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OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

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In the Matter of the  
PUBLIC MEETING OF THE  
NEW YORK CITY CAMPAIGN FINANCE BOARD

Re: The Subject of Land of "Doing Business  
Contributions" - Fourth Hearing

-----x

April 18, 2006  
10:00 a.m.  
  
40 Rector Street  
New York, New York

B E F O R E :

FREDERICK A.O. SCHWARZ, JR.,  
Chairman  
NICOLE A. GORDON,  
Executive Director  
JOSEPH POTASNIK  
KATHERYN C. PATTERSON

Sabine Faustin,  
Court Reporter

PAUL BECKER, C.S.R., P.C.  
222 Wellington Road  
Mineola, New York 11501  
(718) 939-5741 (516) 739-8843

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## 2 A P P E A R A N C E S :

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MARLA SIMPSON,  
Director,  
Mayor's Office of Contract Services

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DAVID KARNOVSKY,  
General Counsel,  
Mayor's Office of City Planning

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TERI MATHEWS,  
Counsel,  
Deputy Mayor of Administration

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9

FRAN REITER,  
Former Deputer Mayor,  
Giuliani Administration,  
Reiter/Begun Association

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11

SUZANNE NOVAK,  
Deputy Director,  
Democracy Project  
Brennan Center for Justice

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DOUG ISRAEL,  
Advocacy Director,  
Citizen's Union Foundation

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## P R O C E E D I N G S

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MR. SCHWARTZ: So good morning and welcome all of you. This is our fourth hearing on the subject of candidates accepting contributions from those who "do business with the City".

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We've been holding these hearings to examine the issue of the appearance and reality of influence peddling in City politics.

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Our first three hearings last year explored the broad subject of pay to play politics, with witnesses providing testimony on the scope of the problem and the potential for and types of future regulation; the contract's process, data maintained on contracts; lobbyists; data on lobbyists and the processes surrounding the approval of land use franchises, concessions, revocable consents and licenses.

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On that subject, at the hearing we

1  
2 held last year, the government witness who  
3 was scheduled to come didn't appear and you  
4 are here, all three of you, as the  
5 government witnesses on the subject.

6 Now, we've gotten testimony from a  
7 very wide range of organizations, the --  
8 this administration, the City  
9 administration, the SEC, US SEC, present  
10 and former officials and a number of civic  
11 groups located in the city and elsewhere.

12 Recently, the administration has  
13 developed -- has made some progress in  
14 developing, although it's not completed,  
15 databases that help determine who is doing  
16 business with the City in connection with  
17 contracts and lobbyists.

18 That, particularly as it keeps  
19 going, will at least permit disclosure and  
20 maybe, as legislation moving through the  
21 City Council now suggests, will permit  
22 legislation at some -- legislation on the  
23 subject of lobbyist.

24 Now, many observers in our prior  
25 hearings -- and frankly this is a view that

1  
2 I personally share -- believe that the  
3 biggest risk to the City, in terms of both  
4 the appearance and the reality of undue  
5 influences, is with respect to land use,  
6 using that term broadly.

7 The magnitude of land use, the value  
8 of land use, does create temptations,  
9 either for actual impropriety or for the  
10 appearance of impropriety, as people give  
11 large donations.

12 So we look forward to comments from  
13 you three City witnesses, and from the  
14 other people who are coming later, on how  
15 one might be able to address the subject of  
16 land use and political donations; whether  
17 there are reasonable lines between -- by  
18 way of size where you could say something  
19 below a certain size, you know, just isn't  
20 sufficiently likely to give rise to an  
21 improper contribution, to make it  
22 worthwhile to burden the system with a  
23 regulation.

24 There may be other issues, like do  
25 people who are for-profit get treated

1  
2 differently than people who are  
3 not-for-profit; that may not be an issue  
4 that arises quite so much in land use,  
5 although it could arise in land use because  
6 non-profits do often seek permits from the  
7 City.

8           So in any event, we do appreciate  
9 all three of you coming. I, personally,  
10 know all three of you from work you've done  
11 and your representations have continued to  
12 be excellent.

13           So anyway, proceed as you plan.

14           MS. SIMPSON: Good morning, Chairman  
15 Schwartz and Board members. My name is  
16 Marla Simpson and I am the Director of the  
17 Mayor's Office of Contract Services (MOCS),  
18 and in that capacity, the City's Chief  
19 Procurement Officer.

20           With me today, as you know, are  
21 David Karnovsky, the General Counsel of the  
22 Department of City Planning and Teri  
23 Mathews, Counsel to Deputy Mayor for  
24 Administration.

25           Mr. Karnovsky will address the land

1  
2 use process and if there are additional  
3 questions concerning licenses, Ms. Mathews  
4 is available to answer those. Thank you  
5 for the opportunity to testify.

6 Under Executive Order 48 of 2004,  
7 and its predecessors, I serve as the  
8 Mayor's designee to exercise his oversight  
9 and approval authority in the procurement  
10 world, as defined in the City Charter and  
11 in local laws and the rules of Procurement  
12 Policy Board.

13 In that role, as you know, my staff  
14 and I, approve a wide array of draft  
15 solicitations and proposed contract awards.  
16 We have oversight of more than 40 Mayoral  
17 agencies that are governed by the laws and  
18 regulations that I mentioned.

19 In the areas where we do not review  
20 individual awards, which are mainly in the  
21 competitive sealed bid arena, we  
22 nonetheless exercise substantial, large  
23 scale oversight responsibility.

24 One aspect of the process that's  
25 mandated by the PPB rules is a

1  
2 determination that agencies need to make  
3 that the vendors that they choose to do  
4 business are responsible.

5           As part of that process, the  
6 responsibility determination, agencies are  
7 required to consult with the City's data  
8 base, which is known colloquially as  
9 VENDEX; that data base is a creature and  
10 requirement of Section 6-116.2 of the New  
11 York City Ad Code.

12           And the administrative code  
13 requires, not only that we collect the data  
14 concerning vendor integrity and financial  
15 capability and performance, but that we  
16 make that data publicly available.

17           The data base contains data on every  
18 City contractor and subcontractor receiving  
19 awards in excess of \$100,000 on a  
20 cumulative, annual basis.

21           My office administers the system and  
22 under the statute, we share policy  
23 oversight for the system with the City  
24 Comptroller.

25           There is, as I mentioned, a public



1  
2 access center that allows walk up viewing  
3 of the actual VENDEX records during  
4 business hours and, as you know, in our  
5 effort to improve public access during this  
6 administration, we have made some  
7 technological advances aimed at increasing  
8 the transparency of that data for the  
9 public.

10 One of those initiatives, the "Doing  
11 Business Searchable Data Base," was  
12 developed last year in partnership with the  
13 Board, as a tool of -- to implement the  
14 1998 Charter Amendment that we're  
15 discussing today, concerning regulations  
16 that govern campaign contributions from  
17 those who do business with the City; that  
18 data base is located on nyc.gov at  
19 [html/bizsearch](http://nyc.gov/html/bizsearch).

20 In addition, again, as you know, the  
21 lobbyist information was added more  
22 recently and is also publicly searchable at  
23 that location. The public may search those  
24 records both by the name of the company, and  
25 by the last name of the top three principals,

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the individuals which are typically the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Board Chair or positions like that.

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Our focus last year with the Board in our discussions was on procurement, but under the same Executive Order, as Director of the Mayor's Office of Contract Services, I exercise parallel oversight responsibility for the Mayor's approval authority of franchises, concessions, and revocable consents.

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I've brought copies today with me of our FY 2005, annual report, and my staff will leave them with you, and you'll see on Page 15 of that report, we -- there's a section that actually details, on a citywide basis, the annual volume of what we approve in that area.

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By way of example, the franchise docket today includes the City's recently announced Street Furniture Award and our concession docket includes such items as

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2 the -- anything from a small food cart at  
3 the Parks Department to the recently  
4 approved Randalls Islands water park or  
5 some of the large scale marketing  
6 initiatives sponsored by the City's  
7 marketing development corporation.

8 All franchises, regardless of value,  
9 and all significant concessions, which are  
10 those that are valued in excess of  
11 \$100,000, are already subject to the VENDEX  
12 filing requirements under the Ad Code, and  
13 so we collect the same data on those  
14 companies and on their principals as we  
15 do --

16 MR. SCHWARTZ: You say all  
17 franchises regardless of value, so if it's  
18 a franchise for a push cart or a newsstand  
19 or something like that, that comes  
20 within --

21 MS. SIMPSON: There aren't any  
22 franchises for those. A franchise --  
23 sometimes the issue with a franchise is  
24 that it's actually very difficult to assign  
25 a particular value to it.

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But for example, franchises include cable television, a number of information technology/telecommunications permits that the City grants; in effect, use of the street beds and construction on sidewalks, which is why you get the street furniture, bus shelter issues.

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MR. SCHWARTZ: If you were trying to devise something that drew a line based on -- you know -- if -- let's take, even though it's a concession, a newsstand, you know, it's not very likely that someone is going to be going around making contributions, so they're more likely to get a concession permit for having a newsstand --

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MS. GORDON: Well, first --

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MS. SIMPSON: The statute does draw that line, that's what I'm trying to say.

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MR. SCHWARTZ: But I'm wondering, you draw the line at \$100,000 --

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MS. SIMPSON: Correct, yes. With franchise, I think the idea is that the effect on the land use is significant

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2 enough; they're often citywide, sometimes  
3 they're borough wide; we had, for example,  
4 many bus route franchises.

5 The statute draws the line there,  
6 and says "all franchises", but for  
7 concessions we follow the same process that  
8 we follow in the contract world, which is  
9 \$100,000 annual revenue and up --

10 MR. SCHWARTZ: If we were to ask you  
11 to do a chart that would say how many there  
12 are -- I'm lumping franchises and  
13 concessions together here, but where  
14 there --

15 MS. GORDON: Can we get copies of  
16 those.

17 MR. SCHWARTZ: (Continuing) -- where  
18 the value is between one hundred and  
19 \$500,000 between five hundred and a million  
20 and between \$1 million and \$5 million.

21 MS. SIMPSON: I don't think it's  
22 possible to characterize franchises that  
23 way, but as you will see in the universe  
24 that was done in fiscal 2005, the section  
25 begins, I guess, on Page 15 of the chart,

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2 there were twelve citywide franchises.

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Most of them -- they were split between the Department of Transportation and the Department of Information Technology, and it's actually then misleading in terms of the count, because my recollection of the ones from DOITT are the -- I don't believe any of the FY05 ones were new franchises.

In most cases what DOITT brings to our office for approval is change of control requests. So when a telecommunications company is taken over by another one, the franchise needs to be moved from Company A to Company B, but it's the same franchise.

So citywide in all of fiscal '05, there were twelve. Whereas for concessions you're looking at a much larger universe.

In general, you'll see that we did a total of 229 concessions of which only 27 of them were approved by the FCRC. Now, that is not -- I can give you examples of the split between \$100,000 above and below.

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2 Certainly all 27 that went to the  
3 Franchising Concession Board were above  
4 \$100,000, and that's one of the reasons why  
5 they went there.

6           Within the 229, there probably are  
7 several others that exceed 100,000 in  
8 annual volume and they're in there,  
9 although on an individual basis they didn't  
10 require FCRC approval; but it's relatively  
11 easy.

12           I guess the point I was leading up  
13 to is that because the database has already  
14 been made available through the Doing  
15 Business Search, you already have it.

16           Everything on the franchise and  
17 concession awards is already in the  
18 searchable data base. There's -- no  
19 additional -- no additional development  
20 would be needed for that, because the  
21 franchise and concession holders are  
22 treated identically to the vendors in the  
23 procurement world, and when we made that  
24 available on the searchable public data  
25 base, they came with it. So you already

1  
2 have them.

3 MS. PATTERSON: What is the bidding  
4 process for franchises and concessions?

5 MS. SIMPSON: It's somewhat similar.  
6 The rules are very similar to the PPB  
7 rules. There are some that are done by  
8 competitive, sealed bid; I would say that's  
9 a smaller proportion than exists in the  
10 procurement world.

11 More typically, it's a request for  
12 proposal RFP process, and again the  
13 evaluation rules are very similar to what  
14 you find in procurement, and then for  
15 concessions there is an ability to also use  
16 a process that is called "Other", but tends  
17 to be either sole source, because there  
18 really is only one company that could  
19 provide it or only one company that has  
20 access to the particular parcel of land on  
21 which the snack shop could be set up.

22 And so there are -- you know, there  
23 are processes that exist for approving  
24 those items separate from a competitive  
25 process.



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MS. PATTERSON: Okay, and let's say

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you go through an RFP process with a

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franchise. Are there a minimum number of

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bids that need to be obtained or do you

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just put out -- the City puts out the RFP

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and if only one possible provider comes in,

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you simply evaluate the merits of that

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proposal?

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MS. SIMPSON: You could. Right, you

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could, and obviously you wouldn't be

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obligated to select that provider. We

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always reserve an opportunity to make no

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award, if that is in the best interest of

15

the City.

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Again, not all of the information

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has been released publicly but the best

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example that's on the public awareness now

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is the Street Furniture Franchise that was

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by DOT, a very complex RFP process.

21

The City has obviously made an

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announcement of the tentative awardee, and

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we are very close to beginning the

24

Franchise and Concession Committee process

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that will evaluate that selection.

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Once we do that, we would make public to the members of the Board, obviously, who the competitors all were and how they scored; that element is not yet public.

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MS. PATTERSON: So then, take us very simplistically through the public process, if you have a franchise or a possible franchise that the City is going to give some value -- I mean, and by definition virtually all of these franchises are of value -- but how does it start; how does it finish; what are the operative steps and who gets involved?

MR. SCHWARTZ: Yeah.

MS. SIMPSON: There are a number of agencies that typically -- I mean, I guess one can imagine circumstances where an agency that hadn't done a franchise would suddenly be in a position to do one, but by and large you'll see that the franchise world is pretty much the Department of Transportation because of the control of the streets, and the Department of

1  
2 Information Technology, and so that's  
3 basically the two agencies that do it.

4           They would, under -- just to be  
5 clear, there are no regulations that are  
6 currently on the books, on franchises. The  
7 entire franchise approval process is  
8 spelled out in the Charter. So it's  
9 relatively simple and straightforward in  
10 the Chapter 14 of the Charter.

11           The agency can solicit a proposal  
12 for a franchise and then, basically, is  
13 obligated to provide fair treatment for the  
14 proposers.

15           Under the Executive Order, that  
16 governs my office, the Mayor has delegated  
17 sort of a regulation of that process to us,  
18 because this is very, very analogous to  
19 what we do in the procurement world, and we  
20 work closely with the agencies, both to  
21 structure their solicitations and their  
22 evaluation process, and then once they come  
23 into the process, in effect, they make a  
24 filing with our office to be administer the  
25 docket of the FCRC, the agency comes to us

1  
2 to be on the docket for possible approval.

3 We review all of their documents  
4 before putting -- presenting them to the  
5 FCRC, and at the end of the process, it's  
6 our obligation to certify, on behalf of the  
7 Mayor, that all of the procedural rules  
8 were complied with.

9 MS. PATTERSON: What are the  
10 criteria applied for the award of a  
11 successful franchise, then?

12 MS. SIMPSON: The major -- I mean,  
13 they're generally are awarded, again, in  
14 much the same way as a contract is.  
15 Typically, the requirement is to evaluate  
16 technical merit, which will come into, you  
17 know, sort of the expertise of the  
18 organization, the experience, the track  
19 record, all of those things.

20 A second factor would be financial  
21 capability which is obviously going to be  
22 looked at in all situations where revenue  
23 is being promised to the City because we  
24 need those promises to be real.

25 A major difference that applies

1  
2 then, that somewhat distinguishes this from  
3 the approval process for contracts, is that  
4 generally in the franchise and concession  
5 arena, the revenue is actually part of the  
6 scoring; whereas in contracts, the vendors  
7 are evaluated on technical merit and then  
8 price is considered at the tail end of that  
9 process, in some -- in a separate manner;  
10 whereas, with franchise and concessions  
11 it's actually built into the score.

12 MS. PATTERSON: It makes sense,  
13 because in effect it's a pricing  
14 formulation.

15 MS. SIMPSON: Correct.

16 MS. PATTERSON: But if there are no  
17 regulations, are there other guidelines or  
18 directives that exist that can be looked  
19 at?

20 MS. SIMPSON: Not at present. The  
21 system has worked and has worked reasonably  
22 well all these years, just operating. I  
23 mean again, one of the reasons why there aren't  
24 regulations on franchises is that the  
25 Charter provisions are quite specific;

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2           whereas, if you look at the parallel  
3 Charter provisions on concessions, they are  
4 more general and actually direct the  
5 promulgation of rules, and so obviously  
6 rules are done --

7           MS. GORDON: I just wonder on things  
8 like scoring and all of that, maybe that's  
9 in the Charter -- I'm not familiar with all  
10 of the provisions -- but I'm just curious  
11 whether there is anything else in writing.

12           Are you the quality assurance, so to  
13 speak, that means if more than one agency is  
14 doing it, it's done the same way or is  
15 it not done the same way or, that's why --

16           MS. SIMPSON: Those are policy  
17 judgments that I guess every administration  
18 makes for itself. We do not -- we are the  
19 quality control agency, that's clear but we  
20 do not insist on identical criteria or  
21 identical approaches from agency to agency.

22           You will see differences and I'll  
23 give one -- we're about to reach a level  
24 where I don't want to speak  
25 extemporaneously -- I'd need to get back to

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2           it -- but for example, in the arena that  
3           DOITT does franchises, they are heavily  
4           regulated by the Federal Government.

5                        So that what they are able to do in  
6           regulating or evaluating or theoretically  
7           turning down franchises is quite  
8           circumscribed because the City's authority  
9           in that area is preempted in many ways by  
10          the Federal Government.

11                       So what we look at on a DOITT  
12          franchise will in fact be somewhat  
13          different than what we look at in the area  
14          of DOT, which has control of the sidewalks  
15          and streets, and is soliciting proposals  
16          for a major revenue and franchise that  
17          would govern bus shelters and public  
18          toilets.

19                       We have a great deal more -- the  
20          City has a great deal more discretion on  
21          what we would do, so we don't insist on a  
22          one size fits all --

23                       MS. GORDON: What about the things  
24          like structure. I assume there's an  
25          internal agency Committee that's going to

1  
2 evaluate, or some Committee is set up to  
3 evaluate the different proposals?

4 Are there any guidelines or  
5 expectations about how that will be  
6 peopled?

7 MS. SIMPSON: There are no  
8 directives written or otherwise that govern  
9 that. I think that everyone in the process  
10 understands it to be governed by the same  
11 principals as State law and contract, you  
12 know, and also the provisions that are  
13 mentioned in the Charter.

14 I mean, you're basically looking to  
15 ensure fairness, equal access and, you  
16 know, the integrity of the process and  
17 equal treatment of the various competitors;  
18 and those are the principals that are  
19 spelled out and I think everyone  
20 understands what that is.

21 Now, I'm not saying in the future,  
22 we might not develop guidelines. Obviously  
23 if we develop guidelines or rules, we'll  
24 make that publicly available, we would have  
25 a cap on the process and there would be



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2 wide notice of the existence of that.

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My office's involvement in the -- as it affects the quality assurance component of this process is relatively recent; we assumed that role in last two years.

MS. GORDON: Do you sit on the or does someone from your office sit on the review of the agency?

MS. SIMPSON: No, my office is in effect the Clerk or Administrator for the FCRC Committee.

MR. SCHWARTZ: And can you state, Marla, what the membership of the FCRC is; who appoints them, like their terms.

MS. SIMPSON: Certainly. They all serve at the pleasure of their appointing official. The FCRC is a six member board. It is comprised of the Mayor, as Chair of the Board, another appointee of the office of the Mayor, the Corporation Counsel, the Office of Management and Budget, that's four, the comptroller with a whole vote, and the five Borough Presidents share in one vote.

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MR. SCHWARTZ: They do that by choosing one of themselves or do they each have one fifth of a vote?

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MS. SIMPSON: Generally speaking, what -- it rotates by where the physical location of the item is, and when it is a citywide item, generally they work by agreement, where they can designate one to cast the vote.

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MS. PATTERSON: So in essence, what it sounds like, is the FCRC, and it sounds like the entire approval process, from the point where the RFP goes out, to where the bid comes in, to where the FCRC takes a look at it, to ultimately where you have the Mayor and his designee, and the Comptroller and his designee, in one case approve and the other case register, that's all what I would describe as an Executive branch function?

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MS. SIMPSON: Basically, yes.

MS. PATTERSON: So we don't have, let's say, City Council involved in it?

MS. SIMPSON: The City Council is

1  
2 involved in the land use process, which Mr.  
3 Karnovsky can talk about, in the resolution  
4 that establishes the franchise, but that  
5 resolution does not select any particular  
6 operator of that franchise.

7 MS. PATTERSON: How carefully  
8 tailored is the resolution so that there  
9 may be only one operator of that franchise?

10 MS. SIMPSON: I think it would not  
11 be.

12 MR. SCHWARTZ: So that the City  
13 Council has -- would have, at least in  
14 theory, an oversight role over the award of  
15 franchises. Do they exercise any oversight  
16 on it?

17 MS. PATTERSON: Not really, no.  
18 They don't really have it --

19 MR. SCHWARTZ: Well, they can hold  
20 hearings on anything they want to.

21 MS. SIMPSON: They can hold hearings  
22 on anything they want to. In the two years  
23 that I have been involved in this process,  
24 I've been called on the City Council many  
25 times, but not on the issue of franchise

1  
2 and concessions.

3 MS. GORDON: Is there a history,  
4 just in general way -- has there been, more  
5 or less unanimous consent among the members  
6 of the FCRC or is it sometimes split?

7 MS. SIMPSON: There are occasional  
8 dissents. I would say that unanimous  
9 adoption is the far and away more prevalent  
10 results.

11 With franchises' approval requires  
12 five votes, so the six member body cannot  
13 act without a non-Mayoral supporter. With  
14 concessions, the approval requires only  
15 four votes but I would say that the  
16 typical, um, you know way in excess of 90  
17 percent of them or done unanimously.

18 MS. GORDON: And do the Borough  
19 Presidents, do they ever vote with a -- do  
20 they ever speak with more than one voice;  
21 do they ever have a three fifths --

22 MS. SIMPSON: Again, I would have to  
23 get back to you about the "ever" but in my  
24 experience with it, no, that has not  
25 happened.

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MR. SCHWARTZ: So would it, in your judgment follow that on this subject the -- if there is a concern about the appearance of undue influence, it would be with respect to the office of the Mayor primarily, but also conceivably with the Office of the Comptroller and the office of the relevant Borough President?

MS. SIMPSON: Those would all be parties to whom -- in fact in my experience, when there have been private applicants before the FCRC, they have met with the members of the Board.

MR. SCHWARTZ: Okay, so do we have any more questions about the franchising and concession review process?

MS. GORDON: Yeah, just one on the commission itself.

Is there an easily available public record of the votes that have been taken on particular approvals?

MS. SIMPSON: Um, the -- those records are maintained in my office and they are publicly available. I don't know

1  
2 that they're posted anywhere but we've  
3 certainly gotten requests that we've always  
4 complied with, you know copies of the  
5 resolution are made --

6 MS. GORDON: No, I'm just following  
7 up on this other issue about -- you know,  
8 where, if anywhere in the system, is there  
9 the overlap between possible numbers --  
10 nobody is saying there is or has been  
11 necessarily, but just spots where there's  
12 an overlap between the issue of  
13 contributions and awards.

14 MS. SIMPSON: Well, as I say, the  
15 principal way in which you would, I assume,  
16 research that would be by looking at who  
17 the applicants are and that's in the  
18 database that has been provided, and that's  
19 there.

20 MS. GORDON: Now, you were talking  
21 earlier -- I think that you said that the  
22 franchises are a five -- require five  
23 votes?

24 MS. SIMPSON: Correct.

25 MS. GORDON: The concessions do not?

1

2 MS. SIMPSON: That's correct.

3 MS. GORDON: And so --

4 MR. SCHWARTZ: So the significance  
5 of that five votes and the brilliance of  
6 the people who devised the Charter was that  
7 the Mayor's office alone couldn't decide --8 MS. GORDON: Right, but something  
9 like a Parks Department concession could be  
10 decided without the Mayor's office --11 MS. PATTERSON: No, I think it's the  
12 other way around --13 MS. SIMPSON: Yes, but actually let  
14 me make another point on the Parks  
15 Department, on those type of concessions.  
16 Typically, particularly if you're talking  
17 about the food concessions awards, those  
18 are almost entirely awarded on competitive  
19 processes, either bids, in the case of food  
20 cart or a RFP, in the case of, you know,  
21 say a restaurant, and while the Franchise  
22 Concession Review Committee -- this is  
23 where I might have a question about the  
24 Charter -- the Franchise and Concession  
25 Review Committee is directed to hold a

1  
2 hearing on the competitive hearings, some  
3 of which are quite large, but it has no  
4 power.

5 The awards occur -- once the public  
6 hearing has happened, the agency may  
7 complete it's award process, and the only  
8 certification required on the competitive  
9 concession is my offices's certification  
10 that the procedural requirements were met  
11 and then the Comptrollers approval of the  
12 registration.

13 MS. PATTERSON: So in essence, I  
14 think it's the other way around, as I  
15 understood it. A franchise -- in order for  
16 an application of a franchise to get the  
17 franchise, that applicant needs the  
18 approval of the Mayor's office?

19 MS. SIMPSON: And of at least one  
20 non-Mayoral --

21 MS. PATTERSON: And of at least one  
22 non-Mayoral appointee, which could be Corp.  
23 Counsel --

24 MS. SIMPSON: No, no, no. It has to  
25 be one of the two elected officials.



1

2

MS. PATTERSON: So the Comptroller  
or the Borough President?

3

4

MS. SIMPSON: Correct.

5

6

MS. PATTERSON: And for concessions,  
those can be awarded without the approval  
of the Mayor's office, if they were also --  
you had the Comptroller and the Borough  
President and -- I'm a little --

7

8

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MS. SIMPSON: I guess it all depends  
on the semantics.

11

12

MS. PATTERSON: Who has the veto in  
each case, that's all I'm really trying to  
get at?

13

14

15

MS. SIMPSON: The Corporation  
Counsel and the Office of Management  
Budget, again, I think I can safely say,  
have never voted differently than the  
office of the Mayor and the Mayor, in the  
history of the FCRC.

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So with a concession, the award  
could happen without any non-Mayoral  
elected's approval, and indeed -- which is  
the point I was just making -- most  
competitive concessions are awarded without

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1  
2 the formal vote of the FCRC at all, and so  
3 then, the only approvals that a competitive  
4 award would receive, would be the approval  
5 of my office that the procedural rules were  
6 followed and the approval under the Charter  
7 that the comptroller exercises as part of  
8 registration.

9 MR. SCHWARTZ: Marla, you said, when  
10 I asked you whether the Council did oversight  
11 on the franchise's sector, you said you had  
12 never been up there on that subject, but  
13 you have been to the Council on oversight  
14 hearings on --

15 MS. SIMPSON: Contracts. Contracts,  
16 regularly.

17 MR. SCHWARTZ: Even though today  
18 we're not really talking much about  
19 contracts, what do they bring you in to  
20 talk about, when it's a, I presume, a  
21 non-bid contract?

22 What kinds of questions do they ask  
23 you?

24 What's the nature of their  
25 oversight?

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MS. SIMPSON: Generally about the process. I would say, for example, in Human Services arena, issues come up about the timeliness of awards and the process that's used; whether a particular solicitation that is on the street, that might represent a major change in the program, they may have policy issues with that.

They have asked many questions about the Vendor Integrity Review Process, the actual -- since VENDEX is a creature of the Ad Code, they have had questions on administration and the process by which we collect data under VENDEX.

I've had -- there have been hearings -- a substantial number of hearings about the minority and women owned business initiatives that would be an area recently that Council also became involved in; environmentally preferable purchasing, and passed a number of bills that the Mayor signed on that.

It's a rare example -- and obviously

1  
2 we're very cognizant of this as a key  
3 element of the Charter structure -- it's  
4 very rare in a Council oversight hearing  
5 for a question to come up on an individual  
6 contract or an individual vendor, and if it  
7 did it would only come up as an example of  
8 a particular policy concern, you know, if a  
9 particular contractor complained about  
10 whether they were treated in accordance  
11 with a particular rule.

12 In the hearings that the Council  
13 Contract's Committee has held under my  
14 tenure, I don't recall them asking  
15 questions that are aimed at really  
16 selection process, per se.

17 MR. SCHWARTZ: Okay.

18 MS. SIMPSON: Okay, if I can just  
19 conclude for a moment. The final element  
20 that is within the Executive Order and the  
21 approval authority of my office are  
22 revocable consents.

23 Those tend to be relatively de  
24 minimis items, such as the sidewalk cafe's  
25 or the ballards that are in the street.

1  
2 Our sidewalk -- data from the revocable  
3 consents is not, at this point, contained  
4 in the Doing Business Searchable Data  
5 Base, as it falls outside of VENDEX,  
6 because if it's of its principal low vendor  
7 value, and the Council didn't seek to  
8 regulate it in that way, but that  
9 information is publicly available, so thank  
10 you for your time.

11 MS. PATTERSON: Can I ask you a  
12 question that's not exactly in your  
13 purview -- it's more DOITT, but I didn't  
14 ask it the last time.

15 When a franchiser contract is  
16 awarded, the relevant data goes into  
17 VENDEX --

18 MS. SIMPSON: Yes.

19 MS. PATTERSON: (Continuing) -- what  
20 kind of updating is required or expected of  
21 the provider?

22 MS. SIMPSON: That is very much in  
23 my purview. We are the Administrator of  
24 the whole VENDEX operation. It is a three  
25 year statute, and so the VENDEX filing

1  
2 becomes stale after three years.

3 Now, if you have a one time award  
4 and you're not coming back for a renewal or  
5 you're not -- you know, you're not expected  
6 to come to the process again, you would  
7 not, generally speaking, have to update the  
8 VENDEX with.

9 What the statute requires is that  
10 you update it when you have another action  
11 pending, if -- under two circumstances,  
12 either something has changed, which is to  
13 say you could have made a filing yesterday,  
14 but if you changed the Chair of the Board  
15 today and were asking for a contract  
16 tomorrow, you would have to do an update to  
17 reflect that change of control.

18 But generally if nothing changes and  
19 you're simply coming in for a new contract  
20 or a new franchise, there's a three year  
21 rule.

22 MS. PATTERSON: And if there is no  
23 new application; that is, that it's within  
24 the contract period, does the vendor or the  
25 franchise holder have an affirmative

1  
2 obligation to inform you if the CEO change;  
3 if they get acquired; if the division is  
4 sold to someone, anything of that sort?

5 MS. SIMPSON: The contract itself  
6 will define certain terms or certain issues  
7 as material enough to the relationship that  
8 an affirmative obligation is made for the  
9 contractor to notify the City of changes.

10 Certainly, issues that relate to the  
11 financial control of a corporation will  
12 generally fall in that arena and because of  
13 that, it will typically result in an  
14 updating of VENDEX but those types of  
15 material changes are really a function of  
16 the business transaction, the actual  
17 contract; there's not a one size fits all  
18 approach to that.

19 MR. SCHWARTZ: Thank you, Marla.

20 So David, are you next?

21 MR. KARNOVSKY: I am. I'm David  
22 Karnovsky, General Counsel to the  
23 Department of City Planning. I'm glad to  
24 be here today to answer some of questions  
25 raised in your March letter with regard to

1  
2 land use.

3 More specifically, I'm going to  
4 describe the land use review process a  
5 little bit, and describe the information  
6 that is maintained by the Department of  
7 City Planning with respect to private  
8 applicants for land use changes, and I hope  
9 also to address some possible  
10 misconceptions about the land use process  
11 that may be reflected in some of your  
12 materials, particularly the  
13 characterization of land use approvals as a  
14 form of contract with a specified dollar  
15 value, and I'll discuss that more in  
16 detail.

17 In terms of the land use process in  
18 the City of New York, it's important to  
19 remember first, that most development in  
20 the City of New York takes place on an as  
21 of right basis; that is to say, it takes  
22 place without the need for any  
23 discretionary land use approvals and it is  
24 consistent with existing zoning and  
25 requires only the issuance of a permit by



1  
2 the Department of Buildings to that effect.

3           However, when a proposed development  
4 requires modification of existing zoning or  
5 other provisions, then the owner or  
6 developer must go to one or more of several  
7 agencies: The Board of Standards and  
8 Appeals, the Landmarks Preservation  
9 Commission and the City Planning  
10 Commission.

11           The Board of Standard and Appeals,  
12 of course, with respect to variance and  
13 zoning with respect to certain permits.  
14 The Landmarks Preservation Commission, with  
15 respect to development that affect landmark  
16 sites and historic vistas, and City  
17 Planning Commission with respect to zoning  
18 changes, special permits and other  
19 significant changes in land use, which I'll  
20 discuss in more detail. Of course, my  
21 focus today is on the Department of City  
22 Planning and the City Planning Commission,  
23 not on those other agencies.

24           What is the Department and what is  
25 the Commission?

1  
2           The Department is a Mayoral agency  
3 established under the Charter and then  
4 comprised of architects, planners,  
5 economists and engineers; it's headed by a  
6 director who is appointed and serves at the  
7 pleasure of the Mayor and is charged with  
8 advising the Mayor and/or elected officials  
9 with regard to all manners of issues  
10 related to planning, and it also provides  
11 staff assistance to the City Planning  
12 Commission, in the exercise of its  
13 jurisdiction.

14           So what is the City Planning  
15 Commission. The City Planning Commission  
16 is a 13 member body established under the  
17 charter. The Mayor appoints seven members,  
18 including the Chair, who is also the  
19 Director of the Department, and the six  
20 remaining members are appointed one by each  
21 of the Borough President and one by the  
22 Public Advocate. The members serve for a  
23 terms of years, staggered five years terms.

24           The Charter states that the member  
25 shall be chosen "For their independence,

1  
2 integrity and civic commitment" and they  
3 include people who are engineers, planners,  
4 experts in affordable housing and the like.

5 Most relevant for purposes of  
6 today's --

7 MR. SCHWARTZ: And they have a term  
8 of office, right?

9 MR. KARNOVSKY: They do, a term of  
10 five years, staggered terms, one of the  
11 innovations Charter, 1989.

12 Most relevant for the purpose of  
13 today's discussion, the City Planning  
14 Commission has a formal decision making  
15 role in the City's process for the review  
16 of zoning and other major discretionary  
17 land use changes, under what is known-as  
18 the Uniform Land Use Review Procedure or  
19 ULURP.

20 It should be noted that the Planning  
21 Commission also reviews a number of items  
22 which are not governed by ULURP, but the  
23 ULURP applications are the most significant  
24 ones on its docket, and I'll focus on them  
25 today.

1  
2           The ULURP process is set forth in  
3           the Charter, Sections 197(c) and 197(d) and  
4           what it does is establishes a multi-layer  
5           procedure for the review of certain major  
6           categories of land use actions by the  
7           community boards and the Borough  
8           Presidents, in an advisory capacity, and by  
9           the City Planning Commission, and in  
10          certain cases, the City Council, acting in  
11          a decision making capacity.

12           Now, the land use actions, subject  
13          to ULURP, which are most typically sought  
14          by private applicants include, for example,  
15          designations of the zoning districts, under  
16          the zoning resolution; that is,  
17          applications to amend the zoning  
18          designation for parcels or parcels of land,  
19          special permits to authorize modifications  
20          to the Zoning Resolution, with respect to  
21          use or bulk controls on designated parcels,  
22          and changes to the City map; that is,  
23          applications to eliminate or modify the  
24          configuration of the City's street  
25          network in order to accommodate

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development.

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The formal ULURP review process lasts seven months, roughly seven months and it has several layers of review. First, the Community Board reviews the application for a sixty-day period, holds a public hearing, and issues a recommendation to the City Planning Commission and the Borough President with respect to the action.

Following the City -- following the Community Board action, and the Borough President, and if the action involves more than one Community Board, also the Borough Board reviews the application for thirty days.

They are allowed to but not required to hold a public hearing; their role is also advisory, as I indicated. And then following their review, the City Planning Commission has sixty days to hold a public hearing and thereafter to approve, disapprove or approve of the modifications to the application.

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The City Planning Commission

3

disapprovals are final and there is no

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right of appeal to the City Council.

5

Now with respect to the City

6

Council, the City Council must act on

7

certain items which are legislative in

8

nature or for which its action is required

9

under State law, such as urban renewal

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plans, these items include, most

11

significantly zoning map changes and zoning

12

text amendments.

13

The Council must also review any

14

other ULURP application not subject to its

15

mandatory jurisdiction, where the Community

16

Board has recommended disapproval; the

17

Borough President has represented

18

disapproval; the Planning Commission has

19

recommended approval or has approved it,

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better said, and the Borough President

21

wants to trigger review by the City Council

22

and so advises the Council.

23

Finally, the Council also has the

24

ability to call up any item which is not

25

within its mandatory jurisdiction and to

1  
2 review it, and it does so by a majority  
3 vote of the body. The Mayor --

4 MR. SCHWARTZ: Can you say, just in  
5 terms of percentages, how many matters come  
6 through the City Planning Commission, are  
7 either called up by the Council or get  
8 there by the triple no?

9 MR. KARNOVSKY: I don't have a  
10 percentage figure but I was looking at some  
11 figures yesterday, for example, with  
12 respect to special permits, which are not a  
13 mandatory item, and I saw that in 2005, The  
14 Planning Commission acted on roughly 80  
15 such special permits and the Council acted  
16 on roughly 15, which give us some  
17 indication that not all items are called up  
18 by the Council, but I think it is fair to  
19 say that any item which represents a  
20 significant issue for the local community  
21 and the local Council members will be  
22 called up.

23 The Mayor has a veto with respect  
24 to Council action, which can be overridden  
25 by the City Council by a

1  
2 two-thirds vote of the body; that is a very  
3 rare occurrence.

4 MR. SCHWARTZ: Which is rare, the  
5 Council --

6 MR. KARNOVSKY: The Mayoral veto.  
7 The Mayoral veto. The Mayoral veto.

8 I want to focus a little bit on the  
9 nature of the land use determination that  
10 we make, because I think it's relevant to  
11 your consideration.

12 The purpose of ULURP is to consider  
13 the land use impacts and implications of  
14 the proposal. Is what is being proposed  
15 appropriate and consistent with sound  
16 planning, in terms of what it seeks as a  
17 change of use or a change in the allowable  
18 density of development or change in the  
19 building form or the like.

20 Land use determinations are  
21 regulatory actions in the exercise of the  
22 police power and are not in any sense  
23 contracts between the City and the  
24 applicant.

25 The applicant is not competing for a



1  
2 contract, involving expenditure of City  
3 monies for goods or services, but is  
4 seeking to alter the regulations governing  
5 the use of its property.

6 Unlike contracts, which are held by  
7 the private party that wins the contract  
8 award, land use approvals are not personal  
9 to the owner or development who is the  
10 applicant, rather they pertain to and run  
11 with the land; this means that following  
12 our approval, the property may well be sold  
13 to other parties who will develop it in  
14 accordance with the approvals, and those  
15 successor owners are bound by our  
16 approvals.

17 The Planning Commission does not and  
18 indeed cannot base its condition or land  
19 use determination, on the ownership of the  
20 property and the identity of the applicant.

21 The fact that zoning is concerned  
22 with land use, rather than the person who  
23 owns or occupies the land has been  
24 highlighted in a series of Court decisions,  
25 and I just want to mention one because it

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really crystallizes this point.

Some years ago there was a decision by a local town board which approved a rezoning from a residential classification to a commercial classification, subject to a condition that the change inure to the benefit of named applicant only, and only for its proposed development, which was for a supermarket.

And the Court of Appeals said that this decision reflected a lack of adherence to the fundamental rule that zoning deals basically with land use, and not with the person who owns or occupies it,

"While it is proper for a Zoning Board to impose appropriate conditions and safeguards, in conjunction with a change of zones or a grant of a variance of special permit, such conditions and safeguards must be reasonable and relate only to the real estate involved, without regard to the person who own and occupies it."

MS. GORDON: But Dave, can I just make a point here. This is not directed at

1  
2 the City Planning Commission or anybody in  
3 particular, but I hope you understand that  
4 from the point of view of the question that  
5 is before the Board about regulating  
6 contributions, it's not the question of  
7 whether the land -- you know, whether the  
8 approval follows the land, the possible  
9 problem is that regardless of what your  
10 mandate is, it may well be that in any  
11 given case, whoever is the applicant does  
12 benefit to a very possibly high degree  
13 personally --

14 MR. KARNOVSKY: I'm trying -- I'm  
15 making this point in order to get to a  
16 discussion about the information we  
17 maintain with respect to parties who we do  
18 business with, because I want you to  
19 understand that our function is not  
20 directed at the applicant, the principals  
21 of the applicant, the investors of the  
22 entity but rather the use of the land and  
23 that's why I'm focusing on this. I  
24 understand --

25 MR. SCHWARTZ: Dave, if the way we

1  
2           approached the problem was unlike the  
3           contracts, let's say where there is a data  
4           base or unlike the lobbyist where there is  
5           a data base, and live person -- if the way  
6           we approach the problem was to say the  
7           entity or the owner of the entity who is  
8           seeking the benefit from the change or the  
9           permit being granted, is barred from making  
10          a contribution to certain City officials,  
11          whoever the relevant City officials are --  
12          which is the way, by the way, that other  
13          states and the SEC has addressed the issue  
14          of pay to play -- that wouldn't be hampered  
15          or hindered by the fact that you say you  
16          don't have data on who the concerned people  
17          are.

18                         Now, under the New Jersey system or  
19                         the SEC system, the consequence to the  
20                         person who should have made the  
21                         contribution is that they lose their right  
22                         to do business with the City.

23                         So my having said that's a way of  
24                         looking at the problem, and a method for  
25                         addressing it, I'd just like you to react

1  
2 to whether such a law -- because in effect  
3 it could only be done by a law -- creates  
4 any significant problems for the way the  
5 City does handle land use questions?

6 MR. KARNOVSKY: Speaking from the  
7 point of the view of the Department and the  
8 Commission, it has no real effect on the  
9 way we handle these applications.

10 The point of my focusing on land use  
11 and the use of land as the focus of our  
12 efforts is really to simply highlight for  
13 you that we have relatively limited  
14 information available to us, by virtue of  
15 the nature of our jurisdiction -- and I  
16 want to discuss what we do maintain, how it  
17 could be available and so forth -- but I  
18 think it all starts from the premises, that  
19 we are concerned not with the identity of  
20 the applicant, nor with the character or  
21 integrity of applicant.

22 We don't, for example have VENDEX.  
23 We're not concerned with making  
24 responsibility determinations, but rather  
25 with whether or not what has been proposed

1  
2 for the use of land is appropriate in terms  
3 of comprehensive planning, and that's really  
4 why I make the point.

5 Your point -- what you describe is  
6 not something that would affect,  
7 materially, the process.

8 MS. PATTERSON: Can I ask a couple  
9 of questions?

10 And I certainly understand your  
11 point that any restrictions or approvals or  
12 grants run with the land; they do not apply  
13 to the owner who is the applicant at the  
14 particular time that you give your approval  
15 or impose a restriction.

16 Um, but if these are in essence  
17 restricted easements or permits those, I  
18 assume, would be a matter of record if  
19 there were to be a search on the particular  
20 item property.

21 MR. KARNOVSKY: If you -- well,  
22 there are a couple of things. First of  
23 all, our decisions are a matter of public  
24 record; our reports are available on the  
25 westbound and elsewhere, and in many cases

1  
2 our reports and our actions are accompanied  
3 by what are known as Restrictive  
4 Declarations, which are covenants that  
5 embodied some of the terms of our approval,  
6 those are available and accessible on the  
7 land use records.

8 MS. PATTERSON: And is there a time  
9 gap between when you -- what is the time  
10 gap between when you would impose a  
11 restrictive covenant and when it would be  
12 available if you did a title search?

13 MR. KARNOVSKY: The covenants have  
14 to be recorded as a condition of the  
15 issuance, by us, of a letter to the  
16 Department of Buildings which authorizes  
17 the permits to be issued.

18 MS. PATTERSON: So it would be quite  
19 quickly after whatever restricted covenant  
20 is issued?

21 MR. KARNOVSKY: I just want to make  
22 one point. I'm not sure whether you were  
23 saying this in effect, but if you were  
24 suggesting, that -- under the system you  
25 described, where it would be illegal to

1  
2 make a donation to an elected official or  
3 other party involved in the land use  
4 process, that the City Planning Commission  
5 could somehow not approve the project, I  
6 think that would be troublesome.

7 So I think a question of nexus  
8 between what you described and our exercise  
9 of land use discretion could be an issue.

10 MS. GORDON: Is there another stage  
11 of the process where that happens?

12 I mean, let's just say, totally  
13 hypothetically, right, that somebody wants  
14 to get some land use application approved,  
15 wants to build something that is a  
16 known, you know -- I don't know, someone  
17 who has built bad buildings in past,  
18 whatever, and gets this approval because  
19 it's a good use of the land, let's say, is  
20 there some other stage at which the  
21 person's history in building buildings  
22 would stop that person's ability to go  
23 forward with a plan?

24 Are there other permits and so on  
25 that come afterwards, that would involve



1  
2 looking at the history of the particular  
3 developer, let's say?

4 MR. KARNOVSKY: Not in the way you  
5 describe. There are processes that the  
6 Department of Buildings and that the State  
7 Department of Education, with respect to  
8 architects and engineers, and their  
9 filings.

10 For example, the Department of  
11 Buildings can, under certain circumstances,  
12 withhold certain privileges, filing  
13 privileges for persons who have engaged in  
14 what they determine to be a form of  
15 misconduct.

16 Likewise architects are licensed by  
17 the Department of Education, and from time  
18 to time they take action. But in terms of  
19 a developer's history of good or bad  
20 development -- and I'm not sure how you  
21 would define that -- no, there is no  
22 determination of that kind made by anybody.

23 MR. SCHWARTZ: David, I'd like you  
24 to put your mind to work on helping us  
25 solve the issue which is in front of us,

1  
2 which we're charged to look at.

3           First, we start with history, when  
4 there was a Board of Estimate, it was rife  
5 with apparent corruption, at least,  
6 connected to the size of gifts that were  
7 given -- campaign donations that were given  
8 to the Board of Estimate at around the time  
9 they voted on whether or not to make a land  
10 use approval.

11           Whether there was corruption, or at  
12 least apparent corruption with the Board of  
13 Estimate, it was particularly focused on  
14 their land use decisions.

15           So the motive that led to people  
16 making excessive contributions with Board  
17 of Estimate can't have gone away, because  
18 there's still enormous value in land use  
19 decisions.

20           So, recognizing the professionalism  
21 with which the City Planning Commission  
22 approaches issues, and that it's a far  
23 better system to have the professionals  
24 really driving the train and then the  
25 politicians come in, sort of as exceptions

1  
2 afterwards; so it's a better system than  
3 under the old Board of Estimate.

4 But still the cupidity of potential  
5 beneficiaries on these extremely valuable  
6 land use decisions, and the desire to make  
7 politicians like them by making large  
8 contributions still exists.

9 So if one wanted to address that  
10 subject through regulation or legislation,  
11 what would you suggest would be an appropriate  
12 way for doing that, without screwing up the  
13 important work that is done, objectively,  
14 in the City Planning Commission?

15 MR. KARNOVSKY: You know, I quite  
16 frankly did not come today to offer  
17 personal views of mine --

18 MR. SCHWARTZ: I know you didn't,  
19 but you're an intelligent person --

20 MR. KARNOVSKY: I am an intelligent  
21 person; I will concede to that, but I  
22 really came to talk about our process and  
23 what information we have to offer; what  
24 its value is and what its limitations  
25 are.

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I think all I would say on this is that -- and you said it before and you said it during the Charter, and this is one of the principles, that guided the Charter revision, that sunshine is very important.

At the same time, going back to a comment I made a minute ago, from my point of view, I would be very concerned about a process in which the parties to the land use process could not exercise their discretion by virtue of other requirements that might come into play, in the terms of disclosure --

MR. SCHWARTZ: You mean the officials who are parties?

MR. KARNOVSKY: The officials, correct. For example, if the City Planning Commission was hindered in its ability to consider an application on the land use merits, by virtue of some issue of disclosure or non-disclosure of parties to the ULURP process, that would be of deep concern to me.

I think what we have -- and we're

1  
2 certainly prepared to share this with the  
3 staff and show them how it works -- is a  
4 system which records the identity of  
5 applicants, the name of applicants, and  
6 which also records the names of the  
7 applicants's representative, which most  
8 often a law firm, but is sometimes an  
9 architect and an engineer.

10 And this is all found in the  
11 database that we maintain called the LUMI  
12 system, the Land Use Management Information  
13 system. We use it primarily for internal  
14 reasons, to track the progress of  
15 applications as they go through the system,  
16 but it will show the block and lot and  
17 address in question, the applicant's name,  
18 it -- sometimes, most often an applicant's  
19 representative, the nature of the  
20 application, and it will show the entire  
21 history on a current basis of application,  
22 all the way through to the City Council  
23 action or the City Planning Commission  
24 action, if that's the last action.

25 This system is accessible by other

1  
2 City agencies. Current applications, the  
3 ones that are pending and active at the  
4 Department but have not started ULURP, are  
5 actually accessible by the public through  
6 our web site, and we intend to make the  
7 entire system, with its modifications,  
8 available on the web some time in 2007.

9 So this is a useful piece of  
10 information. Now there are some  
11 limitations, and I just want to discuss  
12 those for a minute, so you understand them.

13 Very often, in the land use world,  
14 the applicant is a special purpose entity  
15 formed for the purpose of developing a  
16 particular parcel. Hypothetically, 201  
17 East 28th Street LLC.

18 And for our purposes, and because of  
19 the nature of our jurisdiction, all we  
20 require is that the applicant be the owner  
21 of that property and they will name  
22 themselves as that LLC.

23 In that circumstance -- and there  
24 are a number of different circumstances, if  
25 you look at the system -- there is nothing

1  
2 to indicate who the parties are that are  
3 involved in that LLC, by way of ownership  
4 interest or being principals.

5 In other circumstances, however, the  
6 names of principals will clearly show up on  
7 the system. And so, there are some  
8 limitations in terms of its utility as a  
9 form of disclosure of who is involved with  
10 these applications.

11 But nonetheless, it's a system that  
12 exists, it's available and we're glad to  
13 discuss it more with you.

14 MS. PATTERSON: Is there any  
15 practical or legal -- maybe legal is the  
16 more important question, impediment if the  
17 Board were to promulgate regulations that  
18 did involve the kinds of contributions that  
19 could be made, or if the law were changed  
20 in some way that created an obstacle to  
21 making contributions if you were applying  
22 for certain things -- is there any  
23 impediment to expanding that data base or  
24 having your agency ask for more information  
25 than is currently required.

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MR. KARNOVSKY: I think there is.

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You know, we have a rule making authority

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that is -- a rule making authority to

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describe the procedures -- the application

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procedures and the standards for the ULURP

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process, and I would understand that to

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mean that we're entitled to ask for that

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information which is relevant and germane

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to our exercise and authority.

11

A rule which would require the

12

disclosure of the investors and parties in

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interest in the LLC has no bearing on our

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jurisdiction, because it's not a basis upon

15

which we can make a determination.

16

So I think there are limits to what

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we ask, and fundamentally what we ask is

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who's the owner, and you have to represent

19

that you're the owner.

20

And if you're not the owner, but you

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are, for example, a lessee of a long

22

term -- under a long term lease, you have

23

to so state and come in with the owner's

24

authorization; if you're a contractor

25

vendee or an option holder, you have to



1  
2           come with the owner's authorization; that  
3           is appropriate to our jurisdiction but  
4           beyond that I think there are serious  
5           questions.

6                       MS. GORDON:  Where do you think  
7           authority would lay to change either your  
8           jurisdiction or the law in other ways that  
9           would permit asking those additional  
10          questions?

11                      MR. KARNOVSKY:  I haven't analyzed  
12          that question.  Whether it's a question of  
13          State law or local law, I don't know the  
14          answer to that.

15                      MS. PATTERSON:  Does the LUMI data  
16          base identify the principal Officers of the  
17          SPV that is being used?

18                      MR. KARNOVSKY:  No, it does not.  It  
19          just would identify the name of the entity,  
20          which is the owner of record.

21                      MR. SCHWARTZ:  So just let me impose  
22          a hypothetical, which I've never heard of  
23          happening, but just take as a hypothetical.

24                      Suppose the mafia was the owner of  
25          the special purpose entity, would the City

1  
2 have no ability to know that, under the  
3 current system?

4 MR. KARNOVSKY: Um, under our  
5 system, if a principal in an LLC had an  
6 organized crime history, we would not know  
7 that.

8 MR. SCHWARTZ: So, David, presumably  
9 the City Council would have power to pass a  
10 law -- I don't want to conclude that, in  
11 asking the question -- would the City  
12 Council have power to pass a law allowing  
13 the City Planning Commission to know the  
14 principal owners of the corporation that --

15 MR. KARNOVSKY: You know, I haven't  
16 studied that question. I think one thing  
17 to keep in mind is there is a series of  
18 issues which would undoubtedly arise, in  
19 terms of what the impact of that kind of  
20 disclosure is on the process.

21 To the extent that you're dealing  
22 with the owner's ability to develop their  
23 property, or to seek the opportunity to  
24 develop their property and to use it,  
25 regulations which interfere with that could

1  
2 raise certain kinds of issues,  
3 constitutional issues, and that would be an  
4 area that would have to be examined. I  
5 don't have an answer to that, but that  
6 intersection, I think, is very complicated.

7 MS. PATTERSON: Well, there's also a  
8 check because, of course, it doesn't get to  
9 the City Planning Commission unless there  
10 has already been a hearing at the Community  
11 Board level, and the Borough President has  
12 reviewed the application and one would hope  
13 that since they're more in the trenches than  
14 the City Planning Commission, that they  
15 would be more capable of doing that degree  
16 of due diligence.

17 MS. GORDON: Do they have the right  
18 to make any decisions based on the --

19 MR. KARNOVSKY: The community boards  
20 and the Borough Presidents are acting in an  
21 advisory capacity, and their  
22 recommendations is supposed to be based on  
23 the land use issues raised by the  
24 application.

25 MS. GORDON: And not the applicant?

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MR. KARNOVSKY: Not the applicant.

3

Obviously, applicants and their appear

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before the community boards the Borough

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Presidents and the Planning Commission

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Council. This is a process with ample

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sunshine and multiple hearings, and in

8

fact, it is a process which has sometimes

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been criticized as having too many of

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these hearings --

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MS. GORDON: But the different kind

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of sunshine that you're talking about; the

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sunshine is about the use of the land, at

14

least in theory, but not about who is doing

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a project.

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But, remember years ago -- I'm just

17

asking the question -- you know, years ago,

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I can't remember the name of the developer

19

right this minute who built the building

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two stories higher than it was permitted --

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MR. SCHWARTZ: Right, over on 96th

22

Street.

23

MS. GORDON: And let's say that

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person comes back next time around and

25

wants some permission to do something else,

1  
2 and let's say it's not this guy, but some  
3 other guy whose done it six times, violated  
4 the terms of the permission, there's no --  
5 what's the mechanism that stops somebody  
6 who has a great plan and it's the right  
7 plan for the City, but the execution is  
8 not --

9 MR. KARNOVSKY: The mechanism is  
10 essentially enforcement of zoning by the  
11 Department of Buildings --

12 MS. GORDON: So you're going to keep  
13 going back and saying take your two stories  
14 down?

15 MR. KARNOVSKY: In the East 96th  
16 Street case, the principal had no estoppel  
17 against the City with respect to that type  
18 of error by the Department of Buildings in  
19 approving permits and it was taken down,  
20 but the real answer is enforcement.

21 I will not -- I don't mean to  
22 suggest that when a developer with a poor  
23 history comes before the City Planning  
24 Commission that its reputation doesn't  
25 precede it, but -- and that the Commission

1  
2 will be very interested in knowing how  
3 they're going to develop the property and  
4 how they're going to design it and so forth  
5 and so on, how they're going to develop  
6 it and so on, but the City cannot tie its  
7 determination to the use of any particular  
8 architect or engineer or things of that  
9 nature.

10 MS. GORDON: Or corruption, not even  
11 that.

12 MR. POTASNIK: It just appears for  
13 purposes of evasion, it's relatively easy  
14 to get around whatever restrictions you  
15 have.

16 Developers' have friends,  
17 developers' have cousins, so if you're  
18 looking to somehow regulate the  
19 contributions, I don't think it's that  
20 difficult to just, you know, run an end run  
21 here. It's -- no matter what you do,  
22 there's a counter measure that can easily  
23 be realized that will get the person a  
24 contribution.

25 So you know the developer. So you

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2 know the architect. So what?

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Those aren't the only people  
involved in a process.

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MS. SIMPSON: I would assume the  
Board faces those issues, though, as well,  
with though, as well with any contribution  
limit that you set. Any -- those same  
cousins can make multiple donations to  
exceed a contribution limit in just the  
same way, which is not a reason not to have  
a program that would enforce a contribution  
limit.

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And law enforcement gets involved in  
these issues as well, in that -- obviously,  
the Buildings Department is the first place  
where these issues would be addressed, but  
the DA's are active on violations of  
building code and those types of issues, as  
is the Department of Investigation, on  
occasion.

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So you see there is enforcement  
capability of any of these regulations,  
that would kick in on some of the issues  
you mentioned, even if they did not have

1  
2 land use impacts.

3 MS. PATTERSON: I mean, your point  
4 is well taken. I think it's inherent in  
5 the system. I mean it comes up -- there's  
6 a restriction on corporate contributions  
7 which never seem to restrict individuals  
8 from -- the corporations from making  
9 inappropriate contributions to individuals,  
10 as long as they use the right bank account.

11 MS. SIMPSON: The dollar number.  
12 It's the same issue.

13 MS. PATTERSON: It's the same issue.

14 MR. KARNOVSKY: I just want to  
15 mention one thing about franchises  
16 concessions. Reference was made to land  
17 use. Just to be clear about this, there is  
18 a limited role with respect to the land use  
19 review of certain franchises and  
20 concessions.

21 And very simply, if a franchise, RFP  
22 is being developed by an agency, and the  
23 Planning Department determines that the  
24 subject matter of franchise may have land  
25 use impact implications, it must go through



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2 a ULURP review.

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This is all prior to the issuance of the RFP in the competitive process. An example of that was the free furniture franchises back in the 1980's.

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Likewise, there are certain kinds of concessions, very rare, which go through ULURP, because they're deemed to have land use -- the potential for land use impacts, and thresholds for that are defined in rules of the Planning Commission.

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Likewise, if the concession requires an Environmental Impact Statement, it will also go through ULURP; these are also quite rare, but there is an intersection there.

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We, of course, do not deal with the business terms. We deal with it as an application from the agency, particularly the Parks Department and we look at the land use issues.

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MR. SCHWARTZ: Any other questions?

(No response.)

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MR. SCHWARTZ: Okay, Teri do you have other things to cover?

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2 MS. MATHEWS: Well, I think I'm here  
3 on a technical capacity, on a very  
4 esoterical tail. You asked about licenses.

5 MS. PATTERSON: Right.

6 MS. MATHEWS: A license is a right  
7 to use property that isn't a lease, and is  
8 not a franchise. And the City can license  
9 out -- which is the franchise and  
10 concession world -- and it can license in.

11 The vast majority of licenses -- in  
12 fact all of concessions, equal license,  
13 they may go by different names, but the  
14 vast majority of licenses are covered by  
15 Marla's world.

16 But there is a small number of  
17 licenses that we just wanted to -- because  
18 you did ask for licenses, that are more  
19 licenses in, if you want to talk about that  
20 distinction, just ask me because I think  
21 it's helpful.

22 City agencies often rent property in  
23 privately owned buildings those -- if for  
24 different office purposes, warehouse  
25 purposes, other types purposes. Those are

1  
2 all subject to one form of ULURP approval.  
3 If it's offices it's 195 of the Charter.  
4 If it's not an office, it's 195(c).

5 To get City agencies into property  
6 while there is whole process going on, the  
7 City often uses a license to get them into  
8 a facility, pending ULURP approval and  
9 negotiation of a longer term lease.

10 And there is -- we bring it up in  
11 the interest of fair disclosure, but we're  
12 talking about a very small number of  
13 licenses, the vast majority is with the  
14 FCRC, so I'm just here just to, you know --  
15 for full disclosure?

16 MR. SCHWARTZ: Do you have  
17 questions?

18 Do you?

19 (No response.)

20 MR. SCHWARTZ: David, you know, when  
21 I asked you the question which in effect  
22 said, "Take off your hat and give us your  
23 advice," that was probably a little unfair  
24 to call upon you to do that in this  
25 session.

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But nonetheless, we're faced with a situation where your ultimate boss, the Mayor of the City of New York, is pushing for certain action; the members of the Board are interested in exploring that action.

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I can't imagine rationally defending doing something that does not -- that addresses campaign contributions and doesn't cover land use.

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So, I guess it seems to me, it -- given the history and given today's environment, given the economics, there's so much more incentive on the land use side to try to buy influence through political contributions than anywhere else now, whether it's appearance or reality, I can't imagine this Board rationally coming up with a system that touches on, for example contracts, which are interesting but much less likely to involve the same incentives, and not touching land use.

24

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So, particularly in light of the fact that it is the Mayor who is pushing

1  
2 very hard for something to be done on  
3 campaign contributions, I would love it if  
4 you would in a -- not on the spot in a  
5 public hearing -- put your mind to -- and  
6 the same with you Marla, and the same with  
7 you Teri, -- how one might be able to --  
8 best be able to address the subject of land  
9 use and contributions.

10 You did say disclosure is different  
11 from regulations, and that's true, but the  
12 issue is are there things beyond  
13 disclosure.

14 MS. SIMPSON: I'll offer one  
15 observation, since it does intersect with  
16 my world in the Office of Contracts, and  
17 since, as you know, I also have a history  
18 in both the land use and campaign finance  
19 arena.

20 I'll make two observations: One,  
21 obviously, if the mechanism were not an  
22 outright ban on certain types of  
23 contributions, there is an element,  
24 certainly, of self enforcement that would  
25 occur.

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I have had lobbyists, in that arena, including the land use arena, comment that they would be delighted if they no longer were able to answer those invitations.

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And so if there were known a public prescription of on certain kinds of campaign contributions, it's not clear to me that people are so desperate to bring out their checkbooks that they would still be there.

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The second observation that I would make, which is related, and particularly, I think true, with the land use arena is that there is such a level of public attention -- that you mentioned, Ms. Patterson, the Community Board and the Borough President, and the involvement at the earlier stages -- it's widely known who the real parties of interest in most of these disputes are.

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And if there were a disclosure rule that identified that a certain type of individual was either prohibited from making a donation or prohibited from

1  
2 matching funds, again, there's an element  
3 of community based enforcement and press  
4 based awareness that would be inevitable  
5 and would not make the determining of who  
6 those folks were terribly difficult.

7           It is a process that is subject to a  
8 great deal of sunshine. This would add a  
9 layer of sunshine, and the fact that you  
10 had a violation that would occur by virtue  
11 of someone writing a check, or someone  
12 failing to check a box on a campaign  
13 disclosure form, probably would get  
14 attention in most cases.

15           MS. PATTERSON: I think -- the one  
16 thing -- it takes a while for the light  
17 bulb to go on some time, but early in your  
18 presentation, you talked about how land use  
19 issues are not doing business, because  
20 there is literally no outflow of cash from  
21 the City to a provider of goods of services  
22 as there is in the case of concessions,  
23 franchises and contracts.

24           The current -- the 1998 revision of  
25 the Charter says, "Doing business". Is it

1  
2 your official position that we would not  
3 have authority to promulgate regulations  
4 that would put restrictions -- based purely  
5 on that 1998 Charter provision -- without  
6 additional legislation, we would not have  
7 authority to impose restrictions on  
8 contributors who might have applications  
9 pending on land use issues?

10 MR. KARNOVSKY: I have no opinion  
11 about jurisdiction --

12 MS. PATTERSON: That's the  
13 implication --

14 MR. KARNOVSKY: No, what I was  
15 trying to do is distinguish between doing  
16 business in the form of contracts and  
17 franchises or concessions, where there's  
18 either money flowing out of the City or  
19 money coming into the City and land use  
20 determinations.

21 Those parties, who are applicants  
22 before the Department and the Planning  
23 Commission, are doing business within the  
24 meaning of Chapter 68, if that's relevant  
25 to you.



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MS. PATTERSON: I just wanted to  
make certain.

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MR. KARNOVSKY: So it's a different  
form of doing business. It's analogous to  
various kinds of regulatory licenses and  
permits. It is simply distinctive from  
contracts; that's the only point I was  
trying to make.

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MR. SCHWARTZ: Okay, thank you all  
very much. And I do think the Campaign  
Financing Board staff is likely to be in  
touch with you guys to explore various  
ideas. Thank you.

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So Fran Reiter, is your colleague  
just going to watch?

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MS. REITER: Absolutely. He's been  
here before. I really came because it's  
nice to see some of my former colleagues.

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First of all, thank you. When we  
received a notice of another hearing in the  
office, my partner, Marty Begun, as he is  
want to do, dropped it on my desk, and  
having already been here, I looked it and  
read it and said, "You know what, maybe I

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2 have something to say about this".

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I called Nicole and said, "If you're interested, I'm happy to come in and share some thoughts with you." I have not done a long prepared statement. I think there's probably more to be gained by questions and answers, but let me say this:

I think I sit before you with a unique perspective on these issues, simply from having served in a wide array of capacities that touch on or are related to the issues you're dealing with.

I've been a political party activist for over twenty years; served as a campaign manager of a major Mayoral campaign; served in government for three and a half years, as Deputy Mayor for Planning and Community relations and Deputy Mayor for Planning and Economic Development where I probably entertained more lobbyists than any other member of the Mayor's administration, simply by virtue of the areas that I oversaw.

So, I've dealt with lobbyists; dealt

1  
2 with the politics of this. I have headed  
3 two not-for-profit organizations, both of  
4 which were sizably funded by government,  
5 and today I work as a government relations  
6 consultant, albeit, doing minimal lobbying  
7 but do occasionally step into that arena.

8 So I've given a lot of thought to  
9 these issues. I want to begin by saying that  
10 I'm a major supporter of the New York City  
11 Campaign Finance Board, and while certainly  
12 in my capacity as a Campaign Manager, have  
13 sometimes taken issue with the decisions of  
14 this Board, that notwithstanding, I think  
15 that the New York City Campaign Finance  
16 Program has been a major, major step  
17 forward for better government and better  
18 politics in this City.

19 And please don't construe anything I  
20 say here today as in any way critical of  
21 the CFB and the role that it has played and  
22 continues playing.

23 I should mention as well, I've also  
24 been a candidate twice. I ran for Congress  
25 in 1990, under the Federal system, and I

1  
2 also explored a run for Mayor, a few years  
3 ago, under the CFB.

4 So I was out there, in the trenches,  
5 raising money, before admitting to myself  
6 how much I absolutely hated raising money  
7 and decided not to pursue that election.

8 So given that background, and given  
9 what you are charged with, in considering  
10 the issue of pay to play and influence  
11 peddling and any other way you want to  
12 phrase that, here are just some thoughts  
13 that maybe we can talk about.

14 I think that disclosure, that  
15 shining a spotlight on those who do  
16 business with the City is admirable and is  
17 something that should be pursued, and I  
18 think, to the extent that technology exists  
19 today to make that easier, then I think  
20 that's great.

21 I think knowing who is doing  
22 business with the City, whether it's in  
23 relation to any contributions they may be  
24 making or some of the issues you just  
25 raised regarding land use, whether or not

1  
2 they are good providers of service, good  
3 builders of buildings, all of them, I think  
4 is positive.

5 I think, however, that if we're  
6 going to talk about influence peddling,  
7 frankly, the limits that are currently  
8 placed on campaign contributions, which I  
9 am wholly supportive of -- and I would echo  
10 Marla's statement that I don't think  
11 there's a lobbyist in the City who would  
12 not welcome a restriction on being able to  
13 write checks -- having said all of that, I  
14 would suggest to you that given the limits  
15 of campaign donations generally, just in  
16 terms of sheer dollar signs that, there are  
17 far greater influences being peddled in  
18 this City than money, and that beyond  
19 disclosure, to seek other ways of  
20 controlling contributions per se, is  
21 meaningless.

22 I realize that that's a fairly  
23 extreme statement, but frankly I believe  
24 it. We have, today, in the City after 30  
25 years, an extraordinarily transparent group

1  
2 of processes, whether it's around  
3 contracting, the RFP process, VENDEX; all  
4 kinds of disclosures.

5 We have enormous safeguards  
6 surrounding that we have placed on our  
7 process, and I think that that has made all  
8 of these areas that you're investigating  
9 transparent to the point where the truth is  
10 when is the last contracting scandal we've  
11 had in the City?

12 I mean, to a certain extent, I'm  
13 sitting here saying, what is the impetus  
14 for this. The Mayor, really. Clearly, the  
15 truth is, we have a very transparent  
16 system, and we have a system where  
17 community involvement, advocacy  
18 involvement, community involvement and  
19 special interest involvement all sort of  
20 have opportunities to weigh in on these  
21 issues, whether it's land use; whether it's  
22 concessions; whether it's contract.

23 I would suggest to you that the  
24 influence that the advocacy community  
25 places on elected officials is far greater

1  
2 than campaign contributions. I would even  
3 go so far to say -- and some may found this  
4 outrageous -- that the dollars  
5 given/contributed by business interests in  
6 this City are about the only way many of  
7 them can offset or seek to balance the  
8 influence of advocacy organizations.

9 And by the way, I spend a good part  
10 of my life these days, as a private  
11 citizen, being an advocate. I sit on the  
12 boards of a number of not-for-profits, at  
13 least one of which is almost exclusively an  
14 advocacy organization, so I've had that  
15 experience, as well.

16 I know the role we play as an  
17 advocate. I respected it when I was in  
18 government, on the other side, very often.

19 The point I'm making is that we  
20 have, what I believe, is a balanced system,  
21 and that seeking to regulate to an even  
22 greater extent campaign finance as a way of  
23 addressing a problem that I generally don't  
24 think exists, I think ultimately may hurt  
25 the campaign finance system.

1  
2           I think at a certain point, if you  
3           make this system too cumbersome -- and it  
4           is cumbersome, make no bones about it.  
5           This is a cumbersome system. It costs  
6           campaigns a lot of money to comply with  
7           campaign finance regulations, and while  
8           that may not go towards their spending cap,  
9           it's still money -- there limits on  
10          spending, it still goes -- it still has to  
11          be raised.

12                 So I'm concerned to the extent that  
13          you're seeking to address a problem, one, I  
14          don't really think exists; two, to the  
15          extent it does, I don't think it's --  
16          there's anything that you can do that is  
17          going to change that.

18                 To a point that Rabbi Potasnik made,  
19          the truth is, if you really want to  
20          influence peddle, via money, there's  
21          nothing you or anybody else can do to avoid  
22          that.

23                 At a certain level, somebody who is  
24          unethical or a criminal, is going to find a  
25          way to do that. The question is, whether



1  
2 or not, as a matter of public policy and  
3 regulation, conceivably of law, whether or  
4 not there are remedies that we should --  
5 that we should seek and I would suggest  
6 that to meet a remedy, you have to first  
7 have an illness, and I'm not sure there's  
8 an illness here.

9 MR. SCHWARTZ: Were you in the  
10 administration, when the 1998 Charter  
11 issued its (inaudible) that we should come  
12 up with regulations on this subject?

13 MS. REITER: No, and I -- all I'm  
14 saying is I believe that the regulations  
15 you've arrived at, including the 1998 -- I  
16 mean, my understanding of the 1998 revision  
17 is that you've been charged with  
18 investigating this, and looking to see if  
19 there are ways to address the issue of  
20 influence peddling and pay to play, and I  
21 understand that.

22 All I'm suggesting is that having  
23 gone through this investigation and having  
24 heard from a wide array of individuals on  
25 this topic, I would suggest that having

1  
2 done that, you can legitimately come back  
3 and say that from the Campaign Finance  
4 Board standpoint, not necessarily  
5 legislatively, not necessarily in terms of  
6 what the City Council may choose to do, but  
7 that from the CFB's perspective, what you  
8 have done thus far is sufficient to assure  
9 the integrity of our system.

10 Believe me, as somebody in  
11 government who met with lobbyists, there is  
12 not a lobbyist in the world who exerted as  
13 much influence on a decision; there is not  
14 a campaign contributor who exerted as much  
15 influence on a decision that we might be  
16 making on public policy, as the advocates  
17 opposed to whatever they wanted; that the  
18 political ramifications of advocacy in this  
19 City are huge, they are absolutely huge.

20 If you want to talk about influence  
21 peddling that I think we need to deal with,  
22 you're not even touching the subject, which  
23 is the role of public employee unions on  
24 public policy making in this City.

25 I mean, imagine if you are a

1  
2 stockholder in a public company and your  
3 Board of Directors is charged with making  
4 decisions that are in the best interest of  
5 the stockholders; that's how I think of a  
6 Mayor.

7 A Mayor is elected by the people of  
8 the city and is charged with ultimately  
9 doing what he or she believes is in the  
10 best interest of the city.

11 Well, if the CEO of General Motors  
12 was found to be in cahoots with the head of  
13 UAW, the stockholders would go nuts and yet  
14 here's what happens in New York City.

15 We have public employee unions who  
16 are allowed to contribute in all manner of  
17 ways, from money to services, campaign  
18 services, to campaigns for offices that  
19 ultimately are charged with negotiating  
20 their contracts.

21 This to me is the most blatant  
22 conflict of interest in the City. I'm a  
23 union member. I've been a member of two  
24 unions. I'm a union member today. I'm not  
25 anti-union. I think that in the world of

1  
2 pay-to-play, though, as it pertains to  
3 those unions that are directly impacted by  
4 the decisions made by elected officials,  
5 that that's something that you should be  
6 looking at; that is something that affects  
7 every single New Yorker, in very material  
8 ways.

9           But in terms of business interests,  
10 people who do business with the City, the  
11 contributions you're talking about, that  
12 under your very fine system are  
13 considerably limited are a minor issue,  
14 compared to the very public processes we  
15 now have in this City, thank goodness, and  
16 the difficulty, frankly, that public --  
17 those public processes result in, in terms  
18 of actually getting something done.

19           You know, it becomes something of  
20 a -- having gone back to school, since  
21 leaving public life, I've become somewhat  
22 more a history -- a student of American  
23 history. I have -- I'm not a lawyer. Most  
24 people think I have, having worked in the  
25 Giuliani administration, but I was the

1  
2 exception to the rule -- but I've had  
3 reason to study many of the Federalist  
4 Papers and have become most intrigued by  
5 Federalist 10, where Madison discusses our  
6 form of the a large republic being the  
7 greatest defense against factionalism.

8           We are, at our core, as a country, a  
9 country where we've built into the system  
10 mechanisms for making change hard. Change  
11 shouldn't come easy. I think that's a good  
12 thing. I think James Madison would be  
13 shocked to see the extent with which we've  
14 made change difficult in the City of New  
15 York.

16           What the Federalist papers envision,  
17 and what our basic system of government is,  
18 pales in comparison to the difficulties  
19 involved in making policy decisions. We  
20 have so many checks and balances in the  
21 City -- I can think of a major elected  
22 official in this state, who specifically,  
23 funneled money to a major, not-for-profit  
24 advocacy organization, simply so that the  
25 organization wouldn't protest this elected

1  
2 official.

3           This was an organization that was --  
4 when I tell you over the top in terms of  
5 protesting, protest liberals, Democrats,  
6 Republicans, it didn't matter who, if you  
7 were an elected official, you got slammed.

8           One of them just said, "I don't want  
9 any of this". I'm not going to say who it  
10 is. All I'm saying is influence comes  
11 in all shapes, sizes, forms.

12           The question is are our systems  
13 transparent? Are they very public? Is  
14 there lots of opportunity for opposition to  
15 public policy, to the media, to investigate  
16 and shine an even greater spotlight on the  
17 kinds of issues you're seeking to deal  
18 with?

19           I would suggest, yes, and that, if  
20 you make this system, that you're  
21 specifically charged with investigating,  
22 the campaign finance system, more  
23 cumbersome than it already is; more  
24 difficult than it already is to comply  
25 with, that you will cut off your nose to

1  
2 spite your face.

3 That we'll see more and more  
4 candidates not opting into the system,  
5 which would be a tragedy, and frankly,  
6 you'll see more and more businesses throw  
7 up their hands and say, 'I don't want to do  
8 business with the City of New York  
9 anymore'.

10 We contract out an enormous number  
11 of services, which I personally think is a  
12 good thing. I believe in privatization,  
13 but for privatization to work, you want the  
14 greatest competition in the market place  
15 responding to City business; that's good  
16 government.

17 To the extent we get fewer private  
18 industries that want to do business with  
19 the City of New York, I think that's a bad  
20 thing all around and bad for competition  
21 and bad for the City of New York.

22 So I worry that we don't over  
23 regulate. I worry that we'll kill the very  
24 good thing that we've done in this City  
25 over the last thirty years, one of the best

1  
2 being the campaign finance system, that  
3 we'll do great damage to it if we seek to  
4 over regulate in areas where personally, I  
5 think new regulation is simply  
6 unnecessary.

7 MR. SCHWARTZ: Joe, do you have any  
8 questions?

9 MR. POTASNIK: Well, I just wondered  
10 how you would take on some of those  
11 advocacy groups. You know, the City  
12 Council is not going to legislate against  
13 those unions, it's not going to happen.

14 MS. REITER: I'm not here, Rabbi,  
15 suggesting that I have an answer to all of  
16 this. I think that the only way -- the  
17 only time the City Council will ever  
18 respond -- not to take on the City Council,  
19 per se, but the political establishment,  
20 generally, the elected officials  
21 generally -- is if there's such a public  
22 outcry that the political ramifications of  
23 non-support outweigh the political  
24 positives of having that union's support.

25 I'm not a lawyer. I don't know



1  
2 whether there is any legal mechanism for  
3 supporting such a ban, but I think it's an  
4 absolutely terrible, terrible thing, and,  
5 um, -- but I agree with you, I think it  
6 would be an enormously difficult thing to  
7 accomplish.

8 MR. SCHWARTZ: Do you have a  
9 question?

10 MS. PATTERSON: Well, I mean, I just  
11 had an observation. I mean, you've been  
12 involved in not-for-profits; you've been  
13 involved in for-profits and you've been on  
14 the other side, which means you have  
15 undoubtedly heard complaints from entities  
16 that do business with the City about the  
17 VENDEX system.

18 The only thing that seems infinitely  
19 more cumbersome than complying with  
20 campaign finance rules is providing all the  
21 data required by VENDEX, and yet there  
22 doesn't seem to be any -- there seems to be  
23 negligible deterrent effect to institutions  
24 that do business with the City in terms of  
25 complying with VENDEX.

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If they already got an infrastructure in place for filing a bunch of forms, how much worse can it be for there restrictions on campaigns; that's a very small portion of compliance for a business --

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MS. REITER: Yeah, I'm more concerned -- I'm more concerned with the CFB, with the ultimate impact on candidates and whether or not they end up opting into campaign finance.

13

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MS. PATTERSON: And then I'll ask you one more question which is popping through my head --

16

17

MS. REITER: I mean, can I ask a question?

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21

What is it that you believe a real estate developers gets, when he -- I was going to say he or she, but the truth is I don't know any real estate developers --

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23

24

25

MS. PATTERSON: I do --

MS. REITER: Maybe one. Maybe one.

MS. PATTERSON: She's been very successful.

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2

MS. REITER: It is one of the last  
bastions of male dominance in --

3

4

I mean, what is it that you think  
they're buying?

5

6

What is it that we're trying to  
regulate or legislate?

7

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MR. SCHWARTZ: You can turn that  
question around and ask how come we get  
extra contributions from real estate people  
when their matters are pending before the  
City, which we clearly do.

10

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12

13

Obviously, they're getting -- they  
hope they're getting influence.

14

15

I mean, are they?

16

I think that's a different question.

17

18

MS. REITER: Well, but I think that  
is the question. I think, actually, since  
land use issues are obviously part of what  
you're looking at, as you've heard, from  
the earlier testimony, I think that the  
notion of one influences the City  
Planning -- that these contributions  
influence the City Planning Commission  
are -- it's just not real; that the

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1  
2 professional -- that the professional  
3 nature of the Department of City Planning,  
4 the process itself, the scrutiny that it  
5 comes under by --

6 Remember, land use issues are  
7 perhaps the most contentious issues in this  
8 City. I mean -- not perhaps, they are.  
9 And politicians, elected officials are  
10 very, very wary of carry anybody's water.

11 A campaign contribution is nothing  
12 compared to what community activist and  
13 others, the havoc they will wreak on an  
14 elected official.

15 I just don't buy it. Frankly, I  
16 mean really, what I think they're buying,  
17 is, 'Don't hate me quite as much as you  
18 already do'.

19 My experience with the real estate  
20 community is they know that they are widely  
21 viewed by the public as being bad guys and  
22 if they're giving a contribution to an  
23 elected official it's simply so that  
24 they'll be viewed a little less poorly than  
25 they otherwise might.

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But that in terms of actually getting something for it, Mr. Chairman, I don't buy it.

3

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MS. PATTERSON: But isn't there something to not being hated quite so much?

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Let's say you have a developer, regardless of gender, who is seeking to change -- how can I put this politely -- let's see, seeking to change an area of warehouse use to giant box store use --

MS. REITER: Right. A subject I'm an expert on, and failed at.

MS. PATTERSON: (Continuing) -- and there is a Borough President, who is an elected official, who can weigh in positively, negatively or silently on that issue; there are City Council members who can do the same, because they know that even though it rarely comes to this, even a positive decision by the City Planning Commission can be overturned by Council, and even though, that is something, that as I understand it, almost never happens, the stake is there.

1

2 MS. REITER: A box retail is a  
3 perfect example.

4 MS. PATTERSON: And of course, one  
5 of the issues with the Campaign Finance  
6 Board is that a qualifying contribution is  
7 turbo charged by -- for the benefit of a  
8 candidate that is within the program,  
9 because that qualifying contribution gets a  
10 multiple of taxpayer money.

11 So given all of that, given, as  
12 Rabbi Postanik has said, the wealth can be  
13 spread in a whole variety of weighs --

14 MS. REITER: And bribes can be --  
15 there's all kinds of --

16 MS. PATTERSON: Let's assume it's  
17 all legitimate. We're not talking about  
18 bribes here.

19 The wealth can be spread in a  
20 variety of ways, which can then be  
21 turbo charged by the virtues of the  
22 multiples in the financial system, there  
23 may be some virtues to being -- for a  
24 developer who wants to do a retail box  
25 store to not being disliked so much by the

1  
2 Borough President; not being disliked so  
3 much by City Council representatives who  
4 are in the district or near the district or  
5 the district that might be affected.

6 MS. REITER: All I can tell you is  
7 that Wal-Mart doesn't have enough money --  
8 I'm serious, I mean this very seriously --  
9 I'm not going to suggest to you that being  
10 a little less hated isn't an advantage.

11 Mostly, all it does is get you a  
12 meeting that you otherwise might not have  
13 had, but I simply do not believe that  
14 there's enough money in the world; there  
15 are not enough cousins in the world --

16 MS. PATTERSON: That are residents  
17 in New York City?

18 MS. REITER: (Continuing) -- that  
19 are residents in New York City, to  
20 contribute to a multitude of campaigns,  
21 that comes close to offsetting the  
22 opposition the opposition to these major  
23 land use issues.

24 Look, you know, do you kill a fly  
25 with a fly swatter, or do you kill a fly

1  
2 with a sledge hammer?

3 And I would suggest that you're  
4 attempting to kill a fly with a sledge  
5 hammer.

6 Sure, you can pass some more  
7 legislation, I mean, assuming the law  
8 allows you to. The point is, is that  
9 really the way to do this?

10 Is that the most effective way?

11 Is it the most effective use of  
12 people's time?

13 Is it -- has to become more  
14 burdensome to that -- a lot of these issues  
15 are ideological, philosophical. I mean at  
16 certain point, lots of people, including  
17 business people, make contributions not  
18 because they want something specific; they  
19 make contributions to candidates because  
20 they believe that candidate philosophically  
21 is going to be more to their way of  
22 thinking, and development issues are a  
23 perfect example.

24 There are elected officials who are  
25 very anti-development; they're happy to say



1  
2 they are. They want more open space. More  
3 public space, more parks, that's fine.

4           And then there are people who  
5 believe that the City, to do all the things  
6 that it wants to do, needs to enhance  
7 economic development activities; needs to  
8 do more kinds of development; needs to do  
9 X, Y and Z, and the business community may  
10 very well look upon that person as saying,  
11 ` I may never do business with the City,  
12 but whether I do or not, this is the person  
13 I want to elect, because I think that that  
14 person philosophically is going to be  
15 someone who is going to create an  
16 environment in the City, where the things I  
17 want to do, that are important, and  
18 important for my business, by the way, are  
19 more in line with my thinking; and that is,  
20 by the way, why we vote for people.' The  
21 business community is no different.

22           So that once you start -- once you  
23 start going down this road, I don't know  
24 where it ends. I don't know how you  
25 regulate contributions for people who do

1  
2 business with the City -- we have a  
3 contracting process that is incredibly  
4 transparent. If somebody wins a contract  
5 in this City, and a competitor can make  
6 even the slightest case that that contract  
7 was not awarded on merit, they're going to  
8 march into Court with an Article 78  
9 proceeding, and this thing is going to see  
10 the light of day immediately.

11 So I don't know what it is that  
12 we're really trying to accomplish here,  
13 other than sort of feel good measures.

14 Let's be more transparent. Let's  
15 make it easier for the press and the public  
16 to know who is doing business with the  
17 City, and who in turn is making  
18 contributions, I think that's great, but I  
19 don't understand why that's not enough.

20 MR. POTASNIK: Fran, would we -- if  
21 we look at lobbyists and developers in the  
22 City, would we find all of them making  
23 significant contributions to candidates, or  
24 are -- is there a group that gives very  
25 little, and yet still has a lot of access

1  
2 and still has --

3 MS. REITER: I have to tell you, I  
4 saw every land use lobbyist known to human  
5 kind when I was a Deputy Mayor. I did not  
6 know most of them before I came into  
7 government. I didn't know them  
8 politically. I didn't know them at all.

9 There were one of two of them who I  
10 had met at Giuliani fund raisers. I didn't  
11 know how much money they were given. I  
12 didn't know how much money they collected.  
13 I never asked anybody.

14 If you wanted a meeting with me,  
15 you got a meeting with me. And I tell you  
16 something, I approve of lobbyists. I think  
17 that they serve an enormously important  
18 function in government. Government is  
19 unbelievably difficult to navigate. Our  
20 rules, our regulations, knowing where to  
21 go, knowing who to talk to -- this is  
22 a --

23 A good lobbyist performs two vital  
24 functions, one, knowing in fact how the  
25 system works, so that you actually can

1  
2 figure out who to go to see to get your  
3 voice heard. Two, a good lobbyist knows  
4 how government works and explains to the  
5 client, here is what possible and here is  
6 what is not possible.

7 A bad lobbyist doesn't do that. If  
8 someone comes in wanting to do business  
9 with the City and asks for something so  
10 totally off the wall, that if even if you  
11 wanted to do it, you couldn't do it.

12 Lobbyists are very important to the  
13 process, and elected officials would love  
14 to stand up, and all of a sudden there's  
15 some mini scandal about lobbyist, and they  
16 stand up and say 'Nobody wants' -- if this  
17 sounds familiar -- 'Nobody who comes up to  
18 my administration needs a lobbyist to be  
19 heard'. Non-sense. There are twenty-four  
20 hours in a day, and those who most who  
21 people doing business with the City wants  
22 to see or needs to see, gets 5,000 requests  
23 a day to be seen. You can't see everybody.

24 Does having a lobbyist make a  
25 difference? Absolutely, you know why?

1  
2           Because it says to the government  
3           official -- and by the way, we're not  
4           talking elected officials here. I wasn't  
5           elected to anything; I was an appointed  
6           official -- it says that, this is serious  
7           enough that somebody made the investment to  
8           hire somebody to figure out how to do this.

9                        So does it perhaps make it easier  
10           for them to make a meeting?

11                       Yeah, but not because of a campaign  
12           contribution. Simply because somebody who  
13           knows how the system works, has called your  
14           office and said, 'Look, this is a project  
15           we'd like to tell you about; we think  
16           you'll be interested, we think the Mayor  
17           will think this is in keeping with his  
18           agenda, blah, blah, blah' and you say,  
19           ' Fine, come in and tell me about it', but  
20           they're very valuable.

21                       Some of them raise a lot more money  
22           than others, yes. If there's some area  
23           that I would suggest you look at, I think  
24           lobbyists who professionally act as  
25           fund raisers as well are a problem.

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I think that that is a conflict of interest that I am uncomfortable with.

3

4

When I say "act as fund raisers", I'm not

5

talking about somebody who goes and gets

6

their client to put up \$250 for -- to a

7

candidate.

8

I'm talking about someone who's in

9

the business of political fund raising

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who's also in the business of lobbying. I

11

think there you have a clear conflict of

12

interest, and if there is one part of this

13

that I would suggest is worth taking a very

14

close look at, that's it.

15

But generally speaking, you know,

16

lobbyists are under enormous pressure from

17

the very people who say they're all for

18

ethical government elected officials.

19

Come on. You know, people running

20

for office need to raise money, campaigns

21

are expensive; they're under enormous

22

pressure to do so, and they in turn exert

23

pressure on people who have money.

24

The public does not participate to

25

nearly as great an extent -- in an ideal

1  
2 world, you wouldn't have to do any of this.  
3 Every one in the public would say, 'Gee,  
4 it's my civic responsibility to give \$5,  
5 \$10, \$250, to support political candidates  
6 because that's part of good citizenship.'

7 Well, I don't know what I'm smoking,  
8 but that never happens, and the truth of  
9 the matter is it's hard to raise money. I  
10 hated raising money.

11 I raised almost \$350,000 -- about  
12 \$370,000, in about a six month period, in  
13 an exploratory committee to run for Mayor  
14 of this City, under Campaign Finance.

15 I had hundreds of donors. I had a  
16 lot of small donors. I had 250 matchable  
17 donors. I was -- I was very close to  
18 making the threshold for matching funds,  
19 when I dropped dead.

20 I hated every single minute of it.  
21 I felt like a whore and I said, 'I'd like  
22 to be Mayor of City of New York, but this  
23 isn't worth it', and I stopped.

24 You know, God bless, good elected  
25 officials who are prepared to put

1  
2 themselves through it and do it; I wouldn't  
3 wish it on my worst enemy. I understand  
4 the pressures that they're under,  
5 particularly once you -- City Council races  
6 are different; lower threshold; doesn't  
7 take as much money.

8           Once you're in a -- at a race where  
9 you need significant paid media, it becomes  
10 the most horrible process imaginable, and  
11 you've made it better. You've made it  
12 easier, but it's still incredibly  
13 difficult.

14           And frankly, if you now start  
15 restricting contributions from people who  
16 do business with the City, I have to tell  
17 you, I'd be -- if I were a candidate ever  
18 again -- and I will not be, not 'I don't  
19 intend to be'; I won't be -- I don't think  
20 I'd opt in, as supportive as I am.

21           It would become too onerous, if you  
22 take the business community out of mix.  
23 Candidates are going to have very, very  
24 serious problems raising money.

25           MS. GORDON: I just have a question



1  
2 that -- I wanted to ask you to make a  
3 distinction -- I think the Board is very  
4 concerned about the question of onerousness  
5 to the candidates.

6 Do you make a distinction that --  
7 are you saying that in general that you  
8 don't think there should be a regulation --  
9 any additional regulation on contribution  
10 for people doing business in the City, or  
11 if you took the responsibility of the  
12 candidate out of picture and only --

13 In other words, it did not become a  
14 question of whether the candidate had to  
15 gather information, do reporting, et  
16 cetera, but as a separate exercise, the  
17 person who sought to do business, as we  
18 were describing before, somebody who let's  
19 say, who's applying for it's own variance,  
20 at some other stage, in some other forum,  
21 said, 'You know, I want to get this kind of  
22 business for the City'.

23 I check off the box, 'I have not' or  
24 'have given a contribution', and at the  
25 doing business side you're excluded or

1  
2 included, but not on the candidate giving a  
3 contribution side; that the consequence of  
4 making the contribution is either you have  
5 to retrieve it somehow, or you really  
6 cannot pursue this avenue that you were  
7 possibly interested in.

8           The way the FCC says, `If you want  
9 to do municipal stuff, your employee can't  
10 give contributions in excess of X amounts  
11 and have to live in the jurisdiction, but  
12 other than that, no contributions.,

13           And it's virtually self policing,  
14 because no one wants to risk something  
15 that's really much bigger than their  
16 contributions that they might make locally.

17           If that were the approach, would you  
18 similarly just -- are you -- is your  
19 position that you think doing business  
20 contributions, either do or don't have that  
21 much influence; they don't require special  
22 treatment beyond disclosure or --

23           MS. REITER: That's exactly how I  
24 feel about it. That's exactly how I feel  
25 about it, and I think you can increase

1  
2 disclosure and I think the things that  
3 you're pursuing that I've -- before coming  
4 here, I went on to your web site last  
5 night, to take a look at some of the  
6 earlier testimony from here, particularly  
7 that of DOITT -- I mean, I think clearly  
8 technology is going to allow for better  
9 disclosure and I think that that's great.

10 I think that if -- if on a campaign  
11 distribution form, there's a check off box  
12 that says, you know, 'Have you ever done  
13 business -- ever done business with the  
14 City' or 'Are you doing business with the  
15 City,' or whatever, and you want to require  
16 people to check it off, so that that goes  
17 into -- that raises a flag and at least it  
18 can be looked at, fine.

19 I have no issue at all with  
20 disclosure. I think, in fact, it's this  
21 whole issue of transparency in government  
22 process, which is why, I think, we don't  
23 have to go much further.

24 You know, I'm really concerned  
25 with -- number one, I don't think the money

1  
2 we're talking about actually plays the kind  
3 of influential role lots of people think it  
4 does. And number two, I really am  
5 concerned that if we keep whittling away,  
6 and whittling away at the kind of money  
7 that can be contributed --

8 I mean, you've dealt with corporate  
9 contributions. I don't really know what  
10 that accomplished, but meanwhile LLPs and  
11 LLCs can still make contributions.

12 I mean it's a little hard to fathom  
13 what it is that we're really trying, really  
14 substantively trying to accomplish.

15 I think we all want an ethical  
16 system. We all want a transparent system,  
17 but when we start putting restrictions  
18 on -- real restriction on who can  
19 contribute -- we've already restricted how  
20 much we can contribute -- when we start  
21 putting restrictions based on who is doing  
22 business with the City and who may do  
23 business with the City, I think you're now  
24 crossing into the line where you're making  
25 raising money that much more difficult.

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If you take out business

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contributions, you're going to be hurting

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campaigns; there's no question, and I

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really think that there will come a point

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when New York Times editorials

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notwithstanding, people are going to start

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opting out.

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MR. SCHWARTZ: Okay, so, thank you

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for your testimony.

11

MS. REITER: Thank you.

12

MR. SCHWARTZ: We're going to take a

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one minute recess, and then Suzanne Novak

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is next, and then Doug Israel, and then I

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think there's some other person who wants

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to speak. So the next witness can come up

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and get comfortable up there.

18

(Whereupon, at this point in the

19

proceedings there was a recess and the

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matter continued as follows:)

21

MS. NOVAK: Thank you, Mr. Chairman

22

and members of the Board. You took away my

23

opening line. I've not discussed this

24

testimony with Chairman Schwartz.

25

My name is Suzanne Novak. I'm the

1  
2 Deputy Director in the democracy program,  
3 at the Brennan Center for Justice.

4 The Brennan Center seeks to achieve  
5 a mission of an inclusive and effective  
6 democracy. We have been working in the  
7 area of campaign financing reform since the  
8 center's inception in 1995 on the local,  
9 State and Federal levels, both in research,  
10 public advocacy, public outreach and  
11 education and legal advocacy.

12 I did not prepare written testimony  
13 today because when I started to, I realized  
14 and remembered that my former colleague,  
15 Adam Morris, testified before this Board in  
16 January of 2005, and so I have put copies  
17 of his testimony out there and I have extra  
18 copies and am here today to summarize that  
19 testimony; talk about a few additional  
20 things that the Brennan Center has done  
21 since then that might relate to your  
22 considerations; talk about a few questions  
23 raised and the letter inviting us here to  
24 testify and to answer any questions that  
25 you may have.

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The Brennan Center has -- we commended you all for considering pay to play regulations and considering putting -- regulating contributions, in addition to disclosure.

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The Courts have generally upheld such narrow bans on contributions. There's no case law binding in New York and there has been various case law around the Country, but nothing on the Supreme Court level.

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But, you know -- it's a question of what a Court would consider a narrow ban. So there -- it's also important that if you are to either enact yourselves or encourage the City to enact some sort of regulation of contributions to also consider anti-circumvention measures.

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But as you understand, the more anti-circumvention measures you put into place, the broader then the ban becomes and then the closer it might be to its constitutionality being questioned.

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Since the testimony that was

1  
2 provided last year, I, and my colleagues,  
3 at the Brennan Center have been active in  
4 advising Connecticut when they were  
5 determining whether to enact pay to play  
6 regulations and they subsequently did, and  
7 so we provided written and oral testimony  
8 for them.

9 One thing that we encouraged them to  
10 do, which I don't think the Brennan  
11 Center -- and Adam discussed last year here  
12 was to consider enacting low limits, rather  
13 than complete bans.

14 They ended up not following this  
15 advice --

16 MR. SCHWARTZ: You did that for sort  
17 of defensive, constitutional defensive  
18 reasons?

19 MS. NOVAK: Yes, for constitutional  
20 reasons, which is that -- and although bans  
21 have been upheld, like I said bans have  
22 certainly been upheld, you -- a law  
23 dramatically increases the likelihood of  
24 being upheld as constitutional if there are  
25 low limits and that is because there is



1  
2           some room -- you get to associate with the  
3           candidate -- but you also decrease the  
4           threat of corruption or appearance  
5           dramatically if you have low limits.

6                     And if you have bans, you really,  
7           you are cutting off the ability to  
8           associate in that way with the candidate.  
9           Of course you're able to engage in other  
10          activities. But the Supreme Court has  
11          upheld very low limits generally, and so  
12          there's no reason to believe that they  
13          wouldn't uphold low limits, particularly  
14          for those doing business with the City.

15                    And the limits for the City as they  
16          stand are not particularly low, so there is  
17          certainly room that you can lower them.

18                    Another thing that we encouraged the  
19          Connecticut legislature to do, which they  
20          didn't follow either, is to include some  
21          sort of legislative findings, if you are to  
22          enact it or encourage it, and you map out  
23          why you are doing this.

24                    Particularly in Connecticut, there  
25          were many scandals that would have been

1  
2 easy to map out, but courts have been --  
3 have great deference to legislative  
4 findings, and all that, and it certainly  
5 could have increased the likelihood of a  
6 law being upheld to talk about what has  
7 happened in the past or perception of the  
8 past, or what you foresee, what loop holes  
9 would be, and this is why you enacted in  
10 the way that you did. So we would  
11 encourage that.

12 You should also be aware that  
13 because this has not got on to the Supreme  
14 Court and there's only been one Circuit  
15 ruling on it, the Court's have applied all  
16 different levels of scrutiny to bans and  
17 limits, so it is unclear what level a Court  
18 would apply to this.

19 And then, you have asked in your  
20 letter about whether activity of  
21 businesses, affiliated businesses should be  
22 aggregated. And, again, this could be  
23 anti-circumvention matters and it matters  
24 how -- you know, it should be carefully  
25 drawn; that you don't want to allow it such

1  
2 that a certain business would be able to do  
3 it, but it has affiliates and they all  
4 would be able to do that. Then again, you  
5 don't want to get too far away from really  
6 what you're trying to counter.

7 And then it sounds like there's been  
8 some discussion earlier today, which I  
9 didn't really hear, about the -- where the  
10 burden of compliance should be.

11 There are some jurisdictions, and  
12 you should consider the burden being at  
13 both ends; both on the candidate and the  
14 business, and if there is disclosure by  
15 those doing business, that's where the  
16 first burden applies, that it's either  
17 check off or they have to file something  
18 with the City when they begin negotiations,  
19 when they have the contract; that it would  
20 be easy enough for a candidate or an  
21 official to find that, and the burden  
22 should be on both ends.

23 And those were my --

24 MR. SCHWARTZ: In Connecticut, what  
25 was the form of their ban?

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In other words, was it on the candidate accepting or on the business giving.

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MS. NOVAK: It was on the business giving, and it is particular to the level of government before which their contracts are; which they had been considering a much broader bans.

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So, if you can get action from the legislative, then your ban is on giving contributions to the legislature, but if it's before the Executive branch, then the ban is there.

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You know, there's certainly something to consider, the different levels of who you're going to ban, again, for circumvention reasons, but again you get broader --

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MS. PATTERSON: And what's the consequence, if you do give -- you're the business and you give --

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MS. NOVAK: I don't know what the penalty is and I don't know if it's just particular to the provision, or if it's

1  
2 just what general penalties are for  
3 violating campaign finance --

4 MS. GORDON: But it's not -- it  
5 doesn't prevent them from doing the  
6 business?

7 MS. NOVAK: No --

8 MR. SCHWARTZ: Well, New Jersey  
9 does.

10 MS. NOVAK: New Jersey does. There  
11 have been some, 'You're prevented from  
12 doing', and 'You void the contract', and I  
13 would have to, I would certainly --

14 MS. GORDON: We can find that out  
15 easily.

16 MR. SCHWARTZ: Did Connecticut  
17 explore, as far as you know, defining doing  
18 business more broadly than "contracts"?

19 MS. NOVAK: They actually have  
20 definitions of "associated businesses", so  
21 it is not necessarily someone who has  
22 contracts.

23 MR. SCHWARTZ: Today we were talking  
24 substantively about land use decisions, do  
25 you know if Connecticut law bites on land

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2 use decisions?

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MS. NOVAK: I don't believe there's anything specifically about that, but I would have to look. I don't know all that much about land use, what the language is in Connecticut, if it covers that.

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And like I hear the testimony here today, there was a big point of contention in Connecticut about whether to enact those; especially since there were total bans and they were originally considering enacting it for all level of government, and they were afraid this is where they get a lot -- those candidates, who run privately, which is what the system was in Connecticut, get a lot of their money from, which then begs the question that maybe it's necessary, but it was enacted along with the full public planning (inaudible).

So I know that they see those two things in tandem; that they were able to enact this ban on such contributions, because many of them planned to participate in the public finance --

1

2 MS. GORDON: So the ban only applies  
3 -- I'm sorry, the ban or restrictions only  
4 apply to publicly financed --

5 MS. NOVAK: No, it applies to both.  
6 But I think the -- my understanding is  
7 amongst the legislature is they felt  
8 comfortable putting this ban in place,  
9 because they now mainly expect to run under  
10 the public financing system, and so they  
11 won't need these contributions as much.

12 Because --

13 MR. SCHWARTZ: Is there a public  
14 financing system, where you get a matching  
15 grant, as in New York City, or where you  
16 just get an out right --

17 MS. NOVAK: No, it's a full public  
18 finance system. You get an outright grant.  
19 And the severability clause in Connecticut,  
20 which is a main point of contention, ties  
21 them all together.

22 And that's why I've learned through  
23 these discussions, `Why are you tying these  
24 bans to if the public financing system gets  
25 struck down, and, you know, they're nervous

1  
2 about not being able to raise the necessary  
3 funds, if public financing is not  
4 available. This is the practicality and  
5 (inaudible). Good to learn.

6 MR. SCHWARTZ: Was it your  
7 experience that the legislation in  
8 Connecticut was due to the fact that there  
9 had been significant scandals in  
10 Connecticut in the year before it was  
11 passed --

12 MS. NOVAK: The scandals led to a  
13 lot -- a ton of public pressure, that I  
14 think led to the enactment of those  
15 restrictions.

16 But in addition, once Governor Rell  
17 got on board, and was supportive of them,  
18 she's Republican; Democratic legislature,  
19 it all came together. The bans -- she  
20 also insisted that you could only sign a  
21 law that it was total ban, not limits. I  
22 think that was one reason they had to go  
23 that far.

24 Every one was always insisting on  
25 that thus far, because that's where their



1  
2 scandals were. Their scandals were with  
3 contractors and not necessarily lobbyists,  
4 and they put bans on both.

5 MR. SCHWARTZ: Do you have any  
6 comments on the testimony of the witness  
7 before you?

8 MS. NOVAK: I learned a lot from  
9 that. I thought it was interesting. A  
10 couple of things. I mean, I think the  
11 discussion that was raised about let's say  
12 Wal-Mart and whether there's influence,  
13 even if the influences does not change the  
14 vote, it's still influences and it's  
15 influences that comes from money, and I  
16 think that problematic and I think the  
17 public sees that.

18 I mean there's a lot about whether  
19 there's actual corruption, and of course  
20 it's hard to prove, but it's the public  
21 perception -- which it's great that, you  
22 know, people are here testifying, letting  
23 you know about that, but that really needs  
24 to be watched out for.

25 I mean as we know, New York City has

1  
2 done an excellent job, and is a leader on  
3 campaign finance laws, but needs to be  
4 aware -- I mean, this is a movement and we  
5 see it a lot around the country -- that  
6 people are really wary of people who can  
7 buy influence who are close to government.

8           And, in addition, when, -- I commend  
9 her that she was not influenced; I'm not  
10 sure that that is the same way, and I'm not  
11 sure every government official is open to  
12 every lobbyists who wants to speak to them.

13           And when you look at  
14 contributions -- and I haven't looked  
15 closely at New York City, but If you have  
16 real estate developers, or whoever it is,  
17 giving contributions to both candidates or  
18 different parties, then they're not  
19 contributing because that candidate  
20 supports their beliefs or interests, it's  
21 because they see it as buying interest.

22           And on the flip side, which I think  
23 was the impetus for the FCC regulation, is  
24 they believe that they will be punished if  
25 they don't contribute.

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And so I am not sure that -- you're receiving all the testimony, but that these communities would be so against this type of restriction, because they feel that they need to be in this business of contributing to all candidates in order to make sure they are not punished.

MS. PATTERSON: Are there restrictions in Connecticut on union contributions?

I say "contributions", by use unions doing business --

MS. NOVAK: Yes, as long as they fall under the definition. There's nothing specific for unions, but if they're doing business --

MS. PATTERSON: But doing business is defined broadly enough that a State employee's union --

MS. NOVAK: You think that's not correct?

MS. GORDON: I thought that they were carved out. I want to check on that. I think I asked that question at some point

1  
2 of someone, and I thought unions got carved  
3 out.

4 MS. PATTERSON: That was one of the  
5 points made by the previous testimony, which  
6 is that there's already a disparity in the  
7 system which would be worse if there  
8 were bans on --

9 MR. SCHWARTZ: Maybe you can submit  
10 a letter to us on that particular --

11 MS. NOVAK: Yes. Right. I think  
12 I'll submit a letter and I'll just describe  
13 Connecticut in a little more detail.

14 MS. PATTERSON: Thank you. And New  
15 Jersey, as well.

16 MS. NOVAK: Yes. New Jersey has an  
17 Executive Order also New Jersey has various  
18 municipalities. I think there might be 17  
19 or something --

20 MS. GORDON: Crazy quilt.

21 MS. NOVAK: And they have a law that  
22 specifically allows, and I guess kind of  
23 encourages municipalities to enact their  
24 own regulations. But, yeah I can ascribe  
25 their Executive Order in New Jersey and

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also Connecticut.

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MR. SCHWARTZ: Any other questions?

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(No response.)

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MR. SCHWARTZ: Thank you. Thank you

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for your discretion in letting me know

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you were coming here.

8

Okay, Doug Israel?

9

MR. ISRAEL: Thanks. Good

10

afternoon, Chairman Schwartz and members of

11

the Campaign Finance Board, I'm Doug Israel

12

the Public Policy and Advocacy Director for

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Citizens Union. I'm not sure we're going

14

to add anything new today.

15

I came here to reiterate some of the

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points that we made in earlier discussions

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last year. There may be a couple of new

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wrinkles in here, and I'm going to try to

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keep it brief, as everyone is hungry for

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lunch.

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Citizens Union believes the steps

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taken to strengthen the rules governing

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lobbyists that's going on at the City

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Council right now, and their political

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contributions is good, and we also believe

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2 the continuing efforts to improve the  
3 vendor data base is a very positive course  
4 of action.

5 And we believe that these should be  
6 coupled with sound legislation that aims to  
7 further regulate pay to play activities.

8 And I guess inherent in this, is the  
9 belief that we think that legislation  
10 obviously would come from the City Council,  
11 and that the Campaign Finance Board should  
12 be cautious as it approaches any type of  
13 restrictions on the contributions.

14 MR. SCHWARTZ: And we should be  
15 cautious because it might adversely affect  
16 the candidates in the campaign system if  
17 it's done by our regulation?

18 MR. ISRAEL: Yes, adversely affect  
19 them but also adversely affect -- impact  
20 the system at the Campaign Finance Board  
21 program itself by creating a deterrent --

22 MR. SCHWARTZ: I mean I was -- I  
23 agree with your conclusion, I was just  
24 trying to make sure what your reasoning  
25 was.

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MR. ISRAEL: We think it's important that the legislation also be consistent with what is being deliberated now, as far as regulation of lobbyists contributions at the City Council.

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We think it would be unwise to set up some type of multi-tiered system, where potentially City Council bans lobbyists' contributions to elected officials and then the Campaign Finance Board restricts contributions to -- you know, I think it's been put out there that maybe there should be restrictions on contributions; they should only be allowed 50 percent of the normal contribution limit.

And if there were some type of multi-tiered system set up like that, we think that that would be, again, detrimental to the program.

MR. SCHWARTZ: Let me see if I understand you there.

What do you mean by a "multi tiered system"?

MR. ISREAL: Again, consistency. I

1  
2 think it was put out there, in the hearings  
3 last year, that potentially you can  
4 restrict contributions from doing business  
5 with the City to something at maybe half  
6 the level of the normal contributions,  
7 maybe \$125 is what it would be, and if the  
8 City goes -- the City Council goes ahead  
9 and entirely bans contributions from  
10 lobbyists, you have lobbyists not being  
11 able to give money, but the contractors  
12 they represent giving half the allowable  
13 contribution limit.

14 I just think these different tiers  
15 and levels, I think would be confusing for  
16 the candidates and the contributors. I  
17 think it's important to be consistent with  
18 what is going on with the City Council  
19 right now.

20 And also, we're very -- we caution  
21 that the Campaign Finance Board to be  
22 careful not to over reach their limits.  
23 This, you know, directly talks about the  
24 land use, and how you do that.

25 You know, we think it's an easier



1  
2 sell to limit the contribution when there's  
3 direct financial impact, such as those  
4 doing business with the City, and I believe  
5 that is what the Charter proposal was  
6 trying to get at, expanding it to include  
7 landmark decisions, administrative  
8 decisions, legislation, et cetera, is a  
9 slippery slope and something the Campaign  
10 Finance Board should proceed very  
11 cautiously on.

12 MR. SCHWARTZ: Let me push you a  
13 little bit on that. Do you disagree with  
14 the conclusion that land use presents the  
15 greatest potential for the appearance of  
16 corruption, because of there being so much  
17 money involved in the land use decisions  
18 that are made by the City?

19 MR. ISRAEL: I would agree, but  
20 again, I think there's real caution that  
21 needs to be addressed. Where do you draw  
22 the line?

23 For instance, our organization  
24 weighs in on what goes on at the Hudson  
25 Rail Yards --

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MR. SCHWARTZ: But you don't have an economic interest, that's the distinction between you and a developer.

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MR. ISRAEL: Well, then, it should be, again, it should be clear and specific. Is it the developer; is it anyone with any type of interest in the land use decision?

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Because, you know, we potentially advocated against the Atlantic Yards being built for X, Y or Z reasons, and we are weighing in on the land use process; we're lobbying the City Council, you know, not to approve of a certain project, does that mean that my contributions, as a registered lobbyist, are not equal to the average contribution, because we think that there's not a good reason for this involvement in this specific site?

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MS. GORDON: But you're going to be covered, aren't you, what the City Council is doing now on the lobbyist front is going to cover you, isn't it?

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MR. ISRAEL: I believe so.

MS. GORDON: But you support that?

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MR. SCHWARTZ: No. No, I think he doesn't. Would you maintain that there's a difference between someone with an economic motive and someone who doesn't?

MR. ISRAEL: Absolutely.

MR. SCHWARTZ: How do you respond to the testimony of the person -- two witnesses before, Ms. Reiter, who argued that while the advocacy groups already have so much influence; business doesn't have much influence, why should we -- basically she said, why should one be worried about business contributions or if you are worried, you're going to cut off too much anyway.

Anyway, what reactions do you have --

MR. ISRAEL: I would respond that the, you know, the advocacy community -- that's just pure democracy, people getting out there and protesting and visiting their elected officials, et cetera, whereas, you know, money has a corrupting influence, and there's a real difference between organized

1  
2 activists getting out there and pushing  
3 their elected officials and setting up  
4 meetings than there is to campaign  
5 contributions to that elected official.

6 MR. POTASNIK: Do you apply the same  
7 logic to unions?

8 MR. ISRAEL: I mean unions are  
9 always -- it's a difficult situation,  
10 because they're an organized entity for  
11 political purposes, that is somewhat  
12 separate and has different rules than an  
13 ordinary group of citizens organizing for  
14 housing issues.

15 MS. PATTERSON: And yet the largest  
16 contracts that the City has are with  
17 unions representing City employees, and if  
18 we're looking at people who have contracts  
19 with the City, it's sort of hard to  
20 overlook the largest ones.

21 MR. ISRAEL: I agree. Again, it's a  
22 case of being -- not trying to over reach  
23 and throw an umbrella over everybody and  
24 just chilling political discourse --

25 MR. SCHWARTZ: So let me -- this is

1  
2 interesting testimony coming from the  
3 oldest political group in the City or at  
4 least in the State.

5 What is your position on whether  
6 there should be pay-to-play regulations,  
7 beyond disclosure?

8 What is the Citizens Union's  
9 position?

10 MR. ISRAEL: We believe that the  
11 Campaign Finance Board has -- there's two  
12 options that we believe the Campaign  
13 Finance Board can appropriately weigh in  
14 on. One, is disclosure for all.

15 MR. SCHWARTZ: Let's assume there is  
16 improved disclosure.

17 MR. ISRAEL: Okay. Improved  
18 disclosure for all I think is one, and the  
19 other is the use of matching fund, whether  
20 or not you're gonna apply a matching fund  
21 for certain contributions.

22 But the Campaign Finance Board  
23 banning or you know, restricting  
24 contributions that only go towards  
25 participants, we feel is not a good

1  
2 approach, because you're creating a  
3 disincentive to people participating in the  
4 program, and it's something that the City  
5 Council should do very specifically, and  
6 the language should be very clear and  
7 targeted and it should apply to everybody,  
8 whether you're participating or not.

9 MR. SCHWARTZ: So you're in favor of  
10 disclosure being maximized and then on  
11 contributions, the Citizens Union favors a  
12 law, but not a regulation by the Campaign  
13 Finance Board?

14 MR. ISRAEL: Exactly.

15 MR. SCHWARTZ: Okay.

16 MS. PATTERSON: But if the Campaign  
17 Finance Board were to -- I think it may  
18 depend on the substance of law or the  
19 regulation -- if the Campaign Finance Board  
20 were to adopt a regulation that simply said  
21 no matching fund would be available, or a  
22 smaller amount of matching funds would be  
23 available if a contribution were made by,  
24 let's say, a registered lobbyist, would the  
25 Citizens Union have an objection to that?

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MR. ISRAEL: No, I think that is something that we think is more of an appropriate role for the Campaign Finance Board, on this issue.

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MS. PATTERSON: Okay, because that's a regulatory restriction that doesn't affect the right to contribute to the candidate, it simply means that tax payer dollars are not going to be used to increase the amount that is attributable to today that contributor.

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MR. SCHWARTZ: But of course, if there is an appearance problem with maximum contributions from people doing business with the City, that particular approach does not, by any means, get at it?

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MS. PATTERSON: No, but I'm just -- what I'm trying to distinguish between is the legislative solution of reducing the amount of the contribution or banning the amount of the contribution from a certain class of potential contributions, as contrasted with a regulatory approach, which allows contributions to be made, but

1  
2 simply says the taxpayer dollars will not  
3 be used through the Campaign Finance Board  
4 system to supplement the contribution that  
5 has been made.

6 MR. ISRAEL: I think we agree with  
7 that. And then, along those lines, there's  
8 also something we argued for at the  
9 City Council a couple of weeks back.

10 If you're -- you know, if they're  
11 gonna not -- if you're not going to match  
12 the contribution that come from lobbyists  
13 you should not match the contributions that  
14 a lobbyist bundles.

15 They often bundle somewhere  
16 between -- you know, up to \$200,000 for a  
17 given candidate in an election cycle. I  
18 would say the same should apply here. If  
19 you're going to not match or restrict the  
20 contribution of a contractor, you know, if  
21 they're raising \$90,000 or \$100,000 for a  
22 candidate, it has the same, you know, level  
23 of influence or impact, the bundling  
24 activities, as well.

25 MS. PATTERSON: Well, I mean the



1  
2 other issue that was raised in the land use  
3 case is that the name of the entity  
4 that has an application pending for a  
5 variance is virtually never the same name  
6 as the entity that truly wields the control  
7 over the particular that particular  
8 applicant. It is the entity that wields the  
9 control and power over the particular  
10 applicant that is going to be procuring  
11 contributions to elected officials.

12 MR. ISRAEL: I'm just going to hit  
13 on, you know, a couple of items here. I  
14 have nine things laid out that we think  
15 legislation should address. This may be  
16 more applicable for the City Council. It's  
17 our position that they should pass  
18 legislation.

19 But you know, the onus should be  
20 placed on the City not the candidate to  
21 determine and report who is doing  
22 business with the City, and subject to the  
23 terms of the legislation.

24 You know, two, we talked about  
25 ensure that the definition of doing

1  
2 business with the City is clear and  
3 specific. Those who do business with the  
4 City should at the very least include  
5 contractors and lobbyists and others who  
6 stand to receive immediate financial gain  
7 from the decisions.

8 And then we go on to say "The City  
9 should examine the ability to restrict  
10 contributions from others".

11 MR. SCHWARTZ: That gets awfully  
12 broad though, if it's truly a generally  
13 applicable law to say that you can't give  
14 money because you support a truly  
15 applicable law it seems to me to not have  
16 much to do with the appearance of  
17 corruption. I'm just thinking out loud on  
18 that aspect.

19 MR. ISRAEL: Third, "enact a tight  
20 definition of seeking and doing business  
21 with the City or being in negotiation with  
22 the City to do business. Apply to all  
23 candidates for elected office", this is  
24 where we get at the real need for it to be  
25 real legislation, and not for just those

1  
2 participating in the Campaign Finance  
3 Program.

4           Five, place the compliance burden  
5 on the individual or the entity making the  
6 contribution, and potentially, you know, no  
7 liability provision should be asserted for  
8 the candidate so that they don't two years  
9 or year after their election have fines  
10 of fifty to \$100,000, because they accepted  
11 a contribution that they were not aware was  
12 prohibited.

13           And not entirely ban contributions,  
14 so even with legislation, we believe that  
15 there shouldn't be an entire ban, you know,  
16 potentially limiting the size and then  
17 restricting matching funds I think are  
18 important --

19           MS. PATTERSON: I'm a little  
20 confused on the liability provision,  
21 because the Campaign Finance Board rules  
22 already impose fines for things such as  
23 over the limit contributions, inappropriate  
24 corporate contributions, that seems to be  
25 inherent in this system and candidates have

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2           accepted that.

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I mean, they're not huge fines, but they are nonetheless sufficient so that candidates are aware that they do have some requirement to verify that they are not getting a contribution from a corporation and that they're not getting too much money from a particular individual contributor.

MR. ISRAEL: But it appears if we set up a new system and have new restrictions, and we say, 'Well, the onus will be on the contributor' and then the candidate is still liable, then there's a real disconnect there and I think a disingenuity to it, if it's done that way.

Point seven, restricting contributions by individuals or entities doing business with the City for a set amount of time, after the contract expires, potentially up to a year or more.

MR. SCHWARTZ: Expires or is granted?

MR. ISRAEL: I think both probably would be.

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And then this other one, assuring a size of contracts trigger on contributions restrictions. You know, in New Jersey, Executive Board trigger applies to contracts of about \$17,500, I believe; under that, you would not be liable or you would not be regulated in the same way.

I think Los Angeles is deliberating something much bigger, in the range of \$100,000. So, you know, we support something along those lines but we think that the trigger should apply to the total contract's value because if you just look at one contract, maybe for \$5,000 for toilet paper for a school, but when you look at the bigger contract that that paper company may have with the City it could be \$2 million.

So I think you have to look at the total contracts, that that contractor has in front of it.

MR. SCHWARTZ: Have you thought about the distinction between contracts that are discretionary on one hand and

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2 contracts that are bid contracts, where you  
3 have -- the city is required you're  
4 required to take the lowest possible  
5 bidder.

6 MR. ISRAEL: No, I haven't thought  
7 about that.

8 And then finally here, include in  
9 the definition of those doing business with  
10 the City, any spouse, domestic partner and  
11 unemancipated children of such person or  
12 intermediary and any officer or any person  
13 exercises managerial control over the  
14 entity doing business, or any person owning  
15 more than five percent in the entity doing  
16 business.

17 MR. SCHWARTZ: Okay.

18 MR. ISRAEL: I will -- we'll take a  
19 look at this, the discretionary versus bid  
20 contracting --

21 MS. GORDON: That spouse part is a  
22 two edged sword.

23 MR. SCHWARTZ: Which is?

24 MS. GORDON: The spouse/domestic  
25 partner stuff. I mean, you can kind of --

1  
2           you see two sides. On the one hand, it's  
3           surely true that people are able to, by  
4           giving to -- on the other hand it just  
5           assumes that they're not independent  
6           actors.

7                     The campaign finance law itself used  
8           to combine husband and wife contributions  
9           for the purpose of the contributions limit  
10          and then it was changed to separate them  
11          out.

12                    MR. ISRAEL: So we thank you for the  
13          opportunity to testify. We think this is  
14          great -- we're happy that the Campaign  
15          Finance Board is being so deliberative with  
16          this process and being so open. We've had,  
17          I believe four hearings on this.

18                    So we thank you for that, we urge  
19          you to coordinate and make this bill  
20          consistent with what the City Council is  
21          doing as well, and we feel free -- we look  
22          forward to participating in the future.

23                    MR. SCHWARTZ: So thank you very  
24          much. And so there's another witness --  
25          Mr. Popik.

1

2 MR. POPIK: Thank you very much, I  
3 didn't know I can talk, I wasn't on the  
4 calendar. I did speak at the earlier  
5 hearings.

6 MR. SCHWARTZ: Yes, I remember.

7 MR. POPIK: My name is Barry  
8 Popik. I ran for Manhattan Borough  
9 President in 2005 as a Republican  
10 candidate. I didn't stand much of a  
11 chance. We were outnumbered registration 6  
12 to 1.

13 So you don't get many contributions  
14 to a losing cause, you don't get any kind of  
15 support and I didn't get equal time on New  
16 York One or any of the networks.

17 But be that as it may, I really  
18 didn't want to get involved in politics. I  
19 started many, many years ago, when I solved  
20 "Why New York is Called the Big Apple", as  
21 you might know, and I gave it to a  
22 Manhattan Borough historian, and she loved  
23 my work, and she gave it to Manhattan  
24 Borough President and nothing happened.

25 And I could never speak with the



1  
2 Manhattan Borough President. It's been  
3 fifteen years and I've never been able to  
4 speak to the Manhattan Borough President.

5           They eventually dedicated, through  
6 six years of hard work my life "The Big  
7 Apple Corner". It stands there, there's no  
8 explanation as to why it's Big Apple  
9 Corner. It's to a horse racing rider. He  
10 admitted that he got it from an  
11 African-American stable hand in New  
12 Orleans, who has never been honored  
13 whatsoever.

14           I wrote it into Scott Stringer,  
15 didn't even reply. I wrote to my City  
16 Councilman, who knows who I am now, doesn't  
17 reply, and that's the influence --

18           MR. POTASNIK: You need a good  
19 lobbyist.

20           MR. POPIK: I do. People always  
21 say, 'You should get a good lobbyist', but  
22 it shouldn't be that way, but that's how it  
23 is in the City.

24           What I did is after Hurricane  
25 Katrina, I wrote to Snapple. I said look,

1  
2           you're marketing New York City. I wrote to  
3           Snapple I wrote to New York City Marketing.  
4           I said, 'Look, I'm the guy; this is a  
5           perfect opportunity. You're marketing New  
6           York City. Could you put on your bottle  
7           caps, New York City Fact, Snapple fact,  
8           that it comes from a African-American  
9           stable hands; whose name we don't know;  
10          who's probably the father or grandfather of  
11          someone who is still living,' and they  
12          didn't even reply to me.

13                 Not - Snapple replied to me, not New  
14          York City Marketing, and this is New York  
15          City, and I'm outraged, and I ran for  
16          office and nobody listened to me, but that's  
17          another story.

18                 I was going to debates with Scott  
19          Stringer, one of things I did, is I  
20          downloaded campaign financing, I see who is  
21          contributing to him, and he's getting  
22          \$1,000, \$1,000, \$1,000, maximum, maximum,  
23          maximum, real estate, real estate, real  
24          estate, lawyers who represent real estate.  
25          Real estate. Real estate. Lobbyist, over

1  
2 and over again, and that matched four to  
3 one.

4 I have to beg for \$5, beg from my  
5 friends at work who have no money, for \$10,  
6 and that's their life savings, that's  
7 like -- if you get five or \$10 that's gold.

8 But for real estate, to give  
9 maximum, that's nothing; that's just the  
10 point of entry into the system, and for you  
11 to match it -- now, I don't suggest  
12 eliminating it.

13 Obviously that's pay-to-play money.  
14 Obviously that's money -- well, Fran Reiter  
15 said that it doesn't play importance, well,  
16 if it makes you feel less antagonistic to  
17 them, it's money that they have to spend.

18 They're going to spend it on Scott  
19 Stringer, if they're going to spend it on  
20 Eva Moskowitz, they're going to spend it on  
21 whoever they think could buy them that  
22 influence. They're going to spend it on  
23 any candidate, usually Democrats who think  
24 they can win; and they get their ear.

25 Not only that, they get invited to

1  
2 the inauguration. They get a handshake. I  
3 wasn't even -- I applied for the Community  
4 Board and I didn't even get an interview,  
5 it seems. I got called for a Thursday for  
6 a Friday, and I worked on Friday and I  
7 worked on Thursday, and then they said,  
8 'There's no more interviews, so long.  
9 Thank you very much.' He appointed his  
10 friends to the Community Board.

11           So what you have is, you have the  
12 Borough President and he appoints all the  
13 Community Board members, just about, and  
14 then the ULURP process goes to the  
15 community boards and goes up to the Borough  
16 President and you have that Borough  
17 President accepting all this money,  
18 thousand and thousand of dollars of money  
19 matched by money, as a public person, it's  
20 outrageous.

21           Now, I don't suggest banning it,  
22 because, first of all, it's a very  
23 complicated thing of who is this person and  
24 that person, and they disguise themselves  
25 as housewives and whatever.

1  
2           But I suggested limiting. The  
3 finance industry, if you want to donate to  
4 the Comptroller, you work for say Goldman  
5 Sachs or something. I suggest a \$250 is  
6 fine for most -- any normal person. \$250,  
7 over \$250, you're buying influence; you're  
8 buying access. \$250, for any college  
9 student, housewife, whatever is fine, but  
10 over that is too much.

11           Again, I don't suggest limiting  
12 anybody but I suggest going with that  
13 limit, the same \$250 that the Goldman Sachs  
14 people, who needs the Comptroller.

15           Certainly, real estate and lawyers  
16 get into the Borough President -- if you  
17 look at Scott Stringer's contributors, it's  
18 outrageous.

19           Then after the election -- well  
20 first of all, right before the election he  
21 needed more money, he hits up his friend,  
22 Peter Kalikow, the MTA and a huge real  
23 estate developer, and I didn't raise no  
24 money, whatsoever, just about, it was just  
25 outrageous.

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2           And then after he was elected  
3 Borough President, there was a salute to  
4 Scott Stringer -- I showed that to you --  
5 in Our Town, which they were planning  
6 probably before the election even was over,  
7 and you saw a building, the salute to Scott  
8 Stringer, Glenwood Management says, "We  
9 love you Scott," and you know they paid  
10 thousands of dollars, at least a thousand  
11 dollars for a full page ad.

12           You know, the Durst Organization  
13 paid money for an ad, and that's  
14 essentially a campaign contribution,  
15 and Scott Stringer was quoted there -- I'm  
16 sure he read it -- and said, 'Oh, there's  
17 my friends there saying good luck.'

18           It's just amazing, and then of  
19 course, he gets inaugurated and they get a  
20 free inauguration in the Metropolitan  
21 Museum of Art in the Temple of (inaudible)  
22 as gods.

23           Here I am, trying to honor the  
24 African-American who called the Big Apple,  
25 they don't respond. I get nothing, and

1  
2           they get a temple for free, and I says,  
3           `How much would a temple cost an average  
4           person,' if I wanted to have my wedding  
5           there -- I just got married by the way --  
6           if I wanted to have my wedding there, how  
7           much would it be?

8                     They said \$60,000. How much do you  
9           charge them?

10                    Nothing, and that's how non-profits  
11           get into the system. And then of course,  
12           then my City Councilmember Dan Garodnick,  
13           who didn't respond to me on the Big  
14           Apple -- he's on the Cultural Affairs  
15           Committee, by the way, which I wanted him  
16           to do something; he didn't respond to me --  
17           he goes to The Temple Dendara saying we  
18           pledged to serve the community to be  
19           whatever, and they don't respond, but  
20           that's another story.

21                    But who gives money to is that?

22                    The UFT, of course, the developers  
23           give again. They all get invited; they all  
24           get seen, and to say that's nothing --

25                    Obviously, if you get \$250 or less,

1  
2 maybe you don't get invited to the  
3 inauguration, if you give the maximum --  
4 first of all, that's matched four to one,  
5 you get invited to the organization; that's  
6 something; that's influence; that's  
7 something; that's more than I ever got.

8 I never got responses. I don't even  
9 get a response for a Community Board  
10 application, but that's a lot. Again, I  
11 suggest limiting to \$250. Also again I  
12 disagree with Fran Reiter about the  
13 influence, I think it's very important.

14 I agree with her on unions, that's  
15 very, very, very big, that's where I stand  
16 as a Republican, as opposed to Democrat,  
17 although viewing is by everybody, and I  
18 think it's a very, very serious problem.

19 Wal-Mart is an issue. We'll never  
20 have a Wal-Mart in the City. I agree --  
21 she said, Wal-Mart can't spend enough money  
22 to get into the City, but that's a problem,  
23 because most people probably want to shop  
24 at Wal-Mart; most probably want lower  
25 prices; most people, maybe they care about



1

2 that work for Wal-mart, but they want to  
3 shop at a store that has low prices.

4 And --but Wal-Mart will never get  
5 into the City, because of the union money,  
6 because of the large union money, a  
7 tremendous amount of union money, and if  
8 \$250 is the limit not only for people, not  
9 only for the developers but for unions as  
10 well, I think that makes sense. That's all  
11 I want to say thank you very much for your  
12 time.

13 MR SCHWARTZ: Thank you for coming  
14 again, I'm sorry we didn't get to you more  
15 quickly, but the other people were already  
16 on the schedule. Okay, so I guess we're  
17 now adjourned.

18 (Time Noted: 12:25 p.m.)

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C E R T I F I C A T E

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STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

I, SABINE FAUSTIN, a Shorthand  
Reporter and Notary Public within and  
for the State of New York, do hereby  
certify:

That I reported the proceedings in  
the within-entitled matter, and that the  
within transcript is a true record of  
such proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of  
this matter.

INWITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
SABINE FAUSTIN

