TESTIMONY OF ANTHONY W. CROWELL,
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BEFORE THE NEW YORK CITY CAMPAIGN FINANCE BOARD

JANUARY 31, 2005

Good morning Chairman Schwarz and members of the Board. My name is Anthony Crowell, and I am Special Counsel to Mayor Michael R. Bloomberg. Thank you for the opportunity to testify today on the Board's new efforts to implement the Charter amendment passed by City voters in 1998. As you know, that amendment requires candidates in the campaign finance program to disclose contributions from individuals and entities "doing business" with the City, and it directs the Board to further regulate or prohibit such contributions as it sees fit. The Bloomberg Administration is pleased that the Board has convened a hearing to receive public comment on how those rules should be shaped.

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

Two months ago, I testified before the City Council on behalf of a bill submitted by the Bloomberg Administration to effectuate the 1998 Charter mandate. Thus far, however, the Council has not expressed an interest in moving forward. The importance of this Charter mandate, as I explained in my Council testimony, bears some repeating. The primary reason that the campaign finance program was adopted 15 years ago was to reduce corruption and diminish the sway that special interests hold over candidates and

elected officials who seek campaign contributions from them. Yet today, the City's matching funds program enhances the value of contributions from special interests by matching them at a $4-to-$1 rate.

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

Since candidates receive generous public subsidies, New Yorkers might also reasonably ask why such candidates are permitted to receive large contributions from individuals and entities that have business before them, such as executives of telecommunications companies who are seeking lucrative contract terms; or real estate developers who are seeking land use approval; or private equity executives who seek a share of the City's $85 billion pension system. And each time these sources give big contributions, the taxpayers are forced to kick in $1,000.

New Yorkers might reasonably ask: Don't these contributions present a potential conflict of interest for elected officials? Don't they create at least the possibility for inappropriate influence? Undoubtedly, these are exactly the kinds of questions that led voters to pass the referendum in 1998.

When those who do business with the City make campaign contributions to gain access and influence, it is called "pay-to-play." At a minimum, this practice can create the appearance of impropriety. And beneath those appearances lies a potential to corrupt government decisions. Campaign finance reform advocates have long held that campaign contributions from those with pending governmental interests can create the appearance of – and potential for – impropriety. And increasingly, New York City lobbyists and contributors are complaining of a "squeeze" that is "getting out of hand." (See *New York Post*, 5/23/04, attached.)

Real estate developer Bruce Ratner stopped contributing to candidates because of these pressures, which he spoke about in a book on campaign finance reform called *Selling Out*, by Mark Green:

> When you do business with the city, you get solicited by everyone from U.S. Senators down to members of the City Council. There was an anxiety that, if we didn't give, we might not be able to get a meeting, that it might hurt our development efforts, hurt our access. There was a sense that if you contributed, you were a friend. You knew your competitors were doing it, and so when someone would call, it was hard to say no. For businesses that do a lot of business with the city, it was expected...I didn't want to be a person on the outs, nor could my business afford to be a person on the outs given how much business we do with government...It was very unpleasant. I didn't enjoy it. It's very difficult to ask people to give to someone that they may not believe in, and very few people want to contribute the amounts that were being requested. I would much rather ask people to give to a charity that I'm involved with.

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

Prior to the S.E.C.'s adoption of its G-37 rule, the securities industry felt the same pressures as those who have business dealings with New York City government. Robert Lamb, a professor at New York University's Stern School of Business, said, "It was like an ante in a poker game where, in order to play, different firms felt like they needed to make some kind of contribution. If you didn't give, you wouldn't sit at the table." Ending pay-to-play in New York City's local government will protect those who do business with the City from feeling pressured to give. It will protect elected officials from feeling pressured to act in the favor of contributors doing business with the City – and from accusations that they did so. And, it will protect taxpayers from being forced to kick in $1,000 every time a special interest makes a large contribution. It will also go a long way toward bolstering public confidence in elected officials and government.

The wisdom of New York City's voters has been confirmed by recent campaign finance scandals in New Jersey and Connecticut. Last fall, then-Governor McGreevey, freed from the need to raise campaign contributions, issued an executive order prohibiting government contractors from making campaign contributions. In a statement that accompanied his Executive Order, Governor McGreevey explained the urgent need for action:

> Today, the relationship between political fundraising and government operations has become corrosive and cancerous. Legitimate lines of behavior are blurred, ethical ambiguities are the norm and the need to sustain an all consuming fundraising effort has become almost as important as the function of government itself...The wall, the separation, between politics and government, between campaign finance and government operations, between state interest and personal interests has disintegrated...Today it has become increasingly challenging to distinguish between the world of political fundraising and government and between what we do and why we do it. It has become a self-sustaining system with no beginning and no end.

McGreevey closed by challenging his fellow elected officials: "To my colleagues in government, I know that this may cause consternation and anger. Change can be uncomfortable. The goal is to liberate those who seek to serve to do so unfettered by these possible conflicts and it will reassure the people we serve that we do so honestly and decently."

The City of New York does not have the same legal authority granted to the State Executive of New Jersey. The outcome in a recent case in the New Jersey federal courts confirms the wisdom of New York City's approach to the pay-to-play issue, which seeks to regulate candidates, not contributors. Deviating from that approach, as some have suggested, would not only pose legal hurdles, but it would be contrary to the plain language of the Charter amendment adopted by the voters. For these reasons, the Campaign Finance Board's decision to move ahead with the implementation of the 1998 referendum is the correct course of action.

At the City Council hearing last November, I discussed our initial legislative proposal, Intro. 467. As I am sure you are familiar with the bill, I will not spend time discussing its details, but I would like to quickly summarize it: The bill is modeled on the G-37 concept. It would prohibit candidates in the program from accepting contributions from those who do business with the City, with an important exception: Contributors with business before the City could still give up to $250 to any candidate for whom they are eligible to vote, but these contributions would not be matched with public dollars. This ensures that even those who have business with the City may financially support candidates who seek to represent them.

The current law requires candidates in the Campaign Finance Program to ask contributors for numerous pieces of information, including information about their workplace. Our proposal simply takes this disclosure a step further, by requiring candidates to ask contributors whether they have had business dealings with the City within the last twelve months. The definition of the term "business dealings" includes contractors, lobbyists, pension investors, developers who seek land use approval, and firms who seek franchises and concessions. This definition, as with all proposed legislation, requires fine-tuning to ensure that it is not overly broad. For instance, homeowners who seek approvals from the Department of Buildings should not be covered by the law. The Administration is anxious to work with the Board, and willing members of the Council, to arrive at an appropriate definition.

Our proposal also provides for exemptions. All entities with contracts valued at under $100,000, and all contractors who went through a sealed competitive bidding process, would be exempt from the law. We believe that these exemptions, coupled with the G-37 model, set a reasonable definition of "doing business." We look forward to hearing others suggest possible parameters and to arriving at an appropriate definition.

Now, as promised, let me provide both an update on the Administration's efforts to make information about those who "do business" more readily available, and offer a

modest proposal for a first step that will begin to implement the Charter mandate and improve our ability to implement it fully for the 2009 elections.

First, an update: Since the Council's November hearing, the Bloomberg Administration and the Department of Information Technology and Telecommunications (DoITT) have had a number of constructive meetings with Campaign Finance Board staff. Together, we have wrestled with the challenges that this issue presents, and a new spirit of determination has been infused into the process. CFB staff has helped DoITT understand the agency's technical needs and concerns, and a dialogue has taken shape that, we believe, will lead New York City to be – once again – a national pioneer in government ethics.

As a result of these meetings, DoITT is working to create a Web-enabled interface that will provide the CFB – and every member of the public – with access to the City's VENDEX system, which houses every City contract with a value of more than $100,000. The on-line information will include the names of each company's principals, and it will include a search function that will allow users to look-up individual principals and companies. This database will go a long way toward meeting the CFB's request for a searchable data warehouse – and we expect to have it up and running in April. In addition, by that time or sooner, we expect to put the City Clerk's list of registered lobbyists on-line, and we are beginning discussions with other agencies, including the Department of City Planning, to determine how we might be able to effectively capture the universe of individuals and entities with which each does business.

Making VENDEX and the City Clerk's data on registered lobbyists – as well as other possible data sets – fully compatible with the CFB's own database systems is major project that will require significant technical collaboration, significant resources, and a significantly longer period of time. Developing this more comprehensive system is a longer-term project that this Administration is committed to, but which cannot be completed for use in the 2005 elections.

Still, the problem of pay-to-play cries out for urgent action. In order to avoid waiting until 2009 before implementing a vital reform that the voters passed in 1998 – and in order to improve our ability to create the comprehensive database that the CFB seeks – the Bloomberg Administration has a modest proposal that, we hope, will receive support from the Board.

Beginning with the May 16 disclosure statement, at which time the CFB and the public should have access via the Web to VENDEX and the City Clerk's lobbying data, candidates in the campaign finance program would be required to make a good faith effort to disclose – as the Charter amendment requires – which of their contributors do business with the City. I want to emphasize that, in deference to the CFB's enforcement concerns, the Administration is not suggesting that acceptance of such contributions be restricted for this election cycle. Nor is the Administration suggesting that failure to disclose such contributions result in automatic penalties. This proposal is merely an extension of the current rules which require candidates to make a good faith effort to obtain each contributor's employer information.

Currently, each contributor fills out a contribution card. We propose that the contribution card include a question asking whether the contributor does business with the City; if so, the contributor would be asked to provide some basic information about the nature of their business. The Administration is anxious to provide any assistance necessary to the CFB in crafting such a question.

Not only would this first step go a long way toward achieving the disclosure that the voters mandated, it would – by identifying contributors who do business with the City – provide invaluable assistance to the City in its efforts to create the comprehensive database that the CFB seeks. If the CFB were to allow 2005 to go by without requiring candidates to seek and disclose information on contributors who do business with the City, it would be a missed opportunity that would hinder both our understanding of the universe of affected contributors and our efforts to construct a database in a way that makes sense for all involved.

Over its 15 years, the Board's mantra has been that reform must be viewed as an evolutionary process, a work in progress. Our modest proposal is in keeping with that mantra. We must not let the perfect be the enemy of the good. Let's demonstrate our own good faith to the voters of New York City by taking a first step toward implementing the referendum that they approved more than six years ago. And we can do it by requiring candidates to make a good faith effort to abide by that referendum's minimum requirements.

Thank you, and I would be happy to take questions.

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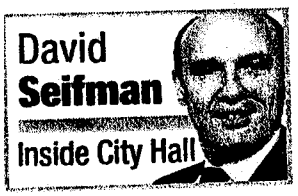
Term-limited pols putting $queeze on lobbyists



LOBBYISTS are being bombarded with an unprecedented number of solicitations from elected officials desperate to fill their campaign treasuries before term limits forces them to pack.

"It's getting out of hand," said one lobbyist who had 16 invitations to campaign events on his desk.

The lobbyist said elected officials focused on the term-limits clock are becoming more and more brazen.

"I sent a contribution and got a call back that it wasn't enough," recalled the lobbyist.

Another lobbyist told of going to a meeting on pending legislation only to find an elected official's campaign manager waiting in the room.

Lobbyists don't have much choice but to give, since their livelihood depends on access.

A third lobbyist suggested the time had come to overhaul the system so that anyone with business before an elected official isn't allowed to contribute.

At least one pol agrees.

"I try to stay away from lobbyists and their money," said Councilman Simcha Felder (D-Brooklyn).

Added Felder, "I think that any honest and reasonable elected official would prefer to see that practice stopped if it were at all possible."

A spokesman for council Speaker Gifford Miller said he'd go along "if the mayor would agree to participate in campaign finance and pledge not to spend $70 million-plus of his own money to buy the mayor's race again."

Last week, city government lobbyists reported a record high $24,761,161 in revenues last year.

Joining the pack was former Councilman Archie Spigner, who received $36,000 from the Greater Jamaica Development Corp., located in the district Spigner used to represent.

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When the Taxi and Limousine Commission decided to raise fares last month, one of those voting for the increase was a well-known lobbyist.

It turns out that Harry Giannoulis, a partner in The Parkside Group, is also a member of the TLC.

Giannoulis, an unpaid adviser to council Speaker Gifford Miller, was appointed under former Speaker Peter Vallone, and has continued to serve past the expiration date of his term in 2001.

Giannoulis told The Post the unpaid TLC job preceded his lobbying activities, and he has an opinion from the Conflicts of Interest Board approving the arrangement.

"I have no clients before the TLC," he said. "I never really found myself in any kind of situation of conflict."

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