8 has raised concerns about this. We believe  
9 this is something possible through  
10 legislation within the City Council. We are  
11 open to further discussing it.

12 MR. CHRISTENSEN: I don't mean to  
13 burden you. All the important stuff you do,  
14 the last thing you need to do is get  
15 assignments from people. If any of that  
16 work has already been looked at on the issue  
17 of executive powers, either through  
18 ordinance or with helpful legislation, not  
19 so much something you, to do new work, if it  
20 has already been done, if you can distill  
21 that for us in some fashion.

22 CHAIRMAN SCHWARZ: Rachael, both of you  
23 talk about how legislation is clearly

24 better. Speaking for myself, that case is  
25 absolutely clear.

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2 Let's assume there isn't any  
3 legislation. Given what the charter  
4 provisions say, if there is a database which  
5 would remove the concern or substantial part  
6 of the concern that Father O'Hare and his  
7 colleagues, including at least two people  
8 here, had five years ago, is it proper for  
9 us to decline to act because we believe  
10 legislation would be better?

11 MS. YOUNG: What we talk about, we see  
12 the proper role of the campaign finance  
13 Board in this situation as being a  
14 disclosure and database place. I guess in  
15 that sense it may be appropriate. We  
16 believe it should fall in the hands of the  
17 procurement sides to enforce.

18 As a first step, let's get the  
19 database, let's see what sunshine does and  
20 we can see what we can come up with.

21 CHAIRMAN SCHWARZ: Other comments,  
22 questions?

23 MS. GORDON: Quickly. I don't know

24           whether you or Paul back there, have you  
25           come across any databases in your travels

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2           with other jurisdictions that yield the kind  
3           of information we're trying to get at?

4                   MS. QUATTLEBAUM: My understanding, New  
5           York City would be ahead of the country in  
6           this aspect. There may be things I am not  
7           aware of. My understanding, we would be at  
8           the forefront.

9                   MS. GORDON: Paul, do you know?

10                   MR. RYAN: The legislation and  
11           ordinance pending in Los Angeles requires  
12           similar database, legislation pending in Los  
13           Angeles.

14                   CHAIRMAN SCHWARZ: Thank you for your  
15           testimony. Good to see you.

16                   Dick Dadey, Executive Director of  
17           Citizens Union.

18                   MR. DADEY: Dick Dadey, executive  
19           director.

20                   Citizens Union, a century old good  
21           government organization that has  
22           consistently supported provisions to

23 strengthen the City's campaign finance  
24 program that seek to reduce the role of  
25 money in politics and campaigns. The

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2 Citizens Union commends the CFB for looking  
3 into a most comprehensive way at one of the  
4 stickiest elements of the role of money in  
5 politics and that is pay to play.

6 The influence that contractors,  
7 developers and lobbyists have over elected  
8 officials, not only here but throughout the  
9 country, is enhanced by the ability of these  
10 persons and entities to contribute directly  
11 to a candidate's campaign for office. The  
12 ability to do so can potentially lead to a  
13 less independent body of elected officials  
14 and erodes the integrity of government in  
15 the course of it making policy decisions and  
16 awarding contracts. The notion, in fact the  
17 reality, of influence peddling by those  
18 seeking to affect the decisions of elected  
19 and public officials is one of the reasons  
20 that the general public's confidence had  
21 been eroded in the belief that government  
22 operates with an even hand and a blind eye.

23                   Citizens Union is still in the process  
24                   of developing a fully formed position on  
25                   this proposal of regulating the pay to play

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2                   system, but nevertheless, strongly supports  
3                   the effort of the Mayor and the Campaign  
4                   Finance Board to create a database  
5                   identifying contractors doing business with  
6                   the City and to institute pay to play  
7                   legislation for the City of New York. We  
8                   believe that legislation and not regulations  
9                   is the best means to ensure a good, sound  
10                  enforceable system. Citizens Union also  
11                  believes that it is critical that the  
12                  legislation be effective, clear, fair and  
13                  comprehensive.

14                  Toward that end, Citizens Union  
15                  believes that any pay to play legislation  
16                  that the City enacts should establish a user  
17                  friendly, searchable database of those doing  
18                  business with the City for candidates,  
19                  elected officials, contractors/vendors the  
20                  City and the public to ensure the greatest  
21                  level of transparency and disclosure. Apply

22 to all candidates for elected office, not  
23 just those participating in the campaign  
24 finance program. Place the onus upon the  
25 City and not the candidates to determine and

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2 report who is doing business with the City  
3 and, therefore, subject to the terms of the  
4 proposed play to pay provision. Place the  
5 compliance burden upon the individual or  
6 entity making the contribution.

7 CHAIRMAN SCHWARZ: That could only be  
8 done by legislation.

9 MR. DADEY: Exactly.

10 Ensure that the definition of doing  
11 business with the City is clear and  
12 comprehensive. There are many sources and  
13 different ways in which to influence the  
14 decisions made by those in government, so in  
15 an effort to be broad enough to capture all  
16 possible influence peddlers, it is important  
17 that the law be very explicit. Those who do  
18 business with the City should, at the very  
19 least, include contractors and lobbyists,  
20 and others who are clearly affiliated with  
21 entities wishing to affect the decisions of



22 government. Individuals, entities, agents  
23 or law firms representing clients or  
24 lobbyists seeking budgetary, administrative,  
25 regulatory or legislative action, as well as

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2 those seeking zoning variances, tax breaks  
3 or are otherwise involved in the real estate  
4 transactions with the City should also be  
5 covered.

6 Furthermore, enact a tight definition  
7 of seeking to do business with the City or  
8 being in negotiation with the City to do  
9 business to at least apply to anyone who has  
10 submitted a bid or a response to a request  
11 for proposals. Not entirely ban  
12 contributions from those who do business  
13 with the City, but significantly limit the  
14 size of the contribution and prohibit such  
15 contributions from being eligible for  
16 matching under the program. The allowable  
17 size of a contribution is not something on  
18 which Citizens Union has yet taken a  
19 position.

20 Prohibit individuals or entities who

21 make other allowable contributions under the  
22 current campaign finance system from seeking  
23 or doing business with the City if they do  
24 not comply with the pay to play provisions.  
25 Ensure a de minimis exception on the size of

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2 a contract. Contain a no liability  
3 provision for candidates if the individual  
4 or entity making the contribution was not in  
5 the City's database at the time of the  
6 contribution.

7 Limit contributions by individuals or  
8 entities doing business with the City for a  
9 set amount of time after a contract expires,  
10 potentially up to one year. Include in its  
11 definition of those doing business with the  
12 City any spouse, domestic partner and  
13 unemancipated children of such person or  
14 intermediary, and any officer, any person  
15 who exercises managerial control or  
16 responsibility over the entity doing  
17 business, or any person owning more than a  
18 five percent interest in the entity doing  
19 business. With the primary elections only  
20 seven months away, any legislation

21           addressing this issue should not take effect  
22           until after the 2005 elections.

23                     We also are troubled by the recent news  
24           reports about the other ways in which one  
25           can influence the decisions of the City,

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2           particularly by complying with a request to  
3           make a contribution to a political party or  
4           charity. We can concur with our friends at  
5           Common Cause/New York with a need for  
6           Campaign Finance Board to also take a look  
7           at this significant way in which doing  
8           business with the City can be influenced.

9                     Citizens Union again thanks the  
10           Campaign Finance Board for the opportunity  
11           to provide our initial thoughts on the  
12           proposed solution to the problem of  
13           influence peddling in the City and commends  
14           it for the thoughtful and comprehensive way  
15           in which it is addressing this problem.

16                     MR. CHRISTENSEN: Do we have a copy of  
17           your statement for the record?

18                     MR. DADEY: Yes.

19                     CHAIRMAN SCHWARZ: Do you have a view

20 on the question I asked about taking as a  
21 given, at least between us, that legislation  
22 is far preferable, among other reasons,  
23 because it's the only way to get at people  
24 who seek to do business with the City and it  
25 is done by all the other places that have

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2 regulated?

3 Suppose there is no regulation, do you  
4 think the Board ought to address the subject  
5 of regulations or not?

6 MR. DADEY: I think the battle should  
7 be joined by pressing for legislation. I  
8 think the Campaign Finance Board would be  
9 well advised to set up some searchable  
10 database.

11 CHAIRMAN SCHWARZ: That's without  
12 regard to legislation, I take it?

13 MR. DADEY: Yes. I would not want to  
14 fall into the easy track to think we can  
15 accomplish this by regulation and somehow  
16 accept regulation or rulemaking route. We  
17 somehow lose the pressure or opportunity to  
18 advocate and enact legislation.

19 CHAIRMAN SCHWARZ: Would you put your

20 mind to issuing a regulation that goes into  
21 effect in X period of time if there is no  
22 legislation on the subject?

23 All people in the audience might want  
24 to think about such devises.

25 MR. DADEY: To force the hand. I think

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2 that would be a wise consideration.

3 Something we will take a look at, as well.

4 MR. CHRISTENSEN: I have a question,  
5 also.

6 The modest proposal the Mayor put  
7 forth, do you see downside in implementing  
8 that for the 2005 election or do you think  
9 that is an appropriate interim step?

10 If you weren't here, what they were  
11 proposing was that a contributor sign an  
12 acknowledgment, that the candidate sign an  
13 acknowledgment he made a good faith effort  
14 there was no contribution of an offending  
15 entity doing business.

16 MS. GORDON: I think what it says, they  
17 would have to make a good faith effort on  
18 contribution cards which would say to the

19 contributor: "Have you done business with  
20 the City?" If so, it would ask questions  
21 about that.

22 MR. CHRISTENSEN: Right.

23 MR. DADEY: That places a potential  
24 unfair burden on the candidates at this late  
25 stage in the campaign season. We probably

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2 would not support that.

3 CHAIRMAN SCHWARZ: I haven't even  
4 thought about that idea. Nicole asked one  
5 question as to whether it might chill  
6 contributions from people who would not  
7 know -- you know, doing business has to go  
8 to not just corporations but has to go some  
9 way to principals. It's there where people,  
10 "Am I or am I not one of the covered  
11 principals?"

12 MR. CHRISTENSEN: You folks might have  
13 a better view.

14 MR. DADEY: Citizens Union strongly  
15 believes in participation of the citizens in  
16 all levels of government, whatever form that  
17 might take. Regulations and laws are  
18 necessary to level the playing fields as

19 much as possible. Little should be done to  
20 discourage participation. Doing something  
21 like this so quickly could have chilling  
22 effects to possible contribution.

23 MS. PATTERSON: I would like to make a  
24 point. I don't know whether anybody else on  
25 this Board has actually had to read or help

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2 complete a VENDEX registration. It is  
3 virtually impossible for the principal of  
4 any corporation that has to file a VENDEX  
5 form not to know they filed it. It is so  
6 exhaustive. Even though it has been  
7 streamlined in the last year, it is  
8 really -- it is not simply signing a card  
9 and sending it in.

10 I suspect that is equally true with  
11 local organizations. There is a separate  
12 provision for lobbyists. Those are the two  
13 vehicles through which the Mayor's office  
14 has been proposing for disclosure now.

15 CHAIRMAN SCHWARZ: You made an  
16 interesting point. Instead of a card  
17 asking, "Do you do business," it could say,

18 "Have you filled out such and such a  
19 report?"

20 MS. PATTERSON: "Is your company  
21 registered with VENDEX or with the City's  
22 local organization?" Whatever is going to  
23 say, yes -- whoever says no will think twice  
24 before saying no, will make the appropriate  
25 inquiry, and chances are, we'll know. It's

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2 too complex a registration system for  
3 somebody not to know if he or she is a  
4 principal of the organization.

5 CHAIRMAN SCHWARZ: Other observations,  
6 questions?

7 Thank you.

8 We have Neal Rosenstein, NYPIRG.

9 MR. ROSENSTEIN: Pleasure. Good  
10 morning.

11 I will excerpt from that. Good  
12 morning. I am Neil Rosenstein, government  
13 reform coordinator for NYPIRG, New York  
14 Public Interest Research Group. I have been  
15 following the work of the Board since before  
16 your inception.

17 NYPIRG supports restrictions on pay to



18 play contributions. We're encouraged by  
19 recent efforts for a database identifying  
20 contractors doing business with the City.

21 But much more needs to be done to  
22 ensure that the proposal is comprehensive,  
23 fairly implemented and does not create an  
24 unworkable system. In particular, we  
25 believe any restrictions must be

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2 administered by the City administration and  
3 affect all candidates. In other words,  
4 entities that are competing for contracts,  
5 lobby, engage in land transactions or have  
6 other business dealings with the City should  
7 be barred from doing such business if they  
8 make a significant contribution to a  
9 candidate for City office.

10 Additionally, in the spirit of fully  
11 airing the questions surrounding pay to play  
12 restrictions, the administration also needs  
13 to explain and explore why current common  
14 sense charter provisions prohibiting City  
15 officials from fund-raising shouldn't be  
16 extended to non campaign related efforts

17           such as NYC2012 Olympic organizing committee  
18           or the Mayor's Funds to Advance New York.

19           We would like to commend the Mayor for  
20           finally directing the City agencies to  
21           develop a workable database of contractors  
22           doing business with the City, and also for  
23           the flexibility shown by special counsel  
24           this morning in working with the Board and  
25           dealing with the number of other issues. We

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2           also encourage him to show further  
3           leadership and support of the campaign  
4           finance program by opting into the system  
5           should he choose to run for reelection later  
6           this year.

7           Why we think contractor database  
8           approach in itself alone falls short. While  
9           the creation of a contractor database would  
10          be both an important civic resource and  
11          necessary component of any pay to play  
12          auditing effort, it fails to adequately  
13          tackle the problem on its own. We believe  
14          it attacks the issue the wrong way.

15          Such an approach has it backwards.

16          Instead of burdening candidates and the

17 Campaign Finance Board at the end of the  
18 contribution process with attempting to  
19 ascertain whether a contributor is doing  
20 business with the City, it should be made  
21 clearly illegal to do so in the contracting  
22 process before the contribution is made.  
23 This alternative approach has the additional  
24 benefit of ensuring that contributions to  
25 all candidates, not only those participating

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2 in the campaign finance program are  
3 covered.  
4 Why not restrict contributors'  
5 testimony through the various processes that  
6 do business with the City, an example which  
7 the Mayor points to for some of his  
8 motivation. And while we have also been  
9 dismayed at the Bush administration's  
10 challenge to the New Jersey system, but  
11 believe that before the City implements its  
12 own pay to play component we should see how  
13 the debate plays out in the courts. The  
14 City should be getting federal dollars,  
15 which are going to contracts, particular

16 contracts, a severability clause should be  
17 included. Legislation addressing this  
18 problem.

19 To get into some of the specifics,  
20 comprehensive pay to play provisions are  
21 needed that don't create loopholes, should  
22 include a broad interpretation. What sense  
23 does it make to limit contributions from  
24 Acme Limited, a partnership seeking a City  
25 contract when you don't also limit

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2 contributions from the lobbyists Acme  
3 Limited has hired? Money is like water and  
4 it will look for cracks in the regulatory  
5 walls you are putting up to contain it.  
6 A legal firm that is in there with Acme  
7 in negotiations, on offering legal advice,  
8 doing groundwork, legal firms do that,  
9 should also be covered by any restrictions.  
10 Lobbyists, as Rachael pointed out, such as  
11 ourselves, finally I won't get anymore  
12 solicitations, not that I have the money to  
13 give. Lobbyists that are seeking budgetary,  
14 administrative, regulatory or legislative  
15 action from City government also need to be

16 covered. New York needs to take a lesson  
17 from Albany where the ability of lobbyists  
18 to contribute to campaigns has eroded public  
19 confidence and corrupted fund-raising  
20 process.

21 New York is known as a real estate  
22 town. It would be absurd to imply we had a  
23 working pay to play system without covering  
24 individuals and entities seeking to  
25 influence the land use process.

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2 Consideration must be given to cover those  
3 seeking zoning variances and tax breaks or  
4 involved in real estate transactions with  
5 the City.

6 If pay to play is basically about  
7 contributors being or feeling pressured to  
8 contribute to campaigns in return for  
9 favorable consideration of their contract  
10 bids, it's probably too late in many cases  
11 to limit contributions from those who have  
12 already won contracts. Contribution  
13 restrictions should start from the moment  
14 negotiations have started or bids submitted

15 and consideration be given bids or  
16 negotiations or beginning to lobby for  
17 contracts themselves.

18 I also think you have to take a look at  
19 sealed bid contracts, an issue up in  
20 Albany. Put out a contract for new voting  
21 machine, RFP, can be so rigged only one  
22 potential bidder is really going to be able  
23 to compete and get that contract if they are  
24 giving money that could influence on that  
25 RFP, how it is crafted.

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2 CHAIRMAN SCHWARZ: That's an  
3 interesting point.

4 Have you thought about whether the  
5 federal New Jersey case could be limited to  
6 bid contracts? I don't see how the federal  
7 government has any stake, whatsoever, in  
8 arguing about contracts that are not done by  
9 bid.

10 MR. ROSENSTEIN: We would agree. You  
11 have legal analysis from folks here. I  
12 don't want to pretend to know those issues  
13 better than those. We should be looking  
14 closely at those. Make it an extensive

15 provision, not backing down to what might be  
16 a flawed decision in New Jersey.

17 Finally, the Board has raised a wide  
18 range of questions about how affected  
19 contributions would be regulated. Our  
20 initial thoughts on some of these issues are  
21 listed more extensively. I'll highlight a  
22 few.

23 We don't support an outright ban on  
24 contributions from those doing business with  
25 the City. Instead, we think they should be

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2 regulated through a combination of decreased  
3 contribution limits and the elimination of  
4 such contributions from being considered as  
5 being matchable. We believe regulated  
6 contributions should total no more than five  
7 to ten percent of the contribution limit for  
8 that office. Maybe it's not 250 for City  
9 wide and for Council races, but maybe, in  
10 essence, 500 for City wide and for Council  
11 it would be somewhat less.

12 I should temper that also saying we  
13 think contribution limitation too high, they

14           should be cut in half. It is not  
15           unreasonable for different levels for  
16           different candidates running for office.

17           Ultimately, pay to play restrictions  
18           should be implemented by local law and not  
19           rely upon the rulemaking authority of the  
20           Campaign Finance Board, only legislation  
21           could make sure, as well as municipal and  
22           county political committees, not just those  
23           participating in the campaign finance  
24           program. Maybe it will be the rise of the  
25           county committees and they will play that

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2           much more of a role in trying to thwart and  
3           undermine the campaign finance program.

4           The primary burden of any restrictions  
5           should be borne by the City and not  
6           candidates. Care has to be given to ensure  
7           that any provisions do not discourage  
8           participation in the campaign finance  
9           program.

10           If I might say, this addresses the  
11           point the Chairman was asked by a bunch of  
12           folks, whether or not we should go ahead  
13           with this disclosure. One of our



14 suggestions in here, it is too late to do  
15 restrictions for this election year. Maybe  
16 you should just have disclosure. One of our  
17 real fears is, are you going to try to shame  
18 or embarrass the Council or Mayor into  
19 action? They may not do anything. You are  
20 stuck with this database. 2009 is going to  
21 come around. They are going to say it's  
22 time to start applying restrictions, make  
23 the candidates start filling out those cards  
24 and information, make them do their own  
25 auditing. You have to be very careful

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2 putting that system into place and letting  
3 the City off the hook.  
4 No reason the Mayor can't be submitting  
5 legislation. We have had other charter  
6 commissions that seriously debated issues.  
7 They have a wonderful code of ethics.  
8 Chapter 68, which places restrictions on  
9 City officials doing fund-raising. There is  
10 no reason, if the Mayor is sincere, they  
11 should also be looking at these in a truly  
12 open and deliberatively manner.

13                   Finally, in conclusion, the creation of  
14                   a contractor database would be a valuable  
15                   first step in helping auditors determine  
16                   whether donors are currently doing business  
17                   with the City. We do think it should be put  
18                   up in place. We think it's a great civic  
19                   resource, not necessarily tied into the  
20                   Campaign Finance Board data. It should be a  
21                   public database.

22                   Initially, there was hesitation from  
23                   the Campaign Finance Board making your  
24                   database available to the public, whether  
25                   that was doable. Those types of concerns,

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2                   if they are being raised, should be worked  
3                   through. There should be a database  
4                   available to the public. We look forward to  
5                   working with the City administration,  
6                   meeting with the Council and Mayor.

7                   CHAIRMAN SCHWARZ: What do you mean in  
8                   your penultimate paragraph about the  
9                   database could undermine confidence in the  
10                  City's campaign finance program?

11                  MR. ROSENSTEIN: I think it's also  
12                  participation. If you have a database up

13 and running and it puts the burden on those  
14 candidates and they aren't opting into the  
15 system.

16 CHAIRMAN SCHWARZ: Assume it doesn't  
17 put burden on the candidates. Assuming  
18 there is just a database which indicates who  
19 does business with the City. Not just the  
20 entity, but also the principals defined  
21 properly.

22 MR. ROSENSTEIN: If it's not  
23 comprehensive, not done by legislation to  
24 cover those areas, what you are doing,  
25 perhaps for the first time in the Campaign

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2 Finance Board program, a facet for people to  
3 criticize, this isn't legitimate, it doesn't  
4 include lobbyists, people participating into  
5 the system. If it is not done properly,  
6 applying to all contractors or all  
7 candidates, I think that can begin to  
8 undermine and people saying, "What is an  
9 exemplary system?" Those type of loopholes  
10 currently exist in the system.

11 MR. CHRISTENSEN: I interpreted what

12           you were saying differently. What you were  
13           getting at, it should not stymie us from  
14           doing things. If there was a database, it  
15           would reveal so much wrongdoing. Is there  
16           gambling in Casa Blanca? Yes. The morals  
17           of the marketplace would get so jaded,  
18           people wouldn't have motive for reforming.

19                   MR. ROSENSTEIN: I don't mean that out  
20           of fear. We shouldn't do that, expose that  
21           dark underbelly of financing in the City.  
22           That wasn't the idea.

23                   MS. PATTERSON: I think people would be  
24           just as shocked if Claude Raines wasn't.

25                   CHAIRMAN SCHWARZ: Thank you very

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2           much.

3                   MR. ROSENSTEIN: Thank you.

4                   CHAIRMAN SCHWARZ: The next witness is  
5           Adam Morse from Brennan Center for Justice.

6                   I work closely with Adam. I have  
7           recused myself at the Brennan Center from  
8           any involvement, whatsoever, in any  
9           discussions about issues that come before  
10          this Board. I didn't know Mr. Morse, who I  
11          see every day, was going to testify until I

12 saw his name on a list.

13 MR. MORSE: Good morning.

14 The Brennan Center applauds the  
15 Campaign Finance Board's decision to focus  
16 attention on the dangers inherent in  
17 campaign contributions from individuals who  
18 stand to benefit directly from government  
19 contracting decisions. While disclosure is  
20 an important first step, the City should go  
21 further and end the threat of pay to play  
22 altogether by imposing an outright ban on  
23 campaign contributions from government  
24 contractors, at least to candidates who  
25 participate in the voluntary public funding

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2 system.

3 Because contributions from government  
4 contractors present a severe risk of  
5 engendering corruption or the appearance of  
6 corruption, courts have generally upheld the  
7 constitutionality of bans on contributions  
8 from government contractors and from  
9 corporations and individuals working in  
10 highly regulated industries.

11           Bans on contributions by government  
12           contractors to participants in a voluntary  
13           public financing system raise even less  
14           substantial constitutional questions.

15           CHAIRMAN SCHWARZ: Let me ask you a  
16           question, Mr. Morse.

17           When you use the term contractors, I  
18           assume you don't mean to exclude people who  
19           don't seek enormous land use discretionary  
20           decisions on the part of the City.

21           MR. MORSE: No. Among the groups other  
22           laws have addressed are also people who work  
23           in industries that are heavily regulated by  
24           the government. Those regulatory may have  
25           the same sort of impact on their livelihoods

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2           and businesses as an actual contracting  
3           decision. Liquor industry have been covered  
4           by laws analogous to a pay to play law  
5           applying to contractors. We would certainly  
6           apply to all sorts of organizations.

7           The difficult questions in banning pay  
8           to play are really the implementation  
9           questions. While no court whose decisions  
10          are binding on New York has directly

11 addressed the constitutionality of bans on  
12 campaign contributions from government  
13 contractors, the weight of precedent  
14 supports the constitutionality of such  
15 bans. The Supreme Court's reasoning in  
16 Buckley v. Valeo, and subsequent campaign  
17 finance cases, supports regulations that are  
18 narrowly drawn to address a clear danger of  
19 corruption or the appearance of corruption.  
20 Other courts, including a United States  
21 Court of Appeals and several state Supreme  
22 Courts, have upheld complete bans on  
23 campaign contributions from individuals  
24 whose employment raises particularly high  
25 concerns of corruption.

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2 The Supreme Court's decision in Buckley  
3 provides the basic framework for considering  
4 the constitutionality of contribution  
5 limits. While the court acknowledged that  
6 limits on contributions implicate  
7 associational rights, it also noted that,  
8 "even a significant interference with  
9 protected rights may be sustained if the

10 state demonstrates a sufficiently important  
11 interest and employs means closely drawn to  
12 avoid unnecessary abridgment of  
13 associational freedoms." The court agreed  
14 that limiting "the actuality and appearance  
15 of corruption" justified \$1,000 contribution  
16 limits.

17 Subsequent Supreme Court decisions have  
18 elaborated on this reasoning. In Nixon v.  
19 Shrink Missouri Government PAC the court  
20 held the quantum of empirical evidence  
21 needed to satisfy heightened judicial  
22 scrutiny of legislative judgments will vary  
23 up or down with the novelty and plausibility  
24 of the justification raised. Buckley  
25 demonstrates that the dangers of large,

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2 corrupt contributions and the suspicion that  
3 large contributions are corrupt are neither  
4 novel nor implausible.

5 The danger of corruption posed by  
6 contributions from contractors who seek to  
7 obtain government business is similarly  
8 neither novel nor implausible. And even if  
9 no actual instances of quid pro quos exist,



10 a supposition rendered unlikely by the  
11 numerous examples of corrupt deals around  
12 the country and the recent scandals in both  
13 New Jersey and Connecticut, the public's  
14 perception of corruption based on pay to  
15 play is sufficient to justify regulation.

16 Furthermore, the Supreme Court's most  
17 recent statement on Campaign Finance Law  
18 stressed the importance of deferring to the  
19 legislature's judgment on contribution  
20 limits. In *McConnell v. FEC*, importance of  
21 contribution limitation. The less rigorous  
22 standard of review we have applied to  
23 contribution limits shows proper deference  
24 to Congress' ability to weight competing  
25 constitutional interests in an area in which

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2 it enjoys particular expertise. It also  
3 provides Congress with sufficient room to  
4 anticipate and respond to concerns about  
5 circumvention of regulations designed to  
6 protect the integrity of the political  
7 process.

8 Similar reasoning would apply to

9 decisions by this court or City Council.  
10 Most courts that have considered pay to play  
11 contribution bans have upheld those  
12 regulations. The Court of Appeals for the  
13 D.C. Circuit, in upholding the SEC's ban on  
14 campaign contributions from bond  
15 underwriters, noted that the risk of  
16 corruption is obvious and substantial. The  
17 court also observed that in order to uphold  
18 the regulations, no smoking gun is needed  
19 where, as here, the conflict of interest is  
20 apparent, the likelihood is stealth great,  
21 and the legislative purpose prophylactic.  
22 Similar rules generally banning  
23 contributions from registered lobbyists have  
24 also been upheld.

25 While some courts have struck down pay

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2 to play bans, the weight of precedent, both  
3 in terms of number of courts and in the  
4 quality of the courts's reasoning, supports  
5 upholding these regulations. Furthermore,  
6 more recent decisions tend to be more  
7 supportive of pay to play bans than older  
8 decisions. While bans on campaign

9 contributions by government contractors are  
10 likely to face court challenges, they are  
11 likely to be upheld.

12 While the City can constitutionally  
13 apply pay to play restrictions to all  
14 candidates, the constitutional authority for  
15 imposing such restrictions on participating  
16 candidates is even stronger. One of the  
17 basic principles of public financing  
18 programs is that the government may  
19 condition the availability of public funds  
20 on the acceptance of additional  
21 restrictions, including restrictions that  
22 would be unconstitutional if imposed on  
23 candidates who did not accept public  
24 funding.

25 The most common additional restriction

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2 is a limit on expenditures by participating  
3 candidates. The Buckley Court upheld the  
4 application of an expenditure limit to  
5 candidates who participate in the  
6 involuntary presidential public financing  
7 system at the same time as it invalidated

8 mandatory expenditure limits.

9 Public financing systems also  
10 frequently require participating candidates  
11 to decline contributions from certain  
12 entities that would otherwise be permitted  
13 to make contributions. For example,  
14 participating candidates in the City's  
15 matching fund program were prohibited from  
16 accepting contributions from corporations  
17 years before the City Council extended that  
18 restriction to all candidates.

19 Other public financing systems limit  
20 participating candidates to contributions  
21 from individuals who would be entitled to  
22 vote for the candidate, a limit that would  
23 not be upheld if applied to all candidates  
24 regardless of public funding. The  
25 acceptance of public funding thus creates an

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2 additional layer of constitutional  
3 protection for the application of pay to  
4 play restrictions to participating  
5 candidates.

6 I would like to conclude with a few  
7 comments on implementing pay to play

8           restrictions. The City should prohibit all  
9           candidates for City office from accepting  
10          contributions from City contractors. If the  
11          City limits the restriction to participating  
12          candidates, the Brennan Center urges an  
13          absolute ban on contributions from City  
14          contractors to participating candidates,  
15          rather than simply eliminating matching  
16          funds for contributions from contractors.

17                 The Board requested comments on whether  
18          an increased incentive should be offered to  
19          counterbalance the increased restriction.  
20          No increased incentive will be necessary if  
21          the restriction applies to all candidates,  
22          regardless of participation in the public  
23          financing system. If the City limits any  
24          restrictions to participating candidates,  
25          the issue of whether to provide an increased

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2           incentive becomes important.

3                 Resolving this question depends on the  
4          empirical question of whether candidates  
5          receive so much money from contractors that  
6          some might opt out of the system rather than

7 give up those contributions. If  
8 contributions from contractors are not a  
9 large portion of the overall contributions  
10 to participating candidates, then no  
11 adjustment to the match rate would be  
12 necessary to counterbalance the additional  
13 restriction. In any event, any additional  
14 benefit should be in the form of an  
15 increased match rate, not an increased  
16 contribution limit. We would agree with the  
17 testimony you have already heard the  
18 contribution limits are already higher than  
19 they ought to be, no need to increase it.

20 Defining the coverage of a pay to pay  
21 provision can be difficult. Efforts at  
22 circumvention are likely, and any successful  
23 regulation must include important employees  
24 of government contractors, individuals who  
25 own significant portions of firms

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2 contracting with the government, and the  
3 spouses and immediate family members of  
4 those individuals. Contribution bans should  
5 apply to all candidates for City office to  
6 prevent efforts to curry favor by

7 contributing to the political allies of a  
8 government official who may more directly  
9 control the contracting process.

10 At the same time, the City should be  
11 aware that extending the reach of the  
12 regulations may increase the danger that a  
13 court would find them unconstitutional.  
14 Once the Board has drafted specific proposed  
15 amendments, the Brennan Center would be  
16 happy to provide further analysis and  
17 comments.

18 In that theme, I suggest, while some of  
19 these changes may be best addressed by City  
20 Council legislation, we recommend the Board  
21 draft legislation submitted to the Council,  
22 that would put pressure on the Council that  
23 would adopt regulations.

24 CHAIRMAN SCHWARZ: What about the idea  
25 I thought of this morning. We could enact

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2 regulations which go into effect in X period  
3 of time if there is not legislation, doesn't  
4 that have the maximum pressure? It does.

5 MR. MORSE: Whether the Board can adopt

6 regulations that apply to New York  
7 participating candidates. We would support  
8 mandatory rule banning contributions from  
9 this category to all candidates. If the  
10 Board does not have an opportunity to do  
11 that under the charter, then we would  
12 support submitting legislation in that  
13 regard.

14 At the same time, it would be  
15 appropriate to address candidates who are  
16 participating.

17 MR. POTASNIK: If contributions are not  
18 a large portion, no adjustment, could you  
19 explain that.

20 MR. MORSE: This is assuming the  
21 regulations, only by participating  
22 candidates. We don't want people operating  
23 out of the system because they receive so  
24 much of their contributions from these  
25 contractors. If, as a factual matter, the

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2 participating candidates are not receiving a  
3 large portion of their contribution from  
4 individuals who no longer would be able to  
5 make contributions, it should be necessary



6 to provide incentive to counterbalance the  
7 loss of that small percentage of  
8 contribution.

9 If they are currently receiving a large  
10 percentage of contribution from people who  
11 no longer might be able to contribute, some  
12 people might choose to opt out. That  
13 counterbalances any dangers.

14 MR. RECHTSCHAFFEN: I want to expand on  
15 the citation you have to the Blount v. SEC.  
16 They talk about obvious and substantial.

17 How obvious and substantial is the  
18 difference between the \$250 and the \$1,000  
19 worth in match in its effect on contracting  
20 with the City? Is there a role problem  
21 here?

22 MR. MORSE: I think there is. I think  
23 that if you think about one of the major  
24 problems as being the appearance of  
25 corruption and the public's perceptions. If

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2 you ask a common citizen is a \$250 gift or  
3 \$1,250 or even larger gifts that are  
4 permitted under the current law, do they

5           have a real chance of influencing  
6           government, they would overwhelmingly tell  
7           you they do. Evenly, if you have the  
8           situation a large number of high ranking  
9           employees and several principals of the same  
10          firm are making contributions and that firm  
11          is seeking business.

12                 At a minimum, I think the perception of  
13          corruption is a real danger. There is some  
14          meaning to actual corruption, as well.

15                 CHAIRMAN SCHWARZ: I ask someone from  
16          Trevor Potter's group if they would provide  
17          stuff from the McCain-Feingold. The Brennan  
18          Center has a record of that material, I  
19          know. It would be a help to us,  
20          particularly those materials that go to  
21          public reaction to money being given to  
22          politicians that were taken in national  
23          surveys. It would be useful if you can  
24          provide them to us.

25                 MR. MORSE: Absolutely. I would be

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2           happy to look for that.

3                 CHAIRMAN SCHWARZ: Other questions?

4           Thank you very much.

5           You read fast, effectively, without  
6           losing your ability to communicate.

7           Marcy Benstock, executive director of  
8           the Clean Air Campaign.

9           MS. BENSTOCK: Like all the other  
10          people who have made some of the points I  
11          plan to make, including you, Chairman  
12          Schwarz, it's great that you think the kinds  
13          of business dealings that should be covered  
14          should extend beyond contracts. We very  
15          much appreciate the work you are all doing  
16          on this enormously important issue.

17          What kinds of business dealings,  
18          transactions or relationships should be  
19          covered under a doing business disclosure  
20          requirement or regulation? Our answer is  
21          that every possible substantial public  
22          benefit should be covered. It doesn't make  
23          sense to regulate only contributors who get  
24          \$100,000 contracts for pencils if  
25          contributors who get multi billions of

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2           dollars in subsidies for development deals  
3           are shielded from public disclosure

4 requirements and regulations.

5 Many of the biggest benefits are  
6 conferred by public authorities and  
7 corporations. It is also very important  
8 that they are, the benefits they confer to  
9 be covered. Big publicly subsidized  
10 development projects are usually put  
11 together by public authorities, a generic  
12 term that includes such not for profit local  
13 development corporations such as the New  
14 York Economic Development Corporation, EDC.  
15 EDC in the past has been funded by a  
16 contract with the City. Technically, its  
17 contracts or subcontracts. Its essential  
18 that the contracts and/or subcontracts which  
19 public authorities enter into be disclosed  
20 to the CFB and the public and the new rules  
21 must cover the officers, directors and  
22 principals of the entities that get these  
23 contracts.

24 The New York State Commission on  
25 Government Integrity presumably established

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2 a terrific record when they did their work  
3 in the late 1980s.

4                   CHAIRMAN SCHWARZ: The distinguished  
5 Ms. Gordon was a participant.

6                   MS. BENSTOCK: Wonderful.

7                   I'll just read one favorite quote from  
8 the 1990 report of the commission called  
9 Underground Government: Preliminary Report  
10 on Authorities and Other Public  
11 Corporations. It said, "These bodies are  
12 generally exempt by law from many of the  
13 controls designed to check favoritism, undue  
14 influence and abuse of official position, as  
15 well as corruption, fraud, waste and misuse  
16 of government funds." Clearly, those  
17 entities need to be covered.

18                   The New York City Economic Development  
19 Corporation was formerly the Public  
20 Development Corporation, or PDC. When the  
21 City's Board of Estimate was still in  
22 existence its members used to be given  
23 information on the terms of PDC deals before  
24 the Board of Estimate voted to amend or  
25 approve them.

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2                   If it were possible to get the

3 confidential memos given to Board of  
4 Estimate members in the past, it would be,  
5 it would provide a good summary of the kinds  
6 of benefits these entities confer.

7 The CFB may hear the argument that the  
8 deals and contracts of public authorities  
9 shouldn't be subject to disclosure because  
10 authorities need to be able to move quickly  
11 on big so-called economic development or  
12 revitalization projects. William Stern, the  
13 former CEO of the State Urban Development  
14 Corporation wouldn't give much weight to  
15 such claims. "Look at the history of  
16 authority sponsored development in New  
17 York," he wrote in Newsday in 1993. "It is  
18 a history filled with sleaze, conflicts of  
19 interest, racketeering and flat out  
20 criminality. The story always seems to be  
21 the same, ordinary taxpayers get fleeced,  
22 political insiders get flush." This  
23 "represents a tired, old, discredited  
24 approach to economic development," Stern  
25 said.

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2 It might also be useful to think about

3 the West Side development plan that is  
4 currently going forward which includes, if  
5 it isn't limited, a stadium. It provides a  
6 great many examples of the kinds of public  
7 benefits top City officials have the power  
8 to give out either through their membership  
9 on EDC's board or through appointments the  
10 Mayor makes to state authorities. What is  
11 happening now is that the various  
12 authorities have not yet decided among  
13 themselves if they get final approval from  
14 the State Public Authorities Board, who will  
15 contribute what to the overall development  
16 package, but they agree distribution a six  
17 billion dollar package in terms of the  
18 public costs involved.

19 The state and such state authorities as  
20 the Empire State Development Corporation and  
21 the MTA have divided up responsibilities  
22 with City authorities. The administration  
23 also hopes to use state authority's powers  
24 of eminent domain and other powers to  
25 condemn real estate for various components

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2 of the overall plan, including a two billion  
3 dollar plus subway extension and other  
4 infrastructure. The subway extension is a  
5 particular interest because there is a  
6 history of corruption, scandals of the  
7 Federal Highway Administration over the  
8 selection of the location for transportation  
9 project routes. In the old days, the  
10 Federal Highway Administration, it was  
11 mostly highways that were chosen. A New  
12 York City transportation commissioner was  
13 removed from office because he was found to  
14 be investing in real estate beside the  
15 location of the highway whose location he  
16 was helping to select.

17 The subway from Times Square to the new  
18 stadium currently is planned to be financed  
19 in part by two billion in borrowing by the  
20 City. This costly, disruptive new subway is  
21 at the bottom of the MTA's priority list.  
22 What benefits will building that subway  
23 confer. Financial consultants are getting  
24 contracts to fashion creative financing  
25 schemes. Investment bankers would get fees

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2 to sell bonds. Speculators who run real  
3 estate along the route may be paid more than  
4 that land is worth in condemnation  
5 proceedings. Nearby property owners may see  
6 the value of their properties increase if  
7 the subways have been finished and the  
8 property's value may be enhanced by City  
9 planning, zoning, along with that subway  
10 access, as well. The construction, City  
11 gets billions of dollars worth of contracts  
12 if that particular subway extension is  
13 built.

14 These are just the beginnings of the  
15 public benefits campaign contractors and  
16 others with other kinds of financial  
17 relationships can get.

18 Just a word about not for profits. The  
19 CFB asks, should members of not for profit  
20 boards who have no financial stake in  
21 transactions with the City be included in  
22 the limitation or ban? It is not clear who  
23 would determine or how they determine a  
24 board member had no financial stake in  
25 transactions. This question also ignores

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2            the fact that such powerful and accountable

3            quasi governmental entities as EDC are

4            technically under law not for profit

5            corporations. It also ignores the growing

6            role of not for profits with benign sounding

7            names in lobbying for projects or programs

8            with immense financial implications.

9    In the case of environmental groups,

10           groups created by public relations firms to

11           do lobbying on the jobs are called astro

12           turf groups because they are fake grass

13           routes groups. There was one called Friends

14           of Clean Air formed in Texas a couple of

15           years ago. Individuals should be covered,

16           not just entities because so many

17           individuals now are creating, let's say, 92

18           entities to pursue a given deal.

19    CHAIRMAN SCHWARZ: Do you have an

20           example of that, Marcy?

21    MS. BENSTOCK: The example I was given,

22           I could try to track it down, Roland Betz

23           had done that for a golf course in

24           Connecticut.

25    Key people seeking financial benefits

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2 from the City may operate through a dozen of  
3 different entities. I'll try to find  
4 examples. It seems easier now to follow  
5 individuals than entities.

6 Finally, cumulative and long-term  
7 contributions should be disclosed. You  
8 asked, should the doing business disclosure  
9 requirements or regulations apply to  
10 business dealings before, at the same time  
11 as, or after contribution is made? The  
12 answer is all three. Relationships are  
13 established over a time. Multiple business  
14 dealings within the longest possible time  
15 periods and by affiliated entities should be  
16 aggregated to avoid understating the  
17 magnitude of continuing financial  
18 relationships.

19 That's the end of what I belatedly  
20 prepared. I would be happy to answer  
21 questions. I welcome the chance to submit  
22 documents later on.

23 CHAIRMAN SCHWARZ: Do you have a copy  
24 of your statement?

25 MS. BENSTOCK: Not readable.

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2 CHAIRMAN SCHWARZ: I know from our  
3 prior experience together, once Ms. Benstock  
4 gets on a subject, she keeps on the  
5 subject. We appreciate your being here.  
6 Thank you very much.

7 There is a piece of testimony that came  
8 in before the hearing that I read that the  
9 witness can't be here. The witness has  
10 asked we read his testimony. It is  
11 testimony from Arthur Levitt, former  
12 chairman of the Security & Exchange  
13 Commission. It's power testimony giving  
14 some of the background to their acting on  
15 the records in a useful way. Nicole is  
16 going to read it. I'll leave the room for  
17 20 seconds. The witness, in deference to  
18 the witness who asked it be read, it should  
19 be read.

20 MS. GORDON: Good morning. My name is  
21 Arthur Levitt. From 1993 to 2001, I served  
22 as Chairman of the U.S. Securities and  
23 Exchange Commission. I regret that I could  
24 not appear before this Board in person as I  
25 had planned, but I thank you for the

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2 opportunity to submit written testimony.

3 To begin, let me say that I am entirely  
4 supportive of Mayor Bloomberg's bold  
5 leadership to root out the improper  
6 influence of campaign contributions from  
7 those who do business with the City, and I  
8 know that this Board has reputation for  
9 excellence in the field of campaign finance  
10 reform. I am confident that together the  
11 Bloomberg administration and the Campaign  
12 Finance Board can create a model of reform  
13 that will set a standard for the nation.

14 When I became SEC chairman in 1993, the  
15 need for reform in the municipal bond market  
16 was obvious. Corruption and conflicts of  
17 interest that would have stirred the envy of  
18 Boss Tweed had tarnished the reputation of  
19 the municipal bond market, overshadowing the  
20 many honest and diligent people who work  
21 there as well.

22 A healthy municipal market is  
23 critically important to all Americans. It  
24 represents the schools that teach our  
25 children, the water we drink, the power that

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2 enhances our lives and drives our economy,  
3 the roads that take us where we need to go.  
4 For all of these reasons, improving our  
5 municipal bond market became one of my  
6 highest priorities, and that meant ending  
7 pay to play.

8 What is pay to play? Sy Lorne, who  
9 served as general counsel at the SEC, once  
10 described an odd experience he'd had in  
11 private practice: "An investment banker  
12 called me up and told me that a state  
13 political figure had told them that they  
14 needed to make a five-figure contribution to  
15 his campaign or be excluded from all state  
16 finance activities. They asked me what they  
17 should do. I was shocked by the question.  
18 After considerable research and evaluation  
19 of the law and circumstances at the time I  
20 was forced to tell them that the answer was  
21 probably to write a check. There was no  
22 clear illegality. I did not like giving  
23 that answer."

24 Those are real life examples of pay to  
25 play, the practice of making political

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2 contributions to elected officials or to  
3 candidates for local office for the purpose  
4 of getting a seat at the table. There is  
5 little doubt that pay to play damaged the  
6 integrity of the municipal bond market, just  
7 as it damages the integrity all government.  
8 It creates the impression that decisions are  
9 made on the basis of political influence,  
10 not professional competence.

11 When I ran a brokerage firm in the  
12 1970s I traveled all over America in order  
13 to compete for the municipal underwriting  
14 business. All too often I was told of the  
15 list, those firms that would be part of the  
16 underwriting syndicate. In nearly every  
17 instance, I was told that to qualify for  
18 such designation I had to buy tables at  
19 party dinners.

20 Pay to play also breeds contempt for  
21 the political process. That was brought  
22 home to me several weeks before I went to  
23 Washington when three young securities  
24 professionals came to talk to me about their  
25 career plans. They worked in the municipal

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2                   bond department of two major firms. One of

3                   them commented that the only way he was able

4                   to survive in the municipal bond business

5                   was by buying tables at political

6                   fund-raising dinners or by making

7                   contributions to officeholders in a position

8                   to award lucrative underwriting contracts.

9                   The others agreed this was still common

10                  behavior. This experience helped convince

11                  me to try to change the practice.

12                                 In the mid 1990s the Municipal

13                   Securities Rule-Making Board adopted Rule

14                   G-37, the specific provisions of which are

15                   familiar to this Board. It was a major

16                   advancement that substantially improved the

17                   integrity of the bond market. Public

18                   officials fought this rule right up to the

19                   Supreme Court, but the rule was upheld. It

20                   has not, however, entirely ended pay to play

21                   because lawyers and consultants are still

22                   free to make contributions on behalf of the

23                   bond industry. And while the term pay to

24                   play originated with the bond industry, the

25                   concept applies to all industries with



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2 business interests before the government,  
3 those seeking contracts, land use approvals,  
4 a share of pension funds or favorable  
5 assistance in other commercial areas.

6 The improper influence of campaign  
7 contributions is one of our democracy's most  
8 corrosive elements. Bold action is urgently  
9 required. It is my hope that the nation's  
10 cities and states will serve as laboratories  
11 of democracy, as they have done so many  
12 times in the past, by enacting reforms that  
13 will put an end to pay to play.

14 And perhaps no other city or state is  
15 in better positioned to enact reform than  
16 New York City, where voters have already  
17 passed a referendum mandating reform. Now,  
18 all that remains is for the City's talented  
19 public servants, and I am familiar with this  
20 Board's reputation for innovation, to issue  
21 rules that fulfill the voters' wishes.  
22 Doing so will no doubt set off a political  
23 fire storm. Speaking from experience, I  
24 will tell you that taking on pay to play  
25 does not win you many friends among

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2           politicians, nor among those in the  
3           industries you seek to regulate. But as you  
4           move forward, I would offer these words of  
5           advice: Remember that you serve the  
6           citizens of your City, and the need to  
7           improve public trust and faith in government  
8           could not be more urgent.

9                           New York City has an opportunity to  
10           address the public's growing cynicism, to  
11           shatter the negative stereotype that so many  
12           harbor about elected officials, that they  
13           cater to those that deliver large campaign  
14           contributions. We are experiencing a vast  
15           erosion of public confidence in the  
16           institutions of government and politics. If  
17           you seize this opportunity you will set a  
18           standard that state and local governments  
19           around the nation will begin to follow. New  
20           York City must lead this effort to preserve  
21           its preeminence as America's foremost  
22           municipality.

23                           CHAIRMAN SCHWARZ: We're going to break  
24           now for lunch. The next witness comes --

25                           MS. GORDON: I would like to say, we

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2           also received a written statement from Craig  
3           Holman, legislative representative with  
4           Public Citizen. He gave a detailed  
5           testimony which is of particular interest.  
6           He has studied this issue across  
7           jurisdictions. I am sure the Board and  
8           public will benefit from seeing his  
9           testimony.

10                   CHAIRMAN SCHWARZ: We will break until  
11           two o'clock when we will resume this  
12           afternoon. We have only three witnesses  
13           this afternoon. We appreciate very much the  
14           attention of people in the audience and this  
15           was an enjoyable hearing.

16                   (Recess taken.)

17                   (Afternoon session.)

18                   CHAIRMAN SCHWARZ: We thank the  
19           Campaign Finance Board staff that has put  
20           together all excellent materials and getting  
21           the witnesses to come.

22                   I call Mark Davies.

23                   MR. DAVIES: Thank you. Mark Davies,  
24           executive director of the New York.

25 Conflicts of Interest Board.

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2 Wayne Hawley accompanies me, general  
3 counsel and executive deputy director.

4 CHAIRMAN SCHWARZ: And my sixth cousin,  
5 I believe.

6 MR. DAVIES: To avoid confusion, I will  
7 refer to the Conflicts of Interest Board as  
8 COIB.

9 I have distributed a couple of  
10 documents. In the back is the Conflicts of  
11 Interest Law, Financial Disclosure Law. You  
12 also have before you an outline of my  
13 remarks.

14 MS. GORDON: The laws are in the back?

15 MR. DAVIES: Yes.

16 Recent COIB publication, political  
17 activities, Conflict of Interest rules.

18 First of all, by way of introduction,  
19 the Conflicts of Interest Board administers  
20 the City's Conflicts of Interest Law set  
21 forth in Chapter 68 of the New York City  
22 Charter, and the Financial Disclosure Law  
23 set forth in section 12-110 of the New York  
24 City Administrative Code. The COIB

25 exercises jurisdiction over public servants

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2 only, not over private persons or entities.

3 I will limit my remarks to the four  
4 issues set forth on the outline. The  
5 meaning of business dealings with the City  
6 as defined in Chapter 68. Second, the  
7 Chapter 68 prohibition on a public servant,  
8 including an elected official, taking an  
9 action as a public servant that might  
10 benefit a consultant to the public servant's  
11 political campaign.

12 Thirdly, the issue of public servants,  
13 including elected officials, taking an  
14 action that may benefit a major campaign  
15 contributor, that is the pay to play issue,  
16 and a possible amendment to Chapter 68 that  
17 would address that issue.

18 Fourth, the COIB's concern Chapter 68  
19 places the entire burden of complying with  
20 the Conflicts of Interest Law upon public  
21 servants and virtually no burden upon the  
22 public, and possible amendments to Chapter  
23 68 that would address that issue.

24                   CHAIRMAN SCHWARZ: The person who is  
25                   causing the conflict you mean?

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2                   MR. DAVIES: Yes.

3                   Defining business dealings with the  
4                   City. I understand that is an issue that is  
5                   before the Campaign Finance Board. The 1988  
6                   Charter Revision Commission stated in regard  
7                   to the definition of business dealings with  
8                   the City: "This definition is at the core  
9                   of many of the chapter's prohibitions. It  
10                  is intended to capture the various  
11                  transactions over which agency officials  
12                  exercise discretion through contracts,  
13                  agreements or through the granting of  
14                  rights, privileges or advantages to  
15                  individuals or firms, excepting those which  
16                  involve a public servant's residence."

17                  Chapter 68 defines the phrase business  
18                  dealings with the City -- this is in Chapter  
19                  68 -- as: "Any transaction with the City  
20                  involving the sale, purchase, rental,  
21                  disposition or exchange of any goods,  
22                  services or property, any license, permit,  
23                  grant or benefit, and any performance of or

24 litigation with respect to any of the  
25 foregoing, but shall not include any

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transaction involving a public servant's  
3 residence or any ministerial matters."

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Ministerial matter is in turn defined  
as: "An administrative act, including the  
issuance of a license, permit or other  
permission by the City, which is carried out  
in a prescribed manner and which does not  
involve substantial personal discretion."

The Chapter 68 definition of business  
dealings has worked well in the COIB's  
interpretations of those Chapter 68  
provisions involving that phrase, namely,  
first of all, the prohibition on holding a  
position or ownership interest in a firm  
engaged in business dealings with the City.  
Secondly, the prohibition on accepting gifts  
from anyone engaged in or intending to  
become engaged with business dealings with  
the City.

Third, the provision that permits a  
public servant to volunteer for a not for

23 profit entity interested in business  
24 dealings with the City. Finally, the  
25 provision that permits a former public

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2 servant to act in a ministerial matter  
3 regarding business dealings with the City.  
4 Those are the four provisions in which  
5 business dealings with the City arise.

6 One should note that under Chapter 68,  
7 "a public servant shall be deemed to know  
8 of a business dealing with the City if such  
9 public servant should have known of such  
10 business dealing with the City." If you  
11 should have known, you are deemed to know  
12 it.

13 Secondly, recusing as to campaign  
14 consultants. Perhaps the most fundamental  
15 provision of any Conflicts of Interest Law,  
16 including Chapter 68, lies in the  
17 prohibition on using one's official position  
18 to benefit one's private interest. The New  
19 York City version of this prohibition  
20 states: "No public servant shall use or  
21 attempt to use his or her position as a  
22 public servant to obtain any financial gain,



23 contract, license, privilege or other  
24 private or personal advantage, direct or  
25 indirect, for the public servant or any

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2 person or firm associated with the public  
3 servant." "Associated" is defined as to  
4 include not only your immediate family, but  
5 any person with whom you have a business or  
6 other financial relationship.

7 In a recent publication I passed out  
8 entitled Political Activities: The  
9 Conflicts of Interest Rules - A Reminder for  
10 an Election Year. The one-page handout,  
11 COIB stated, in effect, that a public  
12 servant is associated with a paid consultant  
13 to that public servant's political  
14 campaign. This is on the second page there  
15 of that.

16 It says: "Because the Board has  
17 concluded that a consultant to a public  
18 servant's election campaign is associated  
19 with that public servant within the meaning  
20 of the City's Conflicts of Interest Law, the  
21 public servant may not use his or her City

22 position to benefit the consultant and  
23 accordingly must recuse himself or herself  
24 from matters involving the consultant. This  
25 means that if the consultant also provides

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2 lobbying services or otherwise acts as paid  
3 representative of parties appearing before  
4 the City, the consultant may not lobby or in  
5 any other way communicate with the public  
6 servant or his or her subordinates on behalf  
7 of the consultant's private clients.  
8 However, an elected official may vote on  
9 matters involving clients of his or her  
10 campaign consultant provided that the  
11 elected official discloses the facts to the  
12 Board and on the official records of the  
13 body where the vote is taken."

14 If a public servant, including an  
15 elected official, hires a person or firm as  
16 a consultant to his or her political  
17 campaign, and if that person or firm also  
18 lobbies the City, the public servant must  
19 recuse himself or herself in his or her City  
20 job from dealing with that lobbyist,  
21 although an elected official may vote on the

22 matter, provided that he or she makes the  
23 required disclosure. Recusal means, among  
24 other things, that the public servant must  
25 not participate in discussions regarding the

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2 matter, must not attend meetings regarding  
3 the matter, and must not receive copies of  
4 documents relative to the matter.

5 The third point on my four points in  
6 the outline, benefitting major campaign  
7 contributors, the so-called pay to play  
8 issue. The definition of associated in the  
9 charter does not expressly include those  
10 persons from whom one receives campaign  
11 contributions, even large campaign  
12 contributions, and the COIB has historically  
13 stated that a campaign contribution is not a  
14 gift within the meaning of the prohibition  
15 on accepting gifts from anyone engaged in  
16 business dealings or intending to engage in  
17 business dealings with the City.

18 CHAIRMAN SCHWARZ: Is that because of  
19 historic, going back to Mayor Wagner's  
20 term?

21 MR. DAVIES: I assume it's historic. I  
22 haven't been able to find legislative  
23 history on it. It is common throughout;  
24 most ethics, conflicts of interests codes  
25 don't define gift to exclude campaign

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2 contributions. There are exceptions  
3 throughout the country that include campaign  
4 contributions with gifts. I do not believe  
5 this conclusion is compelled by the  
6 legislation of the charter or legislative  
7 history.

8 The COIB has thus discussed, but has  
9 not yet proposed amending the definition of  
10 associated to include any person or entity  
11 that was a major campaign contributor during  
12 the previous 24 months. Major campaign  
13 contributor could be tied either to a  
14 specific amount or to the maximum  
15 contribution permitted under the Campaign  
16 Finance Law. Thus, pursuant to Charter  
17 2604(b)(3), a public servant, including an  
18 elected official, would be required to  
19 recuse himself or herself from taking any  
20 action that might benefit such a major

21 campaign contributor, although, with  
22 appropriate disclosure, an elected official  
23 could vote on such a matter.

24 Such an approach --

25 CHAIRMAN SCHWARZ: Are you using the

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2 word major as shorthand for something you  
3 already developed, are you still going to  
4 develop?

5 MR. DAVIES: It would have to be  
6 developed \$500, \$1,000. It would have to be  
7 a specific amount, or could be tied into  
8 with a maximum allowable possible  
9 contribution under the Campaign Finance  
10 Law.

11 There are clear advantages do this  
12 approach. First, it raises no  
13 constitutional or preemption issues.  
14 Second, it avoids the practical problems  
15 attendant on determining whether every donor  
16 does business with the City.

17 Third, the approach under discussion by  
18 COIB narrows the issue to whether the public  
19 servant has taken an action to benefit a

20 major campaign contributor. This approach  
21 in no way restricts contributions. Indeed,  
22 as a matter of Chapter 68, if this proposal  
23 were adopted, a candidate could accept a  
24 million dollar contribution, but merely  
25 requires that the candidate, if he or she

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2 wins the election, recuse himself or herself  
3 from taking any action that may benefit the  
4 contributor.

5 CHAIRMAN SCHWARZ: Other than voting on  
6 legislation.

7 MR. DAVIES: Other than voting.  
8 Particularly in the case of legislators. To  
9 require a recusal by a legislator  
10 disenfranchises the voters.

11 CHAIRMAN SCHWARZ: That's a legitimate  
12 reason for a distinction.

13 Have you done any analysis of whether  
14 the problem is greater or lesser as between  
15 legislators and people in the executive  
16 branch?

17 MR. DAVIES: We haven't done any  
18 analysis. That is probably a little bit  
19 anecdotal. Any such analysis --

20 MR. HAWLEY: I would just add, the  
21 provision that permits voting with  
22 disclosure is charter mandated. It says  
23 there is an exception for an elected  
24 official, he or she can take objection,  
25 namely, vote, but must disclose.

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2 MR. CHRISTENSEN: That includes voting  
3 in committee?

4 MR. HAWLEY: We have taken that  
5 position.

6 MR. DAVIES: To be sure, such a recusal  
7 requirement may well discourage large  
8 contributions from those who make them  
9 solely in order to curry favor with a  
10 candidate. Such a result may also encourage  
11 candidates to participate in the campaign  
12 finance program since contributors would  
13 have little incentive to contribute in  
14 excess of the recusal threshold. But both  
15 of those results are consistent with the  
16 purpose of the Conflicts of Interest Law and  
17 also consistent with the purpose of the  
18 Campaign Finance Law.

19                   Finally, the last point, spreading the  
20                   burden of compliance. It has often been  
21                   said that: "To permit a private company,  
22                   with virtual impunity, to corrupt a  
23                   municipal official undercuts significantly  
24                   the efficacy of the Ethics Law and  
25                   constitutes gross unfairness to the

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2                   official. Accordingly, such laws should  
3                   prohibit private citizens and companies from  
4                   inducing a municipal official to violate the  
5                   Code of Ethics."

6                   The COIB has discussed, although not  
7                   yet proposed, such a provision. State law,  
8                   for example, prohibits any person from  
9                   offering or making a gift to a state  
10                  official where it would be unlawful for the  
11                  official to accept the gift.

12                  The COIB has proposed a civil  
13                  forfeiture provision that would require any  
14                  person, including a private individual or  
15                  entity, to disgorge any ill-gotten gains  
16                  that were obtained in violation of Chapter  
17                  68. The COIB currently has the power to  
18                  fine only public servants. Moreover, absent





18 Campaign Finance Board or on definitional  
19 issues the CFB faces, we hope that the views  
20 I have expressed today will assist the  
21 Campaign Finance Board in struggling with  
22 these matters. We are happy to speak, happy  
23 to answer any questions you may have.

24 CHAIRMAN SCHWARZ: One thing that  
25 certainly strikes me from hearing your

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2 testimony is there is an enormous benefit to  
3 our two agencies, at least extensively  
4 exploring questions today. There might be  
5 reasons for not coming out the same way on  
6 any given issue. It would be unfortunate if  
7 you didn't have in mind what we were  
8 thinking about and we didn't have in mind  
9 what you were thinking about.

10 MR. DAVIES: Our Board agrees with  
11 that.

12 MS. GORDON: The COI's advisory opinion  
13 came up a few times today, the solicitation  
14 now permitted by elected officials for City  
15 purposes for charitable organizations.

16 MR. DAVIES: City affiliated not for  
17 profits.

18 MS. GORDON: Yes.

19 Could you briefly describe that opinion  
20 and what overlap, if any, there is in that  
21 area.

22 MR. DAVIES: Let me make a general  
23 statement. I will turn it over to our  
24 deputy executive director and general  
25 counsel to express opinion.

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2 You are talking about the issues raised  
3 in the Observer and New York Times article?

4 MS. GORDON: Right.

5 MR. DAVIES: Our Board had concerns, no  
6 question about it. About fund-raising, City  
7 public servants fund-raising from those with  
8 business dealings with the City. There are  
9 issues of concern.

10 The Board, therefore, issued that  
11 advisory opinion, which is 2003-4, to  
12 address those concerns. The Board's  
13 position is it provided the public servant  
14 complies with that advisory opinion, those  
15 concerns have been addressed. We're not  
16 concerned about it at that point.

17           Secondly, those concerns have not been  
18           addressed, for the most part, as to  
19           fund-raising for political campaigns. In  
20           addition, it seems to me there is a very  
21           significant distinction between fund-raising  
22           for an affiliated City not for profit that  
23           is essentially doing government type work  
24           for the benefit for the public at large and  
25           on the other hand raising contributions for

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2           a political campaign that benefit only the  
3           candidate and the individual himself or  
4           herself, which to me raise significantly  
5           greater Chapter 68 concerns than  
6           fund-raising for an affiliate or not for  
7           profit. Once you have complied with the  
8           provisions of the 2003-4 fund-raising for  
9           the City not for profit.

10           I have with me a summary of the  
11           opinions 2003. I will then turn it over to  
12           Wayne Hawley to specifically address the  
13           opinion.

14           MR. HAWLEY: I don't know I can handle  
15           the way Mark said. The Board grappled with  
16           this. It has been an issue around since

17           1966. The Council, at that time, had draft  
18           legislation on the greater topics of gifts  
19           to the City. This was a topic of a few  
20           opinions out of both the Board of Ethics,  
21           our Board in various portions at different  
22           times. Our Board came out with a regime  
23           generally favorable to these kinds of gifts  
24           and solicitations of those gifts with  
25           appropriate limits and with disclosure which

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was not the regime previously.

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That said, the Board continues to be

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concerned about where the two things may

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merge. As Mark said, there is a real

6

distinction in the Board's mind between

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gifts to -- let's take a concrete example.

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We have approved gifts to refurbish Gracie

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Mansion or the Governor's room. When the

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Board has a case where it feels like this

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activity is a whole lot closer to, I don't

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want to call it a campaign activity, but an

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activity that may be for the interest of the

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public servant involved, less for the

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interest of the public, the Board will ask a

16 few more questions.

17 In some tough cases, the reality is,  
18 the line won't be crystal clear. As is  
19 always the case when an elected or appointed  
20 official does something the public likes,  
21 good for the City, it may go down to that  
22 public's person representation, as well.

23 MS. GORDON: Exposure required under  
24 this is publicly available.

25 MR. HAWLEY: Absolutely.

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2 MS. GORDON: I don't suppose at this  
3 point it's necessarily computerized.

4 MR. DAVIES: We don't have the staff to  
5 computerize it.

6 MS. GORDON: As a side question, do you  
7 have any way or do you do anything to verify  
8 the information you get?

9 MR. HAWLEY: No.

10 MS. GORDON: Do you have jurisdiction  
11 to do that?

12 MR. HAWLEY: The question has  
13 occurred. It seems that people are required  
14 to report accurately to us. With the volume  
15 of the reports and information, I am

16 somewhat encouraged we're getting quite a  
17 bit of good information.

18 MS. GORDON: Are you getting disclosure  
19 from every level of office?

20 MR. HAWLEY: A lot of City agencies  
21 that come directly from the City. We get  
22 disclosure that come from affiliated not for  
23 profit, maybe through the office. As an  
24 example, the Department of Education sends  
25 out two long reports, the report that comes

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2 from the schools. It's like PTA gifts, 500,  
3 1,000. Then we get the gifts that come  
4 through the fund for the City schools.  
5 Organization headed by Caroline Kennedy.  
6 Those are disclosures in the million range,  
7 Microsoft, Ely Brody, a lot of other people  
8 generous to the public schools.

9 MS. GORDON: The agency is required to  
10 file a public report. That's the agency  
11 that is seeing the benefit of the activity.

12 Is there any requirement for the  
13 elected official to make a report?

14 MR. HAWLEY: The elected official may

15 not be soliciting.

16 MS. GORDON: The one that is doing the  
17 soliciting.

18 MR. HAWLEY: The obligation is a  
19 requirement. To be precise, there is an  
20 obligation to disclose if the solicitation  
21 is being done.

22 MS. GORDON: Obligation by whom, the  
23 City elected official?

24 MR. HAWLEY: Our jurisdiction is really  
25 only over the elected official. We don't

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2 have jurisdiction as a matter of law over  
3 the not for profit.

4 MS. GORDON: I am making a distinction  
5 again the elected official and City agency.  
6 Each City officer or agent must file a  
7 public report. You are a City Council  
8 member and you get the green light to go  
9 ahead and make solicitation.

10 Is there a public record, "I am City  
11 Council member, so and so, this is the  
12 solicitation I am engaged in, this is the  
13 result"?

14 MR. HAWLEY: All there would be, report



15 of contributions, if any contributions  
16 received in the report go over \$5,000.

17 MS. GORDON: By the City agency that is  
18 the sister of the good not for profit?

19 MR. HAWLEY: Yes.

20 MS. GORDON: Who is the individual who  
21 did the solicitation.

22 MR. HAWLEY: Not necessarily and in  
23 practice doesn't. It's not a requirement of  
24 the report.

25 CHAIRMAN SCHWARZ: In your fourth

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2 bullet point you talked about getting  
3 authority to govern people who make the  
4 contribution or the payment in addition to  
5 public official.

6 Have you thought at all about the issue  
7 in front of us on campaign finance and  
8 whether it should be done, in the best of  
9 all worlds, should it be done by regulating  
10 the candidates or regulating the people  
11 doing business with the City?

12 MR. DAVIES: I can't say the Board is  
13 talking about. My remarks have to be

14 confined to my personal view. My personal  
15 view, it raises too many constitutional  
16 preemption issues to regulate the donor. It  
17 is easier to regulate the donee. Public  
18 servant. There is a Liz Holzman case that  
19 pushed aside federal preemption issues in  
20 that context. We're not putting any  
21 restrictions on anybody's ability to give.  
22 We're only putting restrictions -- not even  
23 on ability to receive, only on your ability  
24 to act to favor someone who has given  
25 something, which raises, I don't think, any

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2 constitutional preemption issues. I  
3 discourage our Board trying to look at the  
4 issue of trying to regulate the donor.  
5 CHAIRMAN SCHWARZ: When you talk about  
6 broadening in your first bullet point, what  
7 do you have in mind?  
8 MR. DAVIES: One is debarment, anyone,  
9 private person who induces someone to  
10 violate the Conflicts of Interest Law, maybe  
11 offering a contribution or in excess,  
12 whatever it is, that in that event they  
13 could be debarred, civil forfeiture

14 provision, you would have to disgorge and so  
15 forth. In particular, to hold private  
16 entities or private individuals  
17 accountable. That is to give one, perhaps a  
18 Conflict of Interest Board, we haven't  
19 discussed in detail, a public fine, a  
20 private individual or a private entity that  
21 induces a public servant to violate  
22 Conflicts of Interest.

23 If you are a public servant and I give  
24 you or offer to give you a gift in excess of  
25 the amount you are allowed to receive or in

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2 violation of the Conflicts of Interest Law,  
3 the Board can fine me, the private  
4 individual. We have been talking about  
5 that. I raised this with the Council in  
6 1994. It has been kicking around for a long  
7 time.

8 MR. CHRISTENSEN: Do you have any views  
9 as to what the executive branches powers are  
10 to deal with these kinds of problems from  
11 the point of view of procurement, not doing  
12 business with the entity that is making



13 City do business.

14 CHAIRMAN SCHWARZ: Thank you. It seems  
15 like we should be working closer together.

16 MR. DAVIES: Thank you very much.

17 CHAIRMAN SCHWARZ: Martha.

18 MS. HAINES: I would like to thank you,  
19 first of all, for this opportunity to  
20 participate in the New York City Campaign  
21 Finance Board's hearing on doing business  
22 and contracting with the City. I am Martha  
23 Mahan Haines, chief of the Office of  
24 Municipal Securities at the U.S. Securities  
25 and Exchange Commission in Washington, D.C.

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2 Today I would like to discuss the  
3 history and current status of securities  
4 regulations banning pay to play practices in  
5 municipal securities market. I would like  
6 to share some of my personal experiences  
7 regarding anti pay to play rules.

8 Before I go any further, I need to  
9 advise you my comments today are my own.  
10 They are not necessarily shared by my  
11 colleagues on the SEC staff or by the

12 Commission.

13 I would like to begin --

14 CHAIRMAN SCHWARZ: Are you suggesting  
15 there is some incredible rift?

16 MS. HAINES: It's a matter of policy.  
17 The SEC disclaims.

18 First, I would like to clarify what I  
19 mean when I refer to pay to play. When I  
20 use that term I am talking about the  
21 practice of municipal securities market  
22 participants making political contributions  
23 to state and local government officials in  
24 order to be considered for an award of  
25 underwriting, advisory or related business

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2 from issuers of municipal securities. In  
3 most cases, almost all, these practices do  
4 not amount to outright bribery, which is  
5 already prohibited under state and federal  
6 law. There is usually no express quid pro  
7 quo, just an understanding if you don't  
8 give, you won't get business.

9 While it's difficult to quantify the  
10 cost of fraudulent unethical and  
11 manipulative selection practices, there is

12 little doubt that pay to play damages the  
13 integrity of the municipal bond market. It  
14 creates the impression that contracts are  
15 awarded on the basis of political influence,  
16 not professional competence. The investing  
17 public can easily pay more, and citizens of  
18 the municipality receive less when bond  
19 services are awarded due to political  
20 influence instead of merit.

21 In 1934, when the Exchange Act was  
22 enacted, competitive bidding, in one form or  
23 another, was the most accepted method of  
24 financing that was used by municipalities  
25 and other public entities. In competitive

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2 offerings, the issuer decides who will  
3 underwrite its bonds based almost entirely  
4 on price in response to the issuer's notice  
5 of sale. Competitive bidding offers the  
6 public a measure of protection against the  
7 exertion of inappropriate influence on  
8 public officials by municipal underwriters.  
9 When bidding is done competitively and  
10 publicly, there is less possibility of

11 collusion and political patronage.

12 In contrast to competitive

13 underwritings, negotiated underwritings

14 present greater risk of abuse in the

15 underwriter selection process. Issuers may

16 become involved not only in selecting the

17 lead underwriter, but also in controlling

18 other provisions of the distribution. There

19 may be a large underwriting syndicate and

20 the public official may be involved with two

21 other members of the syndicate. Selection

22 may be based on considerations other than

23 merit, creating a genuine risk that

24 underwriters will be selected on the basis

25 of political influence rather than the

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2 quality of the underwriter's service in

3 distributing the securities.

4 Today, negotiated underwritings have

5 become the dominant method of underwriter

6 selection. According to the press, less

7 than 20 percent of municipal bonds are sold

8 by competitive sale today. Let me be clear,

9 there is nothing inherently wrong with

10 negotiated underwritings. Some bond issues



11           there may legitimately be compelling reasons  
12           for an issuer to prefer a negotiated rather  
13           than a competitive underwriting.  However,  
14           it is possible for play to pay practices  
15           that are next to impossible in competitive  
16           sales to exist in negotiated underwritings.

17           Congress recognized the importance of  
18           integrity in the municipal securities  
19           markets when it directed the formulation of  
20           the Municipal Securities Rulemaking Board in  
21           1975.  It authorized the MSRB to regulate  
22           the conduct of broker, dealers and municipal  
23           securities dealers to, among other things,  
24           prevent fraudulent and manipulative acts and  
25           practices, promote just and equitable

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2           principles of trade, remove impediments to  
3           free and open trade, and to protect  
4           investors and the public interest.

5           I understand you have already earlier  
6           received testimony from Arthur Levitt, who  
7           was one of the major parties behind the  
8           rules I am going to discuss now.

9           The MSRB's Rules G-37 and G-38 were

10           adopted in response to numerous reports  
11           concerning about questionable practices that  
12           broker dealers were sometimes employing to  
13           obtain municipal securities business.  
14           Specific abuses were alleged in several  
15           state and local governments at that time,  
16           including New York City. The widespread  
17           perception of such practices called into  
18           question the integrity of the municipal  
19           securities market and the business practices  
20           some municipal underwriters utilized in  
21           order to obtain underwriting contracts.

22                       MSRB Rule G-37 is a comprehensive  
23           scheme composed of several separate  
24           requirements affecting municipal securities  
25           underwriters. It includes business

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2           disqualification provisions triggered by  
3           political contributions, limitations on  
4           solicitation and coordination of political  
5           contributions, recordkeeping and disclosure.

6                       Basically, and it is a very complex  
7           rule, as you are aware of the difficulty  
8           once you get into the gory detail of  
9           drafting this kind of rule. G-37 prohibits

10 brokers, dealers and political action  
11 committees, which they control, from  
12 engaging in any negotiated municipal finance  
13 business with an issuer within two years  
14 after making a political contribution to an  
15 official of that issue. The prohibition  
16 applies equally to incumbents and candidates  
17 raising the similar situation, if you  
18 contribute, an underwriter contributes to  
19 the candidate that loses, he is prohibited  
20 from doing business with that issuer for two  
21 years.

22 The rule contains a de minimis  
23 provision under which a municipal finance  
24 professional can contribute up to \$250 per  
25 election to any issuer official for whom the

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2 person is entitled to vote. Rule G-38,  
3 adopted in January 1996, requires disclosure  
4 of consulting arrangements and the  
5 contributions made by consultants to  
6 municipal broker dealers.

7 The rule also prohibits a broker dealer  
8 and any municipal finance professional from

9 doing any act indirectly which would result  
10 in a violation of the rule if done directly  
11 by the broker dealer or municipal finance  
12 professional. This is intended to prevent  
13 broker dealers from funneling funds or  
14 payments through other persons or entities  
15 to circumvent the rule's requirements. For  
16 example, a broker dealer would violate the  
17 rule if it does business with an issuer  
18 after contributions were made to an issuer  
19 official from or by associated persons of  
20 the broker dealer, family members of  
21 associated persons, consultants, lobbyists,  
22 attorneys, affiliates their employees or  
23 PACs, or other persons or entities with the  
24 intention of circumventing the rule.

25 CHAIRMAN SCHWARZ: That paragraph I was

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2 focusing on, ma'am, "family members are not  
3 specifically included" is the first  
4 sentence. Then they are included in the  
5 remainder of the paragraph.

6 MS. HAINES: This is the most difficult  
7 part of the rule to enforce. How do you  
8 prove intention to violate the rule?

9                   Someone's spouse makes a contribution.  
10                   How do you prove it is intent of the  
11                   municipal finance professional that  
12                   contribution be made in order to circumvent  
13                   the rule?

14                   My spouse has his own business. He is  
15                   making his contribution for that reason.  
16                   The requirement to prove intent is  
17                   difficult.

18                   CHAIRMAN SCHWARZ: How is it worked out  
19                   in fact?

20                   MS. HAINES: Not very many cases have  
21                   been brought at all. I think one or two.

22                   CHAIRMAN SCHWARZ: Is that because it's  
23                   hard to bring the case or the practice of  
24                   disguising the contribution by using a minor  
25                   child or spouse is not common after the rule

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2                   was put into effect?

3                   MS. HAINES: I don't know. We  
4                   certainly have anecdotal evidence it  
5                   continues. There are also problems with the  
6                   rule with contributions made to political  
7                   parties instead of to the candidate or

8 favored charities favored by the  
9 politician. "Don't give to me, give to this  
10 hospital, they are my favorite charity."

11 CHAIRMAN SCHWARZ: If we were to ask  
12 you to do something which you don't have to  
13 do and we don't want to burden you, if we  
14 were to ask you to do an analysis of how  
15 often since the rule was passed there have  
16 been spousal contributions, would you be  
17 able to answer that question or not?

18 MS. HAINES: I don't think so because,  
19 to my knowledge, that information is not  
20 collected anywhere except by the individual  
21 campaigns that would be accepting the  
22 contributions. We would require reports be  
23 made of the contributions by the broker  
24 dealers and by municipal finance  
25 professionals and by consultants. Those all

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2 have to be reported to the MSRB quarterly.  
3 I don't know there is any realistic way  
4 to collect information about spouses. I can  
5 tell you that this is an area of concern  
6 right now to the MSRB and the Commission. I  
7 can't tell you when or if we actually will

8 take action to. We're focused on it right  
9 now.

10 CHAIRMAN SCHWARZ: Keep us informed if  
11 you develop any more analyses, or if you  
12 take action, we will read about it.

13 MS. HAINES: The rule also prohibits  
14 broker dealers from soliciting contributions  
15 on behalf of officials of issuers with which  
16 the broker dealer is engaging in  
17 fund-raising activities for officials and  
18 issuers that might influence the underwriter  
19 selection process.

20 Although G-37 does include a provision  
21 allowing the NASD to grant exemptions from  
22 the rule, in fact, these have very rarely  
23 been granted, only in extraordinary  
24 circumstances.

25 CHAIRMAN SCHWARZ: Do you have anything

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2 built in that the State of New Jersey built  
3 into their legislation that allows if an  
4 official does make a contribution and the  
5 sanction would be that the business cannot  
6 carry forward with any business with the

7 government, do you allow a cure or not allow  
8 a cure?

9 MS. HAINES: We do in limited  
10 circumstances. I would have to have the  
11 rule in front of me to point to it. If a  
12 relatively small contribution is made, oops,  
13 caught quickly and the money is returned.  
14 They have to give the money back. Then  
15 impose additional supervisory restrictions  
16 on the individual who made the  
17 contribution.

18 The broker dealer is entitled to take  
19 advantage of a couple of those over a period  
20 of time. It is a limited exception. There  
21 were situations where it was an "Oops, I  
22 didn't know I was supposed to write that  
23 check."

24 CHAIRMAN SCHWARZ: If we wanted to find  
25 the circumstances of your limited cure, is

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2 that something we can find by reading?

3 MS. HAINES: It's in the rule itself.

4 CHAIRMAN SCHWARZ: I read your  
5 statement, but I haven't had the chance to  
6 read the whole 12 pages.



7 MS. HAINES: G-38 requires written  
8 agreements between broker dealers and their  
9 consultants who are individuals that are  
10 used by a broker dealer, directly or  
11 indirectly, to solicit or obtain or retain  
12 municipal securities business. It also  
13 mandates the disclosure of these  
14 arrangements to these issuers and the MSRB.

15 I know that G-38 is, MSRB is currently  
16 considering whether or not it should amend  
17 G-38 to require consultants qualify as  
18 associated persons which would subject them  
19 to the supervision of the broker dealer as  
20 the same kind that would be applicable to a  
21 bond salesman or underwriter, investment  
22 banker. They have published that for public  
23 comment. They are receiving comment back.  
24 They have not yet made a decision what they  
25 are going to do and whether or not they are

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2 going to amend the rule. That is actively  
3 in play right now, I would say.  
4 The first amendment issues with rules  
5 like this can be quite thorny. Rule G-37

6 was adopted in the context of a closely  
7 regulated industry and is directly relevant  
8 to the concerns of the regulatory scheme.

9 The Commission was sensitive to and  
10 carefully considered the constitutional  
11 concerns in considering adoption of the  
12 rule. The constitutionality of the rule was  
13 litigated in the case of Blunt v. SEC and  
14 the rule was upheld as a constitutionally  
15 permissible restraint on free speech, state  
16 interest and was carefully tailored to limit  
17 its impact on free speech.

18 Acknowledge G-37 does not prohibit  
19 making a political contribution. It  
20 restricts the ability of someone who made a  
21 contribution to do business with the issuer  
22 for the following two years.

23 CHAIRMAN SCHWARZ: What you say at the  
24 end of your statement I was just sharing  
25 with my colleague Mr. Christensen. That

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2 gives a great incentive to the entity to  
3 police the activities with respect to  
4 contributions.

5 MS. HAINES: Right. They are very

6 active in that. The possibility that one of  
7 their municipal finance professionals making  
8 a relatively small contribution, taking them  
9 out of doing business with a state or all of  
10 the state agencies, which can be many  
11 millions of dollars of business, has focused  
12 their attention very nicely on enforcement  
13 themselves.

14 CHAIRMAN SCHWARZ: Nothing concentrates  
15 the minds like a hanging in the morning.

16 MS. HAINES: It has been over ten years  
17 since Rule G-37 first became effective. We  
18 have brought a number of enforcement cases  
19 for violations of G-37. So has the National  
20 Association for Securities Dealers, SEC and  
21 NASD share enforcement obligations for MSRB  
22 rules. Individual actions taken by the  
23 Commission have resulted in penalties and  
24 disgorgement in excess of a million dollars.

25 As a lawyer who was in private practice

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2 in '94 when G-37 became effective, I  
3 personally observed the beneficial change in  
4 dealer behavior it caused. While the rule

5           may not have completely eradicated pay to  
6           play practices by broker dealers, I believe  
7           that G-37 has done a lot of good.

8           Recent press reports do suggest some  
9           broker dealers may be attempting to  
10          circumvent the rule by making contributions  
11          to support bond referenda and political  
12          parties or through consultants, lawyers or  
13          spouses. As I mentioned earlier, I think  
14          the MSRB is likely to consider further rule  
15          changes, if necessary, to prevent such  
16          abuses. For example, last October the MSRB  
17          did issue the proposal to amend G-38. It is  
18          still receiving comments and considering  
19          those comments before going forward.

20          MSRB rules apply only to the people and  
21          entities it regulates, i.e., brokers,  
22          dealers, municipal securities dealers and  
23          their registered representatives, and only  
24          to transactions in municipal securities.  
25          The integrity of the municipal securities

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2           market rests not only on the shoulders of  
3           broker dealers, federal regulators, but on  
4           those of issuers and other market

5 participants, as well.

6 In closing, I have three personal  
7 observations relevant to the steps you are  
8 to consider. First, while G-37 has not  
9 eliminated all pay to play like activities,  
10 it has significantly improved the integrity  
11 of the municipal securities market. Rules  
12 can be useful even when they are imperfect.

13 Second, rules need to be revisited and  
14 revised over time to address changing  
15 circumstances and practices. No matter  
16 where you draw the line in regulation, all  
17 regulations have edges, people find their  
18 way around the edges. It doesn't matter how  
19 large, how far out you move them, they are  
20 always there. It is a continuing process  
21 once you have adopted a rule to continue to  
22 monitor it and amend it as necessary over a  
23 time.

24 Thirdly, I know that your staff has  
25 expressed concerns about enforcement of the

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2 proposals before you. As I mentioned

3 before, the automatic prohibition from doing

4 business with the issuer for two years has  
5 focused broker dealers' attention and has  
6 caused them to become vigilant in policing  
7 their own activities so as to avoid the  
8 potentially draconian loss of two years of  
9 underwriting compensation from an issuer.

10 Once again, I want to thank you for  
11 inviting me to speak to you today. I would  
12 be happy to answer any of your questions.

13 CHAIRMAN SCHWARZ: I am sure we have  
14 questions. We want to thank you for coming  
15 from Washington and providing a  
16 comprehensive report.

17 Dale?

18 MR. CHRISTENSEN: You are in the  
19 enviable position of having had some  
20 experience with the impact of this Rule 37.

21 Has there been any analysis of whether  
22 it has had any effect on competition for  
23 access in a securities market?

24 In other words, one of the concerns I  
25 have, although this is not based on any

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2 data, there are certain players that don't  
3 need to pay to play. They are entitled to

4 play. Are the people who could not play and  
5 participate in effective pricing as a  
6 consequence shut out of the market by  
7 denying this?

8 MS. HAINES: There has not been any  
9 formal analysis. That was a concern  
10 expressed at the time the rule was adopted.  
11 We were trying to encourage competition, not  
12 limit competition in any way. Although some  
13 of, generally, the smaller players have  
14 complained about the rule, there doesn't  
15 seem to be any organizations that have gone  
16 out of business or stopped competing. There  
17 is still quite a competitive market. In  
18 particular, in joining syndicates to  
19 underwrite municipal bonds to government.

20 MR. CHRISTENSEN: Impressionistically.

21 MS. HAINES: I haven't see anything.

22 CHAIRMAN SCHWARZ: What would be the  
23 logic of reducing competition?

24 MR. CHRISTENSEN: My in point would be,  
25 if you are thinking about the problem as

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2 merely an issue of access as opposed to

3 bribery, by eliminating certain players to  
4 gain access to political decision makers  
5 they wouldn't otherwise be able to do, you  
6 may effectively eliminate the pool of  
7 players, particularly in the municipal  
8 financing fields, to have the cache or  
9 representation they would be sought out. As  
10 a result, players that might be able to help  
11 on pricing are, in a sense, shut out. The  
12 only way they can play is by paying.

13 MS. HAINES: Right.

14 Some of those small issuers were  
15 contemplating they couldn't afford to pay to  
16 play. It's one of those, I don't know how  
17 you measure it. Those kinds of problems.  
18 Some of those entities have been helped by  
19 the set asides for women and minority owned  
20 businesses. Those have tended to be smaller  
21 in the municipal securities world. It's  
22 only one area.

23 MS. PATTERSON: The rule is a  
24 restriction that relates to contributing to  
25 an individual who is a state official or a

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2 perspective state official.



3 MS. HAINES: That's right.

4 MS. PATTERSON: As I read it, it does  
5 not, except with one limit, restrict  
6 contributions to PACs or to political  
7 parties.

8 Has the rule been circumvented  
9 significantly by contributions to  
10 unaffiliated PACs or political parties?

11 MS. HAINES: It's hard to measure a  
12 great deal of this. I can't give you  
13 statistics. We heard anecdotal evidence  
14 political party contributions are being made  
15 in order to circumvent the rule, being made  
16 to housekeeping accounts. MSRB has strong  
17 ideas what a broker needs to do to insure a  
18 contribution to a political party is  
19 acceptable. They are about to come out with  
20 guidance on that which should help.

21 Tax, contributions to truly  
22 unaffiliated PACs are not limited. Truly  
23 unaffiliated PACs are more likely paying to  
24 play for one of their contributors. If a  
25 PAC is controlled by the dealer or by

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2 finance professional, the G-37 prohibitions  
3 apply to it.

4 The biggest issue comes in determining  
5 who is a municipal finance professional in  
6 this world of big conglomerates. Many  
7 broker dealers now are owned by large  
8 conglomerates, including banks. Banks  
9 frequently make political contributions and  
10 fought hard when the rule was first proposed  
11 to be excluded. In a sense, you can  
12 understand it would seem unfair to limit the  
13 ability of your bank teller to make a  
14 political contribution because an associated  
15 broker dealer might be -- it's hard with  
16 rules as to where you draw the lines. This  
17 is a line that has been criticized. It is  
18 hard to draw them.

19 CHAIRMAN SCHWARZ: You don't reach the  
20 bank teller, anyway.

21 MS. HAINES: When the rule was proposed  
22 we would have. It was amended so that only  
23 the municipal finance professionals in a  
24 broker dealer organization and the  
25 executives up the line supervising

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2 executives right on up to the CEO are  
3 covered.

4 CHAIRMAN SCHWARZ: Frankly, in looking  
5 at that, I thought that was quite well  
6 tailored approach.

7 MS. PATTERSON: I thought it was, too.

8 Was it so well tailored as to be  
9 excessively limited?

10 You talk about edges. A PAC  
11 established by a municipal finance  
12 professional --

13 MS. HAINES: Usually controlled.

14 MS. PATTERSON: -- defines a tiny  
15 little slice of PACs.

16 MS. HAINES: Right. It has been  
17 interesting. We took a case involving third  
18 securities where contributions were  
19 requested and went up to a small senior  
20 official who was up the line supervisor who  
21 had to sign off on them. They paid a  
22 million dollars to settle with us. That  
23 bank official signed off on the contribution  
24 that ultimately came to the benefit of the  
25 broker dealer. He was one of the municipal

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2 draconian, the broker dealers themselves  
3 have posed stringent reporting  
4 requirements. Any organization that makes  
5 political contributions has to get pre  
6 clearance.

7 CHAIRMAN SCHWARZ: Is there anybody who  
8 has --

9 MS. HAINES: It's not like the bank  
10 teller. It would include everyone  
11 associated with the broker dealer that  
12 could, in any way, be a municipal finance  
13 professional, all the way up to the top.

14 Violations come to our attention in  
15 many ways in this area and others.  
16 Competitors are a good source of tips when  
17 violations occur. Newspapers are good.  
18 Multiple sources. Competitors are the ones  
19 that amuse me the most.

20 G-37 does not address lawyers, which  
21 was an area the former Chairman Levitt tried  
22 very hard to have that changed;  
23 unsuccessfully. Lawyers are simply beyond  
24 our regulatory reach.

25 MS. GORDON: In New York City we have a

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2 brokers and dealers on the bank board. They  
3 know what is going on. They live in that  
4 world.

5 CHAIRMAN SCHWARZ: In the portions of  
6 my life I have been in government I  
7 frequently observed if the public newspaper,  
8 the quality of many people who worked for  
9 government, it would be a good thing for our  
10 nation. You might illustrate that.

11 Thank you.

12 MS. HAINES: Thank you very much.

13 CHAIRMAN SCHWARZ: Harry Pozycki.

14 Thank you for coming all the way from  
15 New Jersey, who is tutoring New York in such  
16 issues.

17 Derrick is on your Board.

18 MR. POZYCKI: Yes, probably our  
19 strongest supporter.

20 CHAIRMAN SCHWARZ: Go ahead.

21 MR. POZYCKI: First of all, for the  
22 record, I am Harry Pozycki, Chairman of the  
23 Board of Trustees, Center for Civic  
24 Responsibility, former chair of Legal Task  
25 Force, here with Heather Taylor, the





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2                   advocated by the center, one county has.  
3                   The state has begun to incorporate it in  
4                   some provisions minimally by executive  
5                   order, one bill that is up for a vote in the  
6                   legislature. That's the background on the  
7                   center's involvement.

8                   My first point to you would be pay to  
9                   play, we believe it is best characterized as  
10                  a contract reform principally, even though  
11                  it has campaign finance reform benefits, and  
12                  that there are a couple of reasons, at  
13                  least, to structure pay to play reform in a  
14                  legal sense as a contract reform.

15                  The first is constitutional support.  
16                  As we know from Supreme Court cases  
17                  reviewing Campaign Finance Law, the finding  
18                  of corruption or appearance of corruption is  
19                  supporting evidence for regulations that  
20                  limit campaign contributions. Contributions  
21                  that are regulated at the point of  
22                  government contracting, say that need for a  
23                  appearance of corruption if sizable  
24                  contributions especially are being made in  
25                  and around a negotiation, awarding and

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2 performance of the contract.

3 Additionally, there is the argument for  
4 the government it has not only the right to  
5 do this, but the responsibility to protect  
6 the integrity of government contracting.  
7 That has been at least recognized in the  
8 Blau case.

9 Going further, enforcement is easier  
10 through the contracting approach to pay to  
11 play reform. Three reasons: Virtually no  
12 administrative costs. A contractor has to  
13 submit a sworn statement and keep it up to  
14 date and does all of the basic reporting on  
15 it, his or herself.

16 Two, there is a greater deterrent.  
17 Usually, Campaign Finance Law type penalties  
18 can be absorbed, can be modified if can't be  
19 absorbed, or at the very least delayed  
20 because of the amount of enforcement  
21 involved in enforcing a great campaign  
22 finance regulation violation.

23 The contractual style pay to play  
24 reform is enforceable first by the  
25 contractor who files and keeps updates of

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2 the sworn statement. Second, and I am happy  
3 to have heard this from the prior witness,  
4 we find this same to be true by the media,  
5 contracting competitors and political  
6 competitors, all of them keeping an eye on  
7 disclosure reports. All of the  
8 contributions that can be monitored without  
9 governmental monitoring required, even  
10 though it is helpful to have it in  
11 addition.

12 Finally, no finding of intent is  
13 required. If the limit is exceeded, it is  
14 exceeded, a mete of fact, therefore, the  
15 penalty can be exacted without usually, at  
16 least, the requirement of an elect type  
17 hearing.

18 CHAIRMAN SCHWARZ: Isn't it also true  
19 another reason favoring what you call the  
20 contract type approach is that it is only  
21 through that approach you can reach people  
22 seeking to do business with the government  
23 as opposed to people already doing business  
24 with the government?

25 MR. POZYCKI: Yes, I think that

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2 provides that opportunity, as well. There  
3 is that type of legal support that one has  
4 because of the appearance of corruption with  
5 one seeking the contract.

6 I'll give you a quick overview of the  
7 key elements of the New Jersey bill. I must  
8 point out in advance, there is the bill  
9 which the Senate drafted and Common Cause I  
10 also chair in New Jersey advocated through  
11 the legislature. There is the executive  
12 order of the Governor. It mirrors the model  
13 bill, but in some way departs from it.

14 MR. CHRISTENSEN: The same bill that  
15 the Federal Highway Office is opposing?

16 MR. POZYCKI: One of the modifications  
17 of the executive orders that triggered the  
18 litigation with Highway Administration.

19 MR. CHRISTENSEN: You are somewhat  
20 familiar with that?

21 MR. POZYCKI: Yes.

22 CHAIRMAN SCHWARZ: What was the  
23 modification that triggered the case?

24 MR. POZYCKI: The New Jersey model bill  
25 we drafted works as follows: In the

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2

precontract negotiation periods the only

3

contractors that were regulated were no bid

4

contractors, largely professionals,

5

attorneys, architects, accountants, bond

6

consultants and the like.

7

From the award of the contract through

8

its completion, in other words, during

9

contract performance, both no bid and bid

10

contracts or contractors were prohibited

11

from making contributions.

12

What the executive order did,

13

prohibited contributions for no bid

14

contractors in the pre award period.

15

Federal government took issue with that

16

saying that they did not believe it was a

17

proper competitive bidding qualification

18

criteria. That issue remains to be heard.

19

There was a very preliminary hearing

20

for injunctive relief that did not go to the

21

merits at all because of the way our

22

executive order came about. There was

23

little dialogue between the administration

24

and Washington to educate the Federal

25 Highway Administration on pay to play and

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2 its impact on cost-effectiveness and  
3 contracts.

4 CHAIRMAN SCHWARZ: Is that provision  
5 severable so that even if it couldn't be  
6 applied lawfully to bid contracts, it is  
7 severable within the executive order?

8 MR. POZYCKI: It may already work.

9 The Governor did an amendment, the  
10 Acting Governor amended it to exclude the  
11 Federal Highway contracts.

12 CHAIRMAN SCHWARZ: Doesn't that moot  
13 the lawsuit?

14 MR. POZYCKI: It does not. He did it  
15 only pending the lawsuit. There really are  
16 two ways. When the courts get into the  
17 merits of the matter, this may resolve even  
18 before the suit has to go all the way to  
19 conclusion. The brief filed by the federal  
20 government, for example, pointed out not a  
21 shred of evidence as to cost-effectiveness  
22 was submitted by the State of New Jersey.

23 It's interesting, one of the major  
24 impetus for pay to play reform in New Jersey

25 was the famous contracting scandal known as

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2

the Parson's auto inspection scandal. What

3

happened in that scandal, the federal

4

government was pushing New Jersey to upgrade

5

its auto inspection procedure so that it

6

would reduce air pollution. The state

7

decided to competitively bid out a huge

8

contract estimated at \$400 million to

9

upgrade all of the auto inspection

10

stations.

11

In the competitive bidding process, one

12

of the bidders, out of state, who hasn't had

13

a great deal of experience in New Jersey and

14

not a great deal of experience in these

15

retrofitting of auto inspection stations,

16

made hundreds of thousands of dollars in

17

contributions to the Governor's campaign and

18

state parties. The other contractors

19

disappeared from the competitive bidding,

20

suddenly there was a sole contractor. They

21

left because they said they could not meet

22

the deadlines and didn't want to expose

23

themselves to huge financial penalties,

24 penalties that were taken out of the  
25 contract while contributions continued to

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2 flow.

3 The final price was over 100 million  
4 dollars in excess of the bid price,  
5 illustrating, at least anecdotally, the  
6 impacts of pay to play costs. The State  
7 Commission of Investigation did a study of  
8 this Parson's auto pay to play scandal.  
9 Part of its recommendation, they said the  
10 contributions needed to be limited. You  
11 asked me or the prior witness whether there  
12 was objective evidence of pay to play cost  
13 impacts. I would suggest it would probably  
14 be impossible to find out. You would have  
15 to quantify the wink of the eye and the nods  
16 that usually effectuate a pay to play  
17 transaction.

18 I'll give you a couple of significant  
19 factual references that will help in the  
20 understanding so that you do not see it as  
21 isolated to this one single scandalous  
22 Parson's contract.

23 First of all, the treasurer's office in



24 New Jersey hired a consultant to estimate  
25 the cost of some investment counseling it

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2 wished to contract for. The ultimate  
3 contractor charged more than twice the  
4 amount the that consultant recommended as a  
5 reasonable price and was found to be a large  
6 political contractor or pay to play  
7 participant.

8 Another example, our State Department  
9 of Transportation budget office did a study,  
10 found they could save \$25 million a year if  
11 they did not go out of government for a  
12 survey or engineering contracts that could  
13 be done by engineers and surveyors within  
14 the department. When the surveyors and  
15 engineers that received these contracts were  
16 reviewed, they were all large pay to play  
17 participants.

18 We have at least strong anecdotal  
19 evidence. I don't know one would  
20 necessarily find more. The federal  
21 government, when they received this type of  
22 history, to be fair to them, they have not

23 really been educated to this, will  
24 understand it is cost-effective and there  
25 are exceptions they can grant that would not

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2 even require the lawsuit be settled.

3 Additionally, I believe that New Jersey  
4 will ultimately win the lawsuit. The  
5 criteria on which the federal government is  
6 challenging the New Jersey executive order  
7 is that the regulation of a contractor by  
8 way of qualification criteria in a bid  
9 contract is not an appropriate qualification  
10 criterion. Interestingly, they referenced  
11 the New York case and said New York tried to  
12 slip in with an anti apartheid provision  
13 into a competitive provision requirement.  
14 They said they shouldn't have those kinds of  
15 noncontractual policies.

16 However, I think when they understand  
17 the history of where pay to play came from  
18 or pay to play reform that is in New Jersey,  
19 they will understand it was to protect the  
20 integrity of government contracting, masks  
21 as a competitive bidding requirement.

22 MR. CHRISTENSEN: You haven't gotten

23 even any sign the federal government's  
24 challenge in any way relates to first  
25 amendment issues or free speech issues?

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2 MR. POZYCKI: Their argument per their  
3 brief at least in the injunctive action was  
4 that there are two criteria that are needed  
5 for something to be included in the  
6 competitive bid criteria. One, that it be  
7 legal. Pay to play has already been  
8 upheld. Nobody at least has shown me a case  
9 against pay to play reform. It is legal.  
10 It is advertised. I think there has to be  
11 an education process before there really can  
12 be a fair hearing by the federal government  
13 on this.

14 CHAIRMAN SCHWARZ: Your model bill  
15 which excluded bid contracts in issue,  
16 donations from people who were in bidding  
17 situations, would only be covered after they  
18 have been awarded the contract. I never  
19 thought of that distinction.

20 Explain what you think strengthens the  
21 case for covering contributions from people

22           who obtain bid contracts after they have  
23           been entered into.

24           MR. POZYCKI: You don't rebid a change  
25           order.

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2           CHAIRMAN SCHWARZ: They have entered  
3           the realm of discretion once they get --

4           MR. POZYCKI: Precisely.

5           CHAIRMAN SCHWARZ: You have a creative  
6           way of approaching that.

7           MR. POZYCKI: I witnessed competitive  
8           bidding. I have been a government  
9           official. Meetings that resulted in  
10          competitive bidders drifting away until  
11          contributors were the only ones whose specs  
12          made sense and seeing change orders is  
13          damaging to the cost of contracts. They  
14          tend to be more out of public views.

15          MS. GORDON: How did the model apply to  
16          the precontract period bidding process  
17          then?

18          MR. POZYCKI: Prudence is the better  
19          part of valor. I am retired. I ran a law  
20          firm 25 years. My specialty was growth  
21          management, real estate and environmental

22 law. We're entering a new area in pay to  
23 play reform. It is a relatively novel  
24 concept. It was our thinking it was  
25 sensible to be on the safe side. I don't

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2 believe -- it would be impossible legally to  
3 win the case.

4 MS. GORDON: You cited examples that  
5 suggest to you as a matter of fairness,  
6 correctness, it should be --

7 MR. POZYCKI: We have a certain amount  
8 of political insight. We didn't want to  
9 have to fight that fight as to whether or  
10 not someone who is receiving it would be  
11 told under competitively bid circumstances  
12 and had to prove they were better and the  
13 bottom line was factual. It's a harder  
14 thing to explain to the public.

15 I have reported relative to the  
16 Parson's case. Competitive bidders actually  
17 fade away as contributors get their specs  
18 into the bid specs.

19 MS. GORDON: The specs is the thing.

20 MR. POZYCKI: It's also in the meeting

21           itself, you are given encouragement as to  
22           whether or not this is going to work.

23                     There was one reference, cleaning fluid  
24           every contractor made, specified in a bottle  
25           size one of the contractors produced. Ways

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2           to manipulate the system. The safest is to  
3           be broader.

4                     CHAIRMAN SCHWARZ: Do you think one  
5           wants to have a record on which to justify a  
6           regulation? We're obviously trying to  
7           develop as much as a record as we can.

8                     Have you thought about the extent to  
9           which factual statements of the sort you  
10          offered from another jurisdiction are or are  
11          not legitimate for us to consider as part of  
12          our record that would justify action if we  
13          took action?

14                    MR. POZYCKI: What sort of factual --

15                    CHAIRMAN SCHWARZ: You made statements  
16          about specific examples of where pay to play  
17          contributions had been abusive.

18                    MR. POZYCKI: You need to do that. The  
19          problem with pay to play, and it was

20          discussed by your prior witness, it is



20 regulation that might be produced for New  
21 York City based on experience in Tacoma,  
22 Washington or the State of New Jersey?

23 MR. POZYCKI: I think that you may have  
24 to distinguish factors that are not  
25 comparable.

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2 CHAIRMAN SCHWARZ: Like size of  
3 contributions?

4 MR. POZYCKI: Example, our state  
5 government, population is roughly the size  
6 of the City. Virtually all of our contracts  
7 issue out of the executive branch of the  
8 Governor's office. All authorities are  
9 under the executive branch. The legislature  
10 hires their council, a couple of minor  
11 things of that sort. All contracts are  
12 executive branch. That is different.

13 Number two, we only operate under  
14 public financing system with respect to the  
15 gubernatorial election, pilot proposed for  
16 locals. That public financing system went  
17 into effect in the early '70s, riddled with  
18 loopholes. One can end run the system  
19 easily. It's hard to compare to New York



20 City situation. I think, again, because pay  
21 to play -- I was a county party chairman  
22 raising a half million dollars a year.

23 CHAIRMAN SCHWARZ: Is this a  
24 confession?

25 MR. POZYCKI: A history of pay to play

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2 that might be informative.

3 In the early '90s I was considered a  
4 reform chairman. When I was not reelected  
5 in my third term, the numbers jumped to over  
6 a million the next year and over two million  
7 the third year, largely from contractors.  
8 It's a system that has always been there.  
9 Money is the mother's milk of politics,  
10 always will be there.

11 Given the arms war for political  
12 fund-raising and the statistics, whoever  
13 raises the most usually wins. There is a  
14 dynamic which is created by which the  
15 candidate would go to the easiest source,  
16 i.e., a government contractor that may get  
17 something in return for the contribution,  
18 will not need to be sold a platform of

19 issues or any philosophy of the candidate or  
20 party. That dynamic is pushing it further  
21 and further.

22 I think the Parson's contract in New  
23 Jersey that I referenced to you is something  
24 that could be used here. It came under  
25 federal pressure in a sense. There was a

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2 State Commission of Investigation report I  
3 would recommend you obtain a copy of, we  
4 would be happy to facilitate that, so you at  
5 least have some background on that. It is  
6 not comparing apples to apples.

7 If I may go on to a few other points.  
8 You referenced the fact we have a cure  
9 provision. Put in there purposely to avoid  
10 constitutional problems when businesses  
11 merged. Contributions come about or add up  
12 inadvertently.

13 You were also looking at penalties at  
14 some point. Penalties here are breach of  
15 contract if you exceed or conceal the  
16 contribution. If you conceal or attempt to  
17 use an intermediary to make an otherwise  
18 prohibited contribution, there is a ban on

19 future contracts for four years. The scale  
20 of that penalty, the potential for losing  
21 any contract you are in and all contracts  
22 for the next four years makes people more  
23 circumscribed in their contribution  
24 activities, especially where they are  
25 regular government contractors. Those are

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2 the ones we're seeking to reach.

3 MS. PATTERSON: On that point, if there  
4 is no effort at concealment, it is just  
5 considered breach of contract?

6 MR. POZYCKI: Right.

7 MS. PATTERSON: If there is a breach of  
8 contract, could the two parties, the  
9 municipality and contractor, say, agree to  
10 go on with life?

11 MR. POZYCKI: There would probably be a  
12 lawsuit by the opposition due to the fact  
13 they were not following intent. I think  
14 that contracts over. You can write language  
15 after it is breached, it will not be  
16 rewritten. This is one thing I have learned  
17 in the dialog since the model law, the

18 breach provisions be spelled out more. That  
19 type of language might be helpful. There is  
20 value in defining what might happen at the  
21 time of breach and thereafter.

22 The last area would be the anti  
23 circumvention area. Questions raised  
24 before. The definition of a business entity  
25 under the model we drafted includes

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2 subsidiaries, includes employee PACs and the  
3 like, as well as including anyone who owns  
4 ten percent or more. Also includes  
5 partners, even if they own less than the ten  
6 percent. Also includes officers if they  
7 include less than the ten percent, as well  
8 as the spouse or child living at home.  
9 There is a fair amount of anti circumvention  
10 achieved in the definition of the business  
11 entity.

12 In addition to that, circumvention is  
13 prevented by virtue of regulating as  
14 participants not only the elected officials  
15 and candidates for offices that would have  
16 approval authority, but also all political  
17 parties up and down the chain. in this case.

18 state, county and local parties, any PACs  
19 whose principal purpose is the election of  
20 those principals who have. McConnell case  
21 was clear in this. We would recommend you  
22 include it. The anti circumvention is  
23 enforced by the four-year ban because it's  
24 such a high penalty. People are concerned  
25 about going back door.

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2 I would lastly point out to you the  
3 anti circumvention language in the executive  
4 order is better than the anti circumvention  
5 language in our model. It identifies and  
6 specifies a number of areas or Ways in which  
7 circumvention might occur, therefore, giving  
8 more teeth to the general use of prohibition  
9 used against intermediaries. Prohibits  
10 doing indirectly anything that would have  
11 been prohibited directly.

12 One last point, pay to play or public  
13 financing is not a substitute for pay to  
14 play. I don't know whether you have been  
15 through that debate. Public financing  
16 obviously does not regulate and indicates



17 25 years in the law. We have to proceed  
18 cautiously because of first amendment  
19 considerations. Our drafting committee, one  
20 of our most respected top justices, chairs,  
21 is looking at redevelopment contracts  
22 specifically because, again, you have a  
23 contractual nexus. It is a voluntary entry  
24 into the contract by the contractor. You  
25 don't have that first amendment problem as

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2 you don't with public financing.

3 CHAIRMAN SCHWARZ: You wouldn't have a  
4 first amendment problem if the coverage is  
5 of people who are seeking discretionary  
6 benefits with respect to land use from the  
7 government. I don't know why there would be  
8 a first amendment problem.

9 MR. POZYCKI: We're deep in the debate  
10 right now. Under the criterion the courts  
11 have applied to uphold first amendment  
12 infringement, they are looking for  
13 appearance of corruption. Where one finds  
14 discretion and significant private gain that  
15 might result from discretion, there is the

16 ability to apply some sort of a contribution  
17 limit.

18 The disavow from the fact developers  
19 are generally defined as including everyone,  
20 including mom and pop when they come to get  
21 a fence variance. It's a dicier area. We  
22 agree the general direction, highly  
23 discretionary profit that results in  
24 significant private gain. We have already  
25 done some drafting in that area.

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2 MS. PATTERSON: Would you have defined  
3 professional business entity to include not  
4 for profits entering into contracts with the  
5 state? It happens all the time in New York.

6 MR. POZYCKI: We haven't experienced  
7 play to play corruption there. In our  
8 definition of business entity, we did not  
9 distinguish between a for profit or not for  
10 profit. They would be regulated the same.  
11 We define professionals as licensed under  
12 the state laws.

13 MS. PATTERSON: If you had a  
14 municipality that subcontracted municipal  
15 functions to a not for profit, those would



16 also be caught up in your --

17 MR. POZYCKI: I would not see any  
18 reason off the top of my head. The money is  
19 the money and it's influencing the  
20 government contract.

21 CHAIRMAN SCHWARZ: Thank you very, very  
22 much.

23 MR. POZYCKI: I appreciate your having  
24 us.

25 CHAIRMAN SCHWARZ: Give my regards to

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2 Derrick.

3 MR. POZYCKI: I'll give him your best.

4 CHAIRMAN SCHWARZ: Is there anybody  
5 else who wishes to testify?

6 The hearing is adjourned then.

7 (Time noted: 3:40 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK )

) ss.:

COUNTY OF NASSAU )

I, LINDA CAFFERA, a Notary Public  
within and for the State of New York, do  
hereby certify that the within is a true and  
accurate transcript of the proceedings taken  
on JANUARY 31, 2005.

I further certify that I am not related

to any of the parties to this action by

15 blood or marriage; and that I am in no way  
16 interested in the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand this day of ,  
19 2005.

20

21

22 -----

23 LINDA CAFFERA

24

25