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Testimony
of
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before the
New York City Campaign Finance Board
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"Doing Business" with New York City
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Common Cause/NY is a citizen's lobby whose goal is open and accountable government. We appreciate the opportunity to offer testimony to you today.

Common Cause/NY has long decried the all too common practice of pay-to-play, in which large campaign contributions are traded for lucrative government contracts. In a public contract system driven by political contributions, merit and cost-effectiveness fall by the wayside, and those who really pay are taxpayers who are forced to spend more for lower quality services. Even in the absence of contracting scandals like those we have seen in other states and localities in which political contributions appear to have been explicitly traded for government contracts, the fact that those who receive city contracts are in some cases also major campaign contributors can create an appearance of favoritism that itself erodes public confidence in government.

Common Cause/NY wholeheartedly supports restrictions on political contributions from those seeking or holding contracts with the city. We are heartened that the Mayor has taken an interest in remedying this problem, and appreciate recent efforts to begin creating a database that identifies contractors doing business with the city.

Nevertheless, while the administration's focus on pay-to-play is highly commendable, we feel that the current proposal being supported by the Mayor and considered by the City Council contains serious flaws in its approach to the problem. The Mayor's proposal points out that the public has supported reforms that would address the pay-to-play problem, and criticizes the Campaign Finance Board for failing to devise effective solutions. However, as national pay-to-play expert Craig Holman of Public Citizen has stated, "pay-to-play reform should be viewed as reform of government contracting procedures, not as campaign finance law." Pay-to-play is most effectively and appropriately regulated when legislation is passed that restricts contributions from those holding or seeking contracts from the city, with the city's chief procurement officer serving as the enforcement agent. The penalty for contractors who violate these restrictions could then be that their current contract is canceled and the entity is barred from seeking additional contracts for a period of some years into the future. This is the model that New Jersey has pursued, and we believe it is the appropriate avenue for New York City as well.

Intro 467 requires individual candidates for city office who participate in the city's campaign finance program to determine whether or not their contributors are doing business with the city, and then to reject contributions from entities or individuals who are. This places a sizable and we think potentially unsupportable burden on individual candidates, given the number of city agencies and vendors, and we are concerned that it may have the unintended consequence of actually discouraging candidate participation in the campaign finance program. Because the contribution restriction does not apply to candidates who do not participate in the campaign finance program, the proposed legislation could create a strong financial incentive for candidates to opt out of our public financing system.

We believe that this proposal also has serious weaknesses in terms of its enforcement mechanism. Under the proposal, if the Campaign Finance Board determined that a contribution had been made to a participating candidate by an entity or individuals who has or within the last six months has had business dealings with the city, the board will consider this a violation of its rules and may choose to issue a fine to the participating candidate's campaign. In our view, this incorrectly penalizes the candidate as opposed to the contributor, and provides little to no deterrent to the contractor who made the inappropriate contribution. The Campaign Finance Board has no authority to cancel a contract for an entity that has made inappropriate political contributions or to see that this entity be barred from seeking future contracts for a specified period of time, an approach that has been pursued in New Jersey and that gives the pay-to-play restriction more "teeth" than the current proposal being considered in New York City.

At best, the proposal currently under consideration by the Mayor and the City Council represents an inefficient and burdensome approach to solving the pay-to-play problem. At worst, it could undermine the health of the nation's leading municipal public financing program.

We have a number of practical suggestions for how this legislation might be amended and improved to effectively reform the city's contracting process to address the issue of pay-to-play.

- Pay-to-play legislation should be written as a reform to the city's contracting process rather than a new aspect of our campaign finance law. The city's chief procurement officer should serve as the enforcing agent and the Campaign Finance Board should play the important and appropriate role of informing potential contributors of the fact that making a contribution may bar them from seeking city contracts and hopefully joining their online campaign finance disclosure database with the administration's database of those seeking or doing business with the city to make full information about contributors available to the public. The board should also be vested with the authority to fine candidates who knowingly encourage contractors to violate the law.
- Contributions from those seeking or holding business in the city should be restricted for every citywide candidate, whether or not he or she participates in the campaign finance system, and political party committees and leadership PACs should be included in the ban as well.
- Contributions should be restricted starting at latest with the commencement of negotiations for the contract or agreement, throughout the term of the contract, and for at least six months to a year after the contract expires. Restricting contributions only from entities that are already doing business with the city attacks the problem too late to effectively eliminate any pressure contractors may feel to contribute so as to receive favorable consideration of their bid. The city should also consider the possibility of limiting contributions in a specific pre-negotiation period, as New Jersey has done.

- Before the awarding of any contract, the contractor should be required to provide a written certification to the city or to the relevant purchasing agent or agency stating that it has not made a contribution that would bar the award of the contract pursuant to the city's legislation.
- If a contractor is found to have made a contribution in breach of this legislation, this should be considered a breach of the relevant contract or agreement. The contract should be canceled and the entity should be prohibited from seeking future contracts for a period of some years.
- The legislation should include a reasonable "cure" for violations. Occasionally, agents of a business entity may be unaware that a campaign contribution early in the negotiation process would violate the regulation. If such a violation occurs prior to the contract agreement, the contractor should be given a reasonable opportunity to seek the return of the campaign contribution from the candidate or party committee, thus reestablishing the entity's eligibility for contract negotiations.

We believe that legislation of this type would do more to curb pay-to-play in New York City while exacting no harm on the city's model campaign finance program. We believe that the Mayor's proposal could potentially prove so burdensome on candidates that it actually discourages participation in the campaign finance program. This externality alone warrants a rethinking of the legislation.

We also wish to address some of the substantive and procedural questions the Campaign Finance Board has raised.

- We believe that the definition of entities doing business with the city should include lobbyists hired by contractors wishing to do business with the city; legal firms hired by a contractor to develop their proposal or represent them before city agencies; lobbyists seeking budgetary, administrative, regulatory or legislation action from city government; and those seeking zoning variances, tax breaks or who are involved with real estate transactions with the city.
- In addition to the entity itself, we believe that all partners and officers, as well as other individuals with a substantial ownership interest in the entity as well as their spouses and un-emancipated children should be included in the restriction on contributions. New Jersey has set 10% as the floor for substantial ownership interest while Intro 467 places the floor at 5%. We are open to further discussion and debate about the exact percentage interest that will be considered.
- Common Cause/NY does not yet have a position on whether contributions from those who do business with the city should be banned or simply limited. We are still discussing and debating the relative merits of the approaches and we welcome further discussion of the issue. We do believe, however, that these contributions should not be considered matchable under the program's guidelines.
- As in other states and localities, Common Cause/NY believes that New York City should determine a reasonable dollar value of business dealings as a threshold that triggers the "doing business" regulation. We are open to further discussion of what the exact dollar value should be, thought the $1,000 threshold currently being considered strikes us as unusually low.
- We believe that the Campaign Finance Board should first produce a report detailing what percentage of current contributions to candidates would be affected under various pay-to-play regulatory scenarios before deciding what level of additional matching funds might be considered to compensate for the decreased ability of campaigns to raise funds.

In addition to the concerns listed above, there are additional reasons to worry that limiting pay-to-play restrictions to those candidates who participate in the city's public financing program will not be

adequate to address the appearance of contracting decisions being tainted by favoritism. Recent reporting by the *New York Daily News* and others has revealed that the Bloomberg administration has raised $36 million in private money over the last three years for the Mayor's Fund to Advance New York City to help ease the city's budget woes. While much of the funds raised were given by those with no business before the city, some donors who have made substantial donations have sought or are seeking business or contracts with the city. Other press stories in the *New York Observer* have focused on the administration's solicitation of contributions for NYC 2012, the city's Olympic committee and a 501(c)3 tax-exempt organization that, according to its website, has "pledged to bring the Olympic Games to New York City without relying on public funds." The site goes on to say that "New York's bid is being entirely finance by private contributions from corporations, unions, individuals and foundations."

The pay-to-play ordinance that was passed by the city of Los Angeles last year prohibits contractors from making contributions or participating in fundraising activities on behalf of political party committees, ballot measures or charities. While we have absolutely no doubt that the administration has only the best interests of the city at heart when soliciting these contributions and while we are aware of the fact that the Conflicts of Interest Board issued a ruling specifically allowing the administration to solicit funds for NYC 2012, the fact that some of the contributors have business before the city does raise concerns about the appearance of the same pay-to-play issues that arise with contributions made directly to candidates or elected officials. For this reason, we believe that the administration and the City Council should seriously investigate the feasibility of including a provision that would restrict contributions from those seeking or holding contracts with the city to a charity *at the request of* an elected official or candidate for city office. A more limited provision than was passed in Los Angeles, but one that could conceivably go a long way toward addressing the current public concerns.

I should note that we have been discouraged by the Federal Highway Administration's challenge to the New Jersey pay-to-play regulations and agree with Acting Governor Codey that "the federal government is dead wrong" in their position. Nevertheless, before we implement a pay-to-play regulation in New York City, we should see how this particular debate is resolved in the courts. By doing so, we improve our chances of having an effective and unassailable pay-to-play reform. In the interim, we agree with our colleagues at NYPIRG that any legislation should include a severability clause exempting contracts that utilize federal dollars.

Common Cause/NY believes that it is too late in the current election cycle to debate, formulate and then put in to place meaningful and effective pay-to-play provisions for this year's elections. We have concerns about applying new rules and regulations with Primary Day less than eight months away and most citywide candidates already well into their fundraising. However, we do believe that a preliminary database of contractors, lobbyists, real estate interests and others seeking or doing business with the city can and should be online and integrated with the Campaign Finance Board's database before that time. This would be a valuable first step in marshalling the information and resources needed to regulate pay-to-play.

We are eager to work together with the administration, the City Council and the Campaign Finance Board to address the complex issues involved in pay-to-play regulation and to help create strong, workable and effective pay-to-play legislation. Thank you again for the opportunity to appear before you today, and I'm happy to answer any specific questions you may have.