

Opening Statement of Frederick A.O. Schwarz, Jr.

**New York City Campaign Finance Board Hearing
on the Subject of Contributions from Persons “Doing Business” With the City
To Candidates Running for City Office**

January 31, 2005

Good Morning, I am Fritz Schwarz, Chairman of the New York City Campaign Finance Board. On behalf of the Board and its staff, I welcome you to the first hearing on the subject of candidates accepting contributions from those who “do business” with the City.

A. Subjects of the Hearing. This hearing will focus on two subjects. The first is to examine the general issue of “pay to play.” Here we are interested in hearing testimony about the scope of the problem, and about possible ways to address it. Second, we will focus on “doing business” with respect to contracts with the City, specifically the overlap between those who seek and/or receive contracts to do City work and those who give contributions to candidates for City offices.

In subsequent hearings, we will examine lobbying, as well as land use, franchises, licenses, and other business relations with the City.

B. Substantive Issues: Disclosure and Regulations. There are two ways to address the “pay to play” issue: disclosure and regulation.

1. Disclosure. With disclosure, the public, the press, and candidates can know the who, when, and how much about contributions that persons doing business with the City made to candidates for City office.

As you know, the Board has been working closely with the Department of Information and Technology and Telecommunications to develop a way to make the City's VENDEX system, which contains information about who has certain contracts with the City, searchable and available to the public. The Board would ultimately like to see a comprehensive database covering not only contracts, but all other ways of "doing business," such as lobbying, land use, and franchises and licenses. The objective is that all these sets of data be searchable and compatible with the Board's own computerized and instantly available searchable database of contributions to candidates.

2. Other Regulation. Disclosure of who does business with the City is a desirable end in itself. In addition, a searchable database is, we believe, necessary if there is to be other real and effective regulation, whatever form that regulation takes. Disclosure is highly likely also to inform the evaluation of regulatory options, such as lower contribution limits for contributors who do business with the City, banning such contributions, or denying matching funds for those contributions.

The Charter Amendment approved by the voters in 1998 required the Board to promulgate regulations on contributions from persons doing business with the City if this was practicable and could be done without creating such an undue burden that it would discourage candidates from joining the voluntary Campaign Finance Program, thereby harming the entire campaign finance system. Because of the lack of a City "doing business" database, the Board, speaking through its then Chair, Father O'Hare, concluded that meaningful and fair regulation could not be accomplished at that time.¹

¹ Letter to Michael Hess from Joseph O'Hare, November 30, 2000.

The current administration has decided to establish a database. This will be a major achievement, one that has been sought since the 1980's. No other jurisdiction we know of has a comprehensive, searchable, publicly available database. In light of these efforts, which we hope to hear about in detail today as applied to contracts, the Board resolved to proceed with these hearings, recognizing that "the issue of potential influence peddling when candidates accept contributions from those doing business with the City is one that requires serious attention."²

From these hearings, increased knowledge of how (and indeed whether) to regulate should emerge. As indicated by the questions distributed to potential witnesses before the hearing, there are many significant issues to explore.³

The Board continues to believe that legislation (rather than Board regulation) is the best way to regulate this area, for one thing, because the Board has no direct jurisdiction over donors or those who "do business" with the City. Regulating the donor would be the most effective solution rather than regulating candidates generally or, more specifically, those who happen to be in the Campaign Finance Program. (It is also the only way to reach contributions from persons who seek to "do business" with the City, as opposed to those already doing it.) Finally, it is potentially the most effective approach, because forfeiture of the right to do business would be the most meaningful way to stop this practice altogether. It is significant that regulation of the donor is the

²Letter to William Perkins from Frederick A.O. Schwarz, December 16, 2004.

³ Exhibit A- Hearing Invitation Attachment 2, January 5, 2005.

approach taken by the SEC, by the State of New Jersey in its recent executive order, and suggested by the Council on Governmental Ethics Laws' (COGEL) Model Law.

Nonetheless, in the absence of legislation, the Board intends to explore regulation, informed by the hearings that commence today.

C. Process and Timing. The task of regulating contributions from those who do business with the City is enormously difficult. Even defining who “does business” with the City is a complex question, and it is only the first of many complex questions, as the list of questions distributed to witnesses demonstrates. Because (1) the subject of “doing business” contributions is extremely challenging, and (2) the Board is not a repository of data or other information about those who “do business” with the City, the Board has decided to approach a potential rulemaking in a manner that goes beyond the requirements of the usual rulemaking process.

Thus, as the Board did once before, it is gathering information through hearings and in other informal settings even before there is an attempt to draft any rules for public comment. The Board wants to learn as much as possible both about the subject area and about the public's views on the question when changes should go into effect. Possible rules would also necessarily rely on the status of computerized disclosure that is available for those “doing business,” and we will only begin to have had experience as the current computerization project is up and running.

As to disclosure, there seems to be no reason to delay making information available to the public once the new City “doing business” databases can communicate with our contribution database. However, I must caution that once VENDEX is online and searchable, Board regulation may not be automatic. Both our database and the VENDEX system contain data that change frequently, sometimes on a daily basis. In the short term, the two systems may not be automatically comparable, and instead comparison of data may require laborious searches, whether by the public, the Board, or the candidates. Also, as I hope we will learn today, we must be very clear about the limitations on the information available to us, whether from VENDEX or any other of the many systems the City has in place, which were developed for purposes other than disclosure and campaign finance regulation.

As to when we should aim to resolve the questions concerning other kinds of regulation (in the absence of legislation), we join with others, including the Mayor,⁴ in believing this cannot be accomplished in this election season. The available data need to be collected and analyzed. Various possible solutions need to be posited and debated.

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The ultimate goal of these hearings, therefore, is to capture an accurate picture of “pay to play” practices so as to develop a meaningful and effective way of controlling it. The right laws or regulations will instill confidence in our government without discouraging citizens from demonstrating their legitimate support for candidates

⁴ “Pay to Play’ ban too late:Mike” Stephanie Gaskell, *The New York Post*, December 21, 2004 p.8

through financial contributions or discouraging vendors from competing legitimately for City work. Thank you for your time. Now, let us begin with our first witness.