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City Council Committee on Governmental Operations
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Good afternoon, Chairman Felder. I am Nicole A. Gordon, Executive Director of the New York City Campaign Finance Board. I am here to testify today on Intrs. Nos. 190, 191, and 192. With me are Carole Campolo, Deputy Executive Director, and Sue Ellen Dodell, General Counsel.

The legislation, in keeping with the Council's on-going tradition of good-government reform, especially its support of the Campaign Finance Act, represents a well-intentioned effort to limit the influence of money in New York City's political process. New York City's pioneer Campaign Finance Program has enjoyed strong support from the City Council over the years, and although there are concerns regarding the legislation in its current form, which I will address today, we look forward to working with the Council and the Administration to continue strengthening and improving the law.

First, there are advantages to (a) assembling a factual record to make sure the legislation, both in principle and in the details, correctly addresses the perceived or actual problems; (b) looking at all "doing business" subject areas and the contributions associated with them to make sure they are treated consistently, as appropriate; and (c) making sure that tough questions, like the treatment of not-for-profits, have been fully considered.

Second, the Board strongly recommends using the SEC approach, adopted also in New Jersey and Connecticut, which places the burden on the one who seeks to do business, not on candidates or contributors generally.

Third, there are a number of unnecessary complexities and technical problems I will describe.

As you know, the Board has been engaged in this subject since a 1998 amendment to the Charter Commission required the Board to propose “rules as it deems necessary” to regulate campaign contributions from those “doing business” with the City. The Board, pursuant to Charter provisions on “doing business” contributions, is now completing a comprehensive study of these issues and we urge you to consider waiting for the results of the study before plucking the one area of lobbying out of what is a more comprehensive subject. In its consideration of possible rules, the Board was directed by the Charter to balance factors including (1) “the effectiveness of the voluntary system of campaign finance reform, (2) the costs of such system, [and] (3) the maintenance of a reasonable balance between the burdens of such system and the incentives to candidates to participate in such system.”

The Board conducted an extensive study of the issue and issued three alternative versions of “doing business” rules for public comment in the hopes of identifying an effective way to regulate this area. The Board, however, received very limited responses and no consensus on an approach. The Board staff then met both with the Mayor's Office of Contracts and the City Clerk's Office to determine the extent to which the information maintained by those agencies, as examples, could assist the Board in the enforcement of such a rule. Unfortunately, the information collected by both these agencies was inadequate for the purposes of regulation. After this process, the Board concluded that it had met its Charter obligations as of that time and that it would be useless to proceed further to consider promulgating rules without the means to enforce them effectively.

More recently, the current Administration has developed two public databases—one of VENDEX, containing information about who has contracts with the City, and one for lobbyists registered with the City Clerk’s office. The Board has been and will continue to be assisting the Administration in the further development of these and other “doing business” databases to make them reliable, searchable, available to the general public, and ultimately compatible with the Board’s searchable database. This effort will ultimately permit disclosure and possibly other restrictions on contributions from those doing business with the City. By itself, the development of these databases will be a major achievement and the Board hopes that further progress can be made by collaborative efforts among the Administration, the Council, the Board, and concerned citizens.

Proposed Legislation

There has been a great deal of attention paid recently to the subject of regulating political contributions from lobbyists as well as from others who do business with the City. It appears from preliminary review that contributions from lobbyists are a small percentage of the total amount of contributions and an even smaller (almost insignificant) percentage of total contributors. (Any cost savings associated with this legislation, then, are likely to be very limited.) But the Board agrees this as an important area. The best remedy, however, directly regulates those who "do business" with the City, not candidates or contributors in general. In keeping with this concept, we urge you to adopt legislation that prohibits lobbyists from lobbying if they have contributed over a certain small amount, in the way that the SEC prohibits municipal bond professionals from "doing business" unless their political contributions are for $250 or less and the contributions are made only to officials for whom they can vote. New Jersey and Connecticut have adopted the same general approach to "doing business" contributions.

Intrs. Nos. 190 and 191 make strides by improving the disclosure of lobbyists' activities. There are, however, some serious concerns about Intr. 192 in its current form. Board staff have met with the Law Department and Council staff during which some of these issues were discussed and looks forward to similar productive meetings on this and other issues.

These areas of concern are as follows:

- **Unnecessary Complications in Current Version of the Bill.** The most common criticism we hear from candidates is that complying with the Program is too complicated. Complexity arises from many factors, very often beginning with the legislation itself, but we know that most candidates and certainly most elected officials understand, ultimately, that the rigors associated with the Program are necessary to protect the City's taxpayers. Complicating factors, however, must be weighed against benefit to the taxpayers, and we believe this legislation will add to a campaign's compliance burden unnecessarily when much simpler options are available. The current proposed legislation will add to a

campaign's compliance process by asking all candidates and all contributors—not the lobbyist attempting to exert influence—to elicit what contributions are or are not from a lobbyist. This problem is better addressed by limiting the actions of the lobbyist/contributor rather than placing the burden on all candidates and all contributors generally. The new contribution card requirements, which would mandate that participating candidates ask all contributors whether they are lobbyists or "persons affiliated with a lobbyist," could unintentionally discourage contributions and cause unnecessary confusion, concern, or even fear among potential contributors, thus chilling contributions from the people the Program most seeks to involve. Instead, an SEC-type approach would require lobbyists, when they file their disclosure statements, to state whether they have made contributions to New York City candidates and/or require them to certify to their adherence to whatever limitations the City Council adopts. This would remove all burden from the candidates and from contributors generally, and would simply require disclosure and have consequences for the lobbyists/contributors through agency action. Even if the legislation is directed at contributions rather than lobbying activity, with the help of an up-to-date and complete lobbyist registration database, the Campaign Finance Board could help ensure compliance with the limitations, again without such significant burden to candidates and contributors generally.

- **Inconsistent Definitions of Lobbyists.** Intr. No. 192 defines the term "lobbyist" differently from the provisions implemented by the City Clerk. Under Intr. No. 192, the definition of "lobbyists" is expanded to include "persons affiliated with a lobbyist." This is a new term that includes:
    - All individuals who engage in lobbying, and if the lobbyist is an organization, all of the employees of the lobbying division, even those who are not required to be named in the firm's City Clerk registration.

- All persons affiliated with a lobbyist, including their spouses, domestic partners, and children, as well as a firm's lobbyist division's employees and their spouses, domestic partners, and children. [1]

There is not now and there is no proposed obligation for those covered by the lobbyist disclosure law to provide any statement identifying their status as an "affiliated" lobbyist. Thus, the lobbyist database will be incomplete and will not provide the public or the Board with information on lobbying compliance. Neither the public nor the Board will be able to determine if contributions are being made by spouses or domestic partners of lobbyists or by employees in lobbying divisions of lobbying organizations. Since the key enforcement mechanism of this legislation will be lobbyist registration, this contradiction between the City Clerk's and the Board's disclosure and enforcement provisions will be counterproductive and prevent meaningful regulation of lobbyist contributions. This inconsistency can be resolved, and we will work with Council staff to accomplish this.

At the same time, business partners of lobbyists, as I discuss later, are excluded from the definition, which creates a dangerous loophole.

- **Inadequate Enforcement Mechanisms.** Historically, the City Council has laudably passed legislation that could be viewed as against some members' own immediate interests. And that has been the mark of a legislature that is set apart from other legislatures that pass these effective good government reforms. A major part of the Program's reputation has been built upon serious enforcement that plays a major role in leveling the playing field. But this bill as drafted would limit enforcement. We believe this is a mistake that carves out an exemption for lobbyist contributions and may be viewed cynically by the public as an effort to water down or even nullify the intended effects of this legislation.

[1] Including spouses within the definition of "persons affiliated with a lobbyist" may also be inconsistent with the Council's current premise of treating spouses as separate from candidates or elected officials for purposes of the campaign finance law. The Council needs to make a policy determination as to how it wants to treat spouses—as separate entities or not—and then apply that standard for all purposes, not just this specific legislation.

- **Inability to recover matching funds.** Intr. No. 192 prohibits matching lobbyists' contributions, just as the original Act prohibits matching contributions from non-New York City residents. If for some reason a contribution is matched from a non-NYC resident, once this is discovered, the law requires the public money to be returned by the participant to the taxpayer. This proposed legislation, however, does not require repayment to the taxpayer if a contribution is matched from a previously undisclosed lobbyist. Rather, it contemplates that the payment will be subtracted from future payments, if there are any. Not only does this carve out an exemption for lobbyist contributions, but it has the added effect of benefiting larger and more well-financed campaigns that are more likely to be eligible for the maximum payment of public funds earlier in the election cycle.

- **No enforcement for *unintentional* submissions**. Intr. No. 192 provides that if contributors fail to identify themselves as lobbyists, or if a candidate "unintentionally" submits for matching a contribution from a lobbyist, no civil penalty may be assessed. As in the previous example, this will be the first time that City Council legislation effectively prevents the Board from enforcing the substantive provisions of the law. Once an "unintentional submission" becomes the standard, the Board will have no means to regulate contributions from lobbyists, and the candidates will have no incentive for self-policing. Of course, this particular question would become moot if an SEC-type approach is adopted.

We hope these problems can be resolved and will work with Council staff to accomplish this.

- **Bill not structured to accomplish intent.** If the primary intent of the bill is to limit the influence of lobbyists, some aspects of the bill work against the intent and reduce its impact.

  - **Failure to address large contributions from lobbyists.** This bill simply reduces public funds that match some lobbyist contributions; it does not

reduce the amount - - up to $4,950 - - that a lobbyist can contribute to City candidates.

- **Lobbyists: principals vs. employees.** Intr. No 192 prohibits matching lobbyist contributions only from employees in the lobbying division of an organization. We suggest that in order to close a potential loophole whereby principals from other divisions of the organization can continue to make contributions that will be matched with public dollars, the bill be altered to prohibit matching contributions from all decision-making members or officers or principals of an organization that does lobbying, rather than, for example, from clerical staff. This would correct the anomaly that does not restrict contributions from partners of lobbyists, who benefit monetarily from the lobbying activity, but does restrict contributions of secretaries.

- **Does not include intermediaries.** If a lobbyist does not contribute to a Program participant but rather "bundles" or acts as an intermediary for many thousands of dollars of contributions, Intr. No. 192 requires no disclosure of the bundler's lobbyist status. This seems to be a major loophole and therefore we urge that if an intermediary also falls within the definition of a lobbyist, all information required of a lobbyist as a contributor also be required if the lobbyist is an intermediary. Our preliminary research shows that, while lobbyists as contributors are relatively insignificant, they have a far greater role as intermediaries.

- **Participants vs. non-participants.** In 2005, the City Council took the bold step of requiring all candidates, not just Program participants, to disclose all campaign finances to the Board. The public was very much the winner in that legislation. However, under Intr. No. 192, only Program participants will be required to get statements from contributors attesting to their lobbyist connections. And while we understand that the legislation is geared toward those receiving taxpayer funding, and non-participants by definition will not receive funding, it is ultimately the public that loses by this unequal

treatment in disclosure obligations by the lobbyists, depending on Program participation of the candidate.

Finally, we believe that this legislation should be based on an objective record such as the inquiry we are engaged in now, that evaluates the prevalence and magnitude of lobbyist contributions so that the legislation can be tailored to address genuine issues. This will help the Council evaluate whether other restrictions are as important as, or more important than, the matchability of lobbyist contributions.

In addition, piecemeal change in the Campaign Finance Act brings its own complexities and inconsistencies. Now that "doing business" contributions are under study, and additional recommendations will also be forthcoming, it is premature to extract this one item, when the Council can address all areas of concern in omnibus legislation this fall. Examples of other questions that may not have yet been fully considered are whether lobbyists at not-for-profit organizations should be treated the same way as for-profit lobbyists, and whether contributions to all offices should be covered even if the lobbyist in question does not lobby the office to which he or she wishes to contribute. These are some of the questions our Board is grappling with as it hears testimony on the "doing business" issue.

If the Council nonetheless believes it cannot wait, we urge that the Council consider for immediate action Intrs. Nos. 190 and 191 and await action on 192. The Board's April 18th hearing on this subject, together with previous testimony and a detailed review of the factual record regarding "doing business" contributions, will serve as the basis for its ultimate recommendations and rulemaking. Finally, at the least, we urge that the Council, if it moves forward now, make clear its intention to revisit this subject after the Board's report, when the fuller context is available, acknowledging that this is a first foray into a new arena, and also that enforcement of new limitations would not be expected until a revamped, quality-assured, lobbyist registration database containing all the information necessary to implement the changes suggested, is up and running.

Thank you for your time. I look forward to answering any of your questions.