



TESTIMONY
of
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before the
NEW YORK CITY CAMPAIGN FINANCE BOARD
on
REGULATION OF "PAY TO PLAY" CAMPAIGN CONTRIBUTIONS
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Good morning. We appreciate the opportunity to speak to you today about the addition of needed "Pay to Play" provisions for elected and appointed officials in New York City. NYPIRG supports restrictions on such contributions and is encouraged by recent efforts to begin the creation of a database identifying contractors doing business with the city.

But much more needs to be done to ensure that the proposal is comprehensive, fairly implemented and does not create an unworkable system. In particular, we believe any restrictions must be administered by the City Administration and affect all candidates. In other words, entities that are competing for contracts, lobby, engage in land transactions or have other business dealings with the city should be barred from doing such business if they make a significant contribution to a candidate for city office. Additionally, in the spirit of fully airing the questions surrounding 'Pay to Play' restrictions, the Administration needs to explain why current common sense charter provisions prohibiting city officials from fundraising, shouldn't be extended to non-campaign related efforts such as the NYC2012 Olympic organizing committee or the Mayor's Fund to Advance New York.

NYPIRG commends the Mayor for finally directing city agencies to develop a workable database of contractors doing business with the city. We hope that this change of position signals a more sincere interest in developing a workable system to address the problem of 'pay to play' contributions. We encourage the Mayor to show further leadership and support of the campaign finance program by opting in to the system should he choose to run for re-election later this year.

Why the Contractor Database Approach Falls Short

While the creation of a contractor database would be both an important civic resource and necessary component of any "Pay to Play" auditing effort, it fails to adequately tackle this problem on its own. Relying on such a database and voluntary candidate compliance attacks the issue in the wrong way.

Such an approach has it backwards. Instead of burdening candidates and the Campaign Finance Board at the end of the contribution process with attempting to ascertain whether a contributor is doing business with the city, it should be made clearly illegal to do so in the contracting process before the contribution is made. (With the same approach being adopted for the lobbyist registration process, application for zoning variances, etc.) This alternative approach has the additional benefit of ensuring that contributions to all candidates, not only those participating in the campaign finance program are covered.

Unfortunately, the Administration's approach, as outlined in their proposed Council bill Intro 467, would potentially discourage participation in the campaign finance program since non-participants would still be free to accept such contributions, creating an incentive for not entering the campaign finance program.

A better approach has just been adopted in New Jersey, an effort the Mayor himself has pointed to as an example for the city. There, former Governor McGreevey issued an executive order banning contributions by vendors that do business with state agencies. The burden for administering the ban falls as it appropriately should, on a state government that has the resources and expertise to determine who is doing business with government — and the ability to sanction those businesses that violate the ban on contributions.

We have been dismayed at the Bush Administration's challenge to the New Jersey system, but believe that before the city implements a "pay to play" component we should see how the debate plays out in the courts. By doing so, we increase the likelihood of having a truly effective check on contractor contributions. In the interim, 'Pay to Play' legislation should include a severability clause exempting contracts that utilize federal dollars.

Comprehensive Pay to Play' Provisions are Needed That Don't Create Loopholes

We urge that any 'Pay to Play' provisions adopted by the city or board include a broad interpretation when defining those who do business with the city. Here are a few examples of the range of interests beyond those holding current contracts that need to be covered under a 'Pay to Play' system:

- What sense does it make to limit contributions from Acme Ltd., a partnership seeking a city contract when you don't also limit contributions from the lobbyists Acme Ltd. has hired? Money is like water and will seek any loopholes or cracks in the regulatory walls set up to limit money's impact on;
- Likewise, a legal firm employed by Acme to write and develop their contract proposal and that represents them before city agencies would not be covered by the Administration's proposed database;
- Lobbyists that are seeking budgetary, administrative, regulatory or legislative action from city government also need to be covered. New York needs to take a lesson from Albany where the ability of lobbyists to contribute to campaigns has eroded public confidence and corrupted the fundraising process; and
- New York is known as a real estate town. It would be absurd to imply we had a working 'Pay to Play' system without covering individuals and entities seeking to influence the land use process. Consideration must be given to cover those seeking zoning variances and tax breaks or involved in real estate transactions with the city.
- If 'Pay to Play' is basically about contributors being or feeling pressured to contribute to campaigns in return for favorable consideration of their contract bids, it's probably too late in many cases to limit contributions from those who have already won contracts. Contribution restrictions should start from the moment negotiations have started, or bids submitted and consideration be given to requiring participating candidates to retroactively return contributions from such entities if they subsequently initiate business dealings with the city. Similarly, to prevent the appearance of a quid pro quo, contributions should be limited for at least six months to a year after a contract expires as well.

Consideration must be given to all these areas, along with many others including the licensing processes of city agencies, granting of franchises and concessions and the inclusion of sub-contractors.

How Should Contributions From Those Doing Business be Treated?

The Board has raised a wide range of questions about how affected contributions would be regulated. Our initial thoughts on some of these issues are listed below:

- NYPIRG does not support an outright ban on contributions from those doing business with the city. Instead, we believe such contributions should be regulated through a combination of decreased contribution limits and the elimination of such contributions from being considered matchable under the program's guidelines. NYPIRG believes the current contribution limits allowed under the program are too high, and believes they should be lowered for all offices. That said, if current levels are maintained, we believe that regulated contributions from those doing business with the city should total no more than 5 to 10 percent of the contribution limit for that office. For the current cycle that would mean limits of \$137.50 to \$275 for Council races and \$247.50 to \$495 for citywide offices;
- The Campaign Finance Board should first produce a report detailing what percentage of current contributions to candidates would be effected 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;
- Ultimately, 'Pay to Play' restrictions should be implemented by local law and not rely upon the rule making authority of the Campaign Finance Board. In addition to having a stronger legal footing, only legislation can make sure that limits apply to all candidates and not just those participating in the campaign finance program. Legislation is also needed to expand contribution restrictions to municipal/county committees to prevent a built in loophole to the law.
- The primary burden of any restrictions should be borne by the city and not candidates. Care must be given to ensure that any provisions do not discourage participation in the campaign finance program; and
- Those with controlling or substantial interests in an entity doing business with the city should also be subject to 'Pay to Play' restrictions. Those with a certain dollar interest in a covered entity should be subject to the restrictions as well. Spouses and un-emancipated children should also be covered.
- Further study and hearings should be undertaken by the Board to define and identify what types and level of business dealings with the city should be exempt from these provisions. For example, does the city award grants and for what types of activities? Standardized procedures such as paying parking tickets or applying for or receiving certain city services should clearly not be defined as doing business with the city.

'Pay to Play' and the 2005 Elections

It is too late in the current election cycle to debate, formulate and implement meaningful and comprehensive 'Pay to Play' provisions into place for this year's elections. We also have reservations about 'changing the rules of the game' in an election year. Primary Day is less than eight months away, and many but the most wealthy of citywide candidates are already well into their fundraising. However, we urge that a preliminary database of contractors, lobbyists and real estate entities and others doing or seeking business with the city can be online and integrated with the Campaign Finance Board's database before that time.

In conclusion, the creation of a contractor database would be a valuable first step in helping auditors determine whether donors are currently 'doing business with the city.' However, a database alone isn't enough to put a meaningful system in place, and could undermine confidence of the city's campaign finance program.

NYPIRG stands ready to work with both the City Administration, City Council and Campaign Finance Board to address the challenging issues in crafting a workable ban on 'pay to play' contributions.