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Oral testimony on
Intro 586-2007
June 12, 2007

Most voters think that the influence of money on politicians keeps us from having a decent health insurance program, fairer rent laws, an effective landmarks commission, and development that cares less about developers than with the needs of the people who live in New York's neighborhoods.

Twenty years ago the City Council attempted to solve this problem with what appeared to be a model campaign finance law. It has turned out to be flawed, complicated and bureaucratic. It has not lowered the influence of big contributors. It is difficult to administer and time consuming. It is so complicated that it keeps people from running for office.

The proposed "fix" to this law, however, is merely a series of new rules, new reporting requirements, and new complications. It does not prevent lobbyists and contractors from fundraising. It does not prevent any kind of bundling. It does not simplify reporting procedures; it complicates them.

There is a better system, a full public funding system known as "Clean Money, Clean Elections." My guess is, most of the people in this room know that there are places in this country where full public funding works, such as Maine and Arizona.

The two arguments against having "Clean Money, Clean Elections" in New York City are as flawed as the current system.

One that it is too expensive – but how much money is spent on matching funds now? How much money is spent when you add the costs for compliance and bureaucrats to enforce the system? How much money is spent giving big donors and fundraisers special breaks and budget line items?

The other purely political argument is that it will never be enacted by people who were elected under the old system. I believe that most of you would like this to happen, that most of you do not want to spend time raising money, but would rather be listening to voters and doing the work of government.

"Clean Money, Clean Elections" is working in other places. I believe it will work in New York City. And I know, as every person in this room should know, that however well meaning it may be, no matching fund system can work. Creating new rules to make the current system more complicated will not fix what we all know is the fundamental problem – candidates should not be raising money.

My real question is, why is this not even debated by the Council? Why are you putting cosmetic patches on a system that you know does not work? Why is this Council not even discussing a better way?

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Oral testimony on Intro 586-2007
City Council Governmental Operations Committee
Simcha Felder, Chair
June 12, 2007

Intro 586 tries to correct many flaws in the current campaign finance system. These "corrections" look good on paper, but they are based on a fundamentally flawed concept – that the system itself is a good one.

Campaign spending continues to rise at an enormous rate, and in the few cases where the largest fundraiser does not win, matching funds are not the reason why. The system fails to limit spending, and it fails to level the playing field.

I have attached a section-by-section analysis of the bill, and have highlighted those components that don't work. I will briefly mention two major items.

1) Trying to limit contributions from people doing business with the city has three problems. First, there are several loopholes. Second, city contractors will still find ways to funnel money to the candidates of their choice; I've already thought of several possibilities. Third, this creates a new bureaucracy, with more headaches and compliance costs for candidates. As a result, those who can raise more money will gain a further advantage.

2) The changes to the matching fund ratio, combined with lower caps, also look good on paper. But candidates will still go after large contributions, and those donors will still be the most valued, both before and after the election. In addition, the 55% matching fund ceiling ensures that candidates will still need to raise ever-larger amounts of money in order to compete.

This bill was crafted by serious, intelligent, thoughtful people who are, unfortunately, invested in the current paradigm. This bill will not make a significant difference, and will in some ways be a step backward. Think McCain-Feingold.

The real solution lies not in this system, but in a "Clean Money, Clean Elections" system of full public funding. It is working now in Maine and Arizona, and is starting up in Connecticut. It is the system Governor Spitzer said should be the "ultimate goal" of campaign finance reform. A "Clean Money" bill will soon be introduced into the City Council; I urge you to pass it.

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FOR THE RECORD

Written testimony on
Intro 586-2007
June 12, 2007

The campaign finance bill currently being considered is clearly the result of a lot of thoughtful, hard work on the part of many different people. Unfortunately, however, all the work is based on the assumption that the current matching fund system is, in the words of several current and former elected officials, the "best" in the country. As a result, this bill fails to take into account the real problems with this, or any, matching fund campaign finance system.

The current system fails to lower, or even limit, campaign spending. The cost of campaigning has more than doubled in twelve years, after adjusting for inflation. Several people have already raised over one million dollars for the next election that is over two years away. They will almost certainly choose not to participate in the system, and unless the spending limits are significantly raised, fewer and fewer candidates will decline to participate with each election cycle.

The current system also fails to level the playing field. In the vast majority of elections, the candidate who raises the most money wins. When this is not the case, matching funds do not make the difference; instead, non-monetary factors come into play. The reason, in hindsight, is clear. Since a candidate must raise money in order to receive matching funds, those who can raise the most money generally qualify for the most public funding.

Matching fund systems have been in place in New York City for nearly twenty years, and nationally for over thirty years. In that time, it has become obvious that we need to replace it with something that can work. Fortunately, such a replacement is already available; it is the "Clean Money, Clean Elections" (CMCE) system of full public funding. CMCE is already working in Maine and Arizona as well as parts of several other states, and it is beginning to work in Connecticut. In Albany, Governor Spitzer is set to submit a CMCE bill to the state legislature.

Under CMCE, there are no major campaign contributions, only very small contributions from constituents. There are no conflicts of interest, and no special access for lobbyists or others doing business with the city. And it works. The "Maine Rx" program that will soon cover everyone in Maine for prescription drugs is an example of the kind of progress that can only be made when real campaign finance reform is in place.

New York City has been in the forefront of aggressive campaign finance laws, and we should return to that position. We should consider, and adopt a CMCE system.

Thank you.

Campaign Finance Reform in New York City, 2007 Edition
An Analysis of Intro 586-2007

Introduction

On June 4, 2007, Speaker Christine Quinn submitted Intro 586, "in relation to campaign finance," to the New York City Council. This bill makes many changes to the campaign finance laws of New York City in an attempt to fix a system deemed by its supporters as "the best" campaign finance system in the country. Rather than fix, or even significantly improve, the current system, however, this bill not only creates as many problems as it solves, but also highlights the problems with all matching fund systems, problems that may not be solvable within such a system.

The changes made to the system fall into seven main categories. In the order in which the changes are addressed in the bill, they are:

1. Limiting contributions, and matching fund availability for contributions, from people doing a significant amount of business with New York City;
2. Making clarifications to the functions of the Campaign Finance Board (CFB), first in the City Charter, and later in the City Administrative Code;
3. Some minor tightening of existing limitations;
4. Changing the formula for determining matching funds and the conditions under which full matching funds are distributed;
5. Updating the spending limits to account for inflation;
6. Adjustments to the process for resolving disputes between candidates and the CFB; and
7. Apply new limitations to Transition and Inauguration (TIA) committees.

Part 1. Limiting contributions from people doing business with the City

This bill requires the CFB to create and maintain a new database of those people who own, run, or manage companies that do significant amounts of business with the city, in order to limit those people's ability to contribute to candidates' campaigns. Additionally, such campaign contributions will not be eligible for matching funds.

The idea is campaign contributions from people doing business with the city give the appearance, if not the actual fact, of bribes. Last year, the City Council denied matching funds for contributions for lobbyists; this is the logical next step. There are, however, two problems with this attempt to limit the monetary influence of lobbyists and people who get city contracts.

The first problem is that lobbyists and contractors can still gather campaign contributions from others and "bundle" them. Those bundled contributions would not be as limited as direct contributions, and they would still qualify for matching funds. The City Council refrained from attempting to limit such "bundling," although this bill does try to strengthen the definition of an "intermediary" (the person doing the bundling). The reason is that any attempt to limit bundling, or even to require that all intermediaries be publicly identified, is doomed; there is no practical, effective way to enforce such an attempt. As a result, lobbyists and contractors can continue to bundle contributions from friends (and even co-workers who are not required to be in the new database), and gain the same influence they do now.

The second problem is that this attempt to tighten the rules creates new bureaucratic nightmares. The CFB must maintain a brand new, ever-shifting database, and candidates must search that database every time they receive a contribution. For candidates, this means higher "compliance costs" – money spent to ensure that the campaign follows the rules. Compliance costs are exempt from spending limits, so candidates who can raise more money will gain a further advantage. ***This result is the exact opposite of the intent of the proposed legislation.***

Part 2. Making clarifications to the functions of the CFB

The purpose of this part of the legislation, sections 10-12 and 21-22, is to ensure that the CFB can carry out its functions. This is another step in a long-running attempt to improve the workings of the oversight agency, will not hurt, and may make things better. ***This part of the legislation has no direct effect on campaigns.***

Part 3. Some minor tightening of existing limitations

This part of the bill covers sections 13-17, and does several things. It clarifies the definition of an intermediary; lists types of campaign expenses that are, and are not, allowed; expands the prohibition on contributions from corporations to include other types of businesses; and deals with expenditures on issues not directly related to the election of the candidate.

These sections will have only a minor effect on campaigns. The current prohibition on accepting contributions from corporations, for example, has been touted as a major item, but it makes little difference in the "real world." Adding other types of businesses to this list will be equally ineffective.

These sections will have little effect on campaigns.

Part 4. Changing the formula for determining matching funds and the conditions under which full matching funds are distributed

This part of the bill covers sections 18 and 19. Section 18 raises the ratio at which matching funds are distributed from 4-1 to 6-1, but lowers the maximum amount of a contribution that is eligible for matching funds from $250 to $175. Section 19 alters the conditions under which matching funds can be temporarily withheld.

By raising the matching fund ratio but lowering the ceiling for matching fund eligibility, the end result will be only a small change in matching funds available. Furthermore, since few contributors give at least $175 but less than $250, there is no reason to expect a measurable effect as a result of this change.

Section 19 is very poorly written. It repeals a simple, straightforward rule and replaces it with a far more complex rule, and fails to rename the paragraphs after the repealed paragraph.

This part of the bill will not lower the advantage of large contributions and access to large contributors, and will create new headaches for some candidates.

Part 5. Updating the spending limits to account for inflation

Despite the apparently enormous increase in spending limits enumerated in Section 20, the actual increase from 2005 limits will only be 7.5%, in line with inflation. The difference is that the CFB has been making those increases all along, even though they may not have been explicitly authorized to do so. This section raises spending limits in line with inflation, and explicitly grants the CFB the power to continue that process after each four-year cycle.

This part of the bill does exactly what it intends to do, but will have little effect on campaigns.

Part 6. Adjustments to the process for resolving disputes between candidates and the CFB

Sections 22-29 attempt to diminish the adversarial atmosphere that exists between the CFB and candidates who inadvertently run afoul of campaign finance laws and regulations.

This part of the bill may or may not accomplish its objective, but will have little or no effect on campaigns.

Part 7. Apply new limitations to Transition and Inauguration (TIA) committees

This part of the bill applies contribution limitations for people doing business with the city to committees created by election winners to cover their transition and inauguration costs. ***This part of the bill will have no effect on campaigns***, and since it continues to allow newly elected officials to receive contributions, ***this part of the bill also continues the corruptive influence of money on elected officials.***

Section 1:

This section modifies and adds definitions for the purpose of ensuring that everyone knows what is meant by certain terms. Most of this section focuses on the meaning of "doing business" with the city. ***It should be noted that there are several loopholes for those doing business with the city. They are:***

- Any contracts procured through a sealed bidding process;
- A monetary floor – anyone providing goods and/or services totaling less than one hundred thousand dollars, or contracting for capital projects totaling less than one million dollars, is exempt;
- Anyone with a long-term lease that has been in operation for over a year;
- Anyone who pays New York City more than one hundred thousand dollars a year for a franchise or concession.

These loopholes are large enough to drive a matchable contribution through.

Section 2:

This section provides much smaller limitations on campaign contributions from people officially listed as "doing business with" the city, denying matching funds for such contributions, and setting forth rules and procedures for enforcement.

Another loophole is added in this section. Only officers and managers of companies doing business with the city are covered; other employees are exempt.

Section 3:

This section delays the deadline by which time a candidate must decide whether to apply for matching funds. ***This gives candidates longer to determine whether they can raise enough money to opt out of the system.***

Section 4:

This section requires that anyone dealing with campaign finance for a campaign attend a training program. ***This acknowledges that the system is extremely complicated.***

Section 5:

This section requires the CFB to make matching funds available more readily in the month leading up to election day.

Section 6:

This section is housekeeping; it gives the CFB power to enforce the new rules.

Section 7:

This section gives candidates some leeway if they spend matching funds for purposes other than those allowed by law.

Section 8:

This is another housekeeping section, similar to section 6.

Section 9:

This is another housekeeping section, similar to section 6.

Section 10:

This section alters the City Charter to require CFB board members to undergo a training session.

Section 11:

This section alters the City Charter to call on the mayor and the CFB to develop a training curriculum for CFB board members and staff.

Section 12:

This section alters the City Charter to separate the investigative and adjudicatory powers of CFB.

Section 13:

This section adds to the definition of "intermediary".

Section 14:

This section defines "expenditure" and "campaign expenditure" and lists a number of specific campaign expenditures that shall be considered to be legitimate.

There is a numbering error here. This section claims to add a new "subdivision 19" to section 3-702 of the administrative code of New York City, but Section 4 of the bill also adds a new subdivision 19 – this section should add a new "subdivision 21."

Section 15:

This section adds other business entities to the list of entities (currently numbering one – corporations) not allowed to contribute to campaigns.

Section 16:

This section makes any campaign spending on a particular issue subject to campaign spending limitations.

Section 17:

This section adds to the list of items for which matching funds may not be used.

Section 18:

This section changes the ratio for receiving matching funds from 4:1 to 6:1, and lowers the ceiling for matchable contributions from $250 to $175.

The theory is that this will raise the value of smaller contributions. It looks good on paper, but a deeper understanding of fundraising reveals that large contributions will still be just as sought after, and just as valuable to campaigns. ***Smaller contributions will result in larger matching funds, but since victorious candidates tend to have larger average donations, this probably won't make any real difference.***

Section 19:

This section changes the thresholds for receiving the full matching funds for which a candidate qualifies. It removes the automatic threshold for candidates opposed by other qualifying candidates. It also creates a list of conditions, any one of which would serve as the threshold.

This section makes it more difficult for a candidate to receive the full matching funds for which the candidate nominally qualifies.

Section 20:

This section raises the campaign spending limits for participating candidates by 7.5% over the 2005 limits, roughly in line with inflation. It also loosens the regulations requiring candidates to prove that certain expenditures are exempt from spending limits.

Because several presumptive candidates for citywide office have already raised over one million dollars with the election still over two years away, the limitations will not be high enough to keep them in the program.

Section 21:

This section requires CFB board members to undergo a training session, in line with Section 10's alteration of the City Charter.

Section 22:

This section calls on the mayor and the CFB to develop a training curriculum for CFB board members and staff, in line with Section 11's alteration of the City Charter.

Section 23:

This section tightens the rules for CFB audits, ***making it more difficult to obtain repayments from candidates to fail to follow the rules.***

Section 24:

This section simplifies the rule for repayment of excess matching funds distributed to participating candidates.

Section 25:

This section clarifies the procedure for repayment of excess public matching funds distributed to participating candidates.

Section 26:

This section ***lengthens the procedure for determining whether a candidate or candidate's agent has violated campaign finance rules.***

Section 27:

This section gives candidates who violate campaign finance rules an opportunity to avoid paying penalties.

Section 28:

This is another housekeeping section, similar to section 6.

Section 29:

This section clarifies procedures for informing a candidate that campaign finance rules may have been violated.

Section 30:

This section bans contributions from certain business entities to Transition and Inauguration committees.

Section 31:

This section requires city agencies to assist the CFB in creating the database of people doing business with the city.

Section 32:

This section determines when various sections of this bill take effect.

Conclusion

This bill fails to limit the influence of money on politics, and also fails to level the playing field between candidates who can raise large sums of money from many contributors and those who can't. In fact, in some areas, this bill actually has the opposite effect; it tilts the playing field, giving extra advantages to candidates with access to lots of money.

Most of this legislation has little or no effect on campaigns at all, and does very little to improve a system that doesn't work. Almost every election for offices covered by the city's matching fund system is won by the candidate who raises the most money, and those few exceptions to that rule have other, non-monetary reasons for their victory. In other words, matching funds never make a real difference.

In addition, campaigns have become increasingly expensive over time. According to the CFB report on the 2005 election, City Council races more than doubled in cost, in real, inflation-adjusted dollars, between 1993 and 2005. In 2009, it's a safe bet that nearly all the major candidates for citywide offices will opt out of the system, as they will be able to raise and spend more than participating candidates will be limited to spending.

The only true solution to the goals of leveling the playing field, limiting campaign spending, and simplifying the system is a full public funding system, such as the one known generally as "Clean Money, Clean Elections" (CMCE). This system, which is already a tremendous success in Maine and Arizona and now being implemented in Connecticut, also has the support of Governor Spitzer and Lieutenant Governor Paterson.

A CMCE bill will soon be introduced in the City Council. As it will not take effect until after the 2009 elections, it will not impact Intro 586. Whether the City Council passes Intro 586 or not, it does not fix the system because the system is irreparably broken. Only a full public funding system, such as CMCE, can truly fix the system.

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Testimony of Ciara Torres-Spelliscy
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On Campaign Finance Reform

Presented to the

Governmental Operations Committee
of the New York City Council

June 12, 2007

On behalf of the Brennan Center for Justice at NYU School of Law, I would like to thank you for inviting me to testify about Int. No. 586 and for holding this hearing today.

The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on democracy and justice, including issues pertaining to campaign finance and the preservation of fair and impartial courts. Our remarks here focus briefly on some of the constitutional issues related to public financing. For a more detailed analysis of these constitutional issues, we refer you to our 200-page treatise, *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, which you may download chapter-by-chapter at http://www.brennancenter.org/subpage.asp?key=38&tier3_key=10340. For specific questions, please feel free to contact Ciara Torres-Spelliscy at 212-998-6025.

The Center's Democracy Program has been working in the area of campaign finance reform on the federal, state, and local levels since its inception in 1995. The Center was part of the legal defense team in *McConnell v. FEC*, 540 U.S. 93 (2003), in which the U.S. Supreme Court upheld virtually all of the key provisions of the federal Bipartisan Campaign Reform Act of 2002. Center attorneys have also successfully defended public funding systems throughout the country, including as lead counsel for intervenors in *Association of American Physicians & Surgeons v. Brewer*, 2007 WL 1366077 (9th Cir. 2007) (affirming dismissal of complaint against Arizona's public funding program); *Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000) (upholding Maine's full public financing system); and *Jackson v. Leake*, 2006 WL 4091233 (E.D.N.C. 2006) (denying plaintiffs' motion for preliminary injunction against North Carolina's public financing system for appellate judicial elections), No. 5:06-CV-324-BR. (E.D.N.C. Mar. 30, 2007) (granting motion to dismiss the complaint), *appeal filed* (4th Cir. April 30, 2007). Presently, the Brennan Center is assisting the State of Connecticut in defending its public financing system enacted in 2005. *Green Party of Connecticut v. Garfield*, 3:06 CV 01030 (D. Conn. filed July 6, 2006). In addition to litigation assistance, the Center provides legal counseling, legislative drafting assistance, and

policy analysis to citizens and elected officials who are interested in promoting campaign finance bills or initiatives.

The Brennan Center would like to commend the New York City Council for being a leader in the realm of campaign finance reform by providing the citizens of New York with a dynamic public matching funds system for candidates who run for office in the City which encourages them to seek support from smaller donors.

We applaud your effort to prevent the undue influence of lobbyists[1] and city contractors on political decision-making. Such provisions are commonly known as "pay-to-play" regulations, because they seek to prevent deals whereby contributors "pay" officials for the opportunity to "play" with the government. Like other restrictions on campaign contributions, these regulations have been subject to First Amendment scrutiny.

The U.S. Supreme Court has not addressed the constitutionality of pay-to-play contribution restrictions, although it has upheld low contribution limits, even for ordinary members of the general public, who do not pose the heightened threat of corruption that lobbyists and city contractors do. *Shrink Missouri*, 528 U.S. 377 (upholding $1,000 contribution limit for statewide office).[2] Moreover, no other courts whose rulings are binding on New York City have issued opinions on the constitutionality of pay-to-play contribution limits. Consequently, any court considering the City's provisions will likely look to other jurisdictions for guidance.

Courts throughout the nation have recognized that political contributions by lobbyists, government contractors, or highly regulated industries pose severe risks of corruption and have upheld pay-to-play regulations. *See, e.g., Blount v. SEC*, 61 F.3d 938, 944-48 (D.C. Cir. 1995); *Institute of Gov'tal Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183, 1189 (E.D. Cal. 2001) (upholding ban on contributions by lobbyist to offices for which lobbyist is registered to lobby); *Casino Ass'n of Louisiana v. State*, 820 So. 2d 494 (La. 2002) (upholding ban on contributions from riverboat and land-based casinos), *cert. denied*, 529 U.S. 1109 (2003); *Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890 (Ga. 1993) (upholding ban on contributions by insurance companies to candidates for Commissioner of Insurance); *Soto v.*

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[1] The Supreme Court recognized over fifty years ago that lobbyists can be subject to special regulations because of their influence on the legislative process. *U.S. v. Harriss*, 347 U.S. 612 (1954) (upholding disclosure requirements for federal lobbyists). The Court described modern legislative process in the following way:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. *Otherwise the voices of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.*

U.S. v. Harriss, 347 U.S. 612, 625 (1954) (emphasis added). The Court concluded that Congress could require disclosures from federal lobbyists in part because Congress had the "power of self-protection." *Id.*

[2] However, in 2006 the Supreme Court made it clear that there could be contribution limits that were too low if they prevented challengers from mounting effective campaigns against incumbent officeholders. *Randall v. Sorrell*, 126 S. Ct. 2479, 2482-83 (2006).

State, 565 A.2d 1088 (N.J. Super. Ct. App. Div. 1989) (upholding ban on political contributions from casino employees); *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61 (Ill. 1976) (upholding ban on contributions from members of liquor industry). But these courts sustained pay-to-play restrictions only after examining the factual basis for them and determining that they were carefully designed to further an important government interest. *See, e.g., Blount*, 61 F.3d at 943; *Institute of Gov'tal Advocates*, 164 F. Supp. at 1189.[3]

Whether a court will uphold a particular "pay to play" restriction as constitutional depends upon the reach of the restriction and the grounds for imposing it. While narrow pay-to-play regulations like those proposed by New York City are generally upheld, *see, e.g., Blount*, 61 F.3d at 944-48, court decisions on broader pay-to-play regulations (including bans) have been mixed, depending on the courts' judgments about whether the broader restrictions were necessary to address the potential for corruption. *Compare Fair Political Practices Comm'n v. Superior Ct.*, 25 Cal. 3d 33, 45 (1979) (noting the importance of ridding the political system of corruption but nonetheless striking down as overbroad a state law that banned all contributions from lobbyists), *with Casino Ass'n of Louisiana*, 820 So. 2d 494 (upholding a broad ban on contributions from riverboat and land-based casinos).

A court adjudicating a challenge to New York City's proposed pay-to-play restrictions, which restrict contributions from a wide range of donors to candidates for many offices, would consider whether the reach of those provisions is necessary to address the reality and appearance of corruption in the City. It will be particularly important to have legislative findings supporting such restrictions, which could include references to any recent experience with campaign finance and corruption scandals.

As currently drafted, Int. No. 586 would limit the amount of contributions that a lobbyist or a city contractor could give to participating candidates to roughly 10% of the contribution limit which would otherwise apply. Int. No. 586 §2 (1-a). These lower limits allow lobbyists and contractors to indicate their financial support for candidates of their choice, thereby preserving their associational rights under the First Amendment. We encourage the Council to consider expanding these lower limits for lobbyists and city contractors to all candidates (not just participating candidates) to reduce the influence of special interests in the City.

Int. No. 586 also bars the City Campaign Finance Board from matching funds that come from a lobbyist or a city contractor. Int. No. 586 §1(3)(g). This provision protects the public fisc by providing matching funds only to contributions from individuals free of conflicts of interest. Both aspects (lower contribution limits and the lack of public matching funds for contributions from lobbyists and city contractors) appear to be within the permissible restrictions that the City may place on candidates participating in the City's public financing system.

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[3] Courts considering pay-to-play restrictions have applied varying levels of constitutional scrutiny in analyzing the statutes. Some have held that the government must show that the restriction furthers a "compelling" interest, *see, e.g., Gwinn*, 426 S.E.2d at 892, while others have held that it must show an "important" or "substantial" interest, *see, e.g., Institute of Gov'tal Advocates*, 164 F. Supp. at 1194; *Casino Ass'n of Louisiana*, 820 So. 2d 504. Similarly, some have held that the statute must be "narrowly tailored" to further the government interest, *see, e.g. Institute of Gov'tal Advocates*, 164 F. Supp. at 1194; *Gwinn*, 426 S.E.2d at 892, while others have held that the statute must be "closely drawn," or something similar, to further the interest, *see, e.g. Casino Ass'n of Louisiana*, 820 So. 2d at 504.

CITIZENS UNION
OF THE CITY OF NEW YORK

Citizens Union Testimony

Introduction 586:

A local law to amend the New York city charter and the administrative code of the city of New York, in relation to campaign finance.

Delivered by Doug Israel, Director of Public Policy and Advocacy

to the Committee on Governmental Operations

June 12, 2007

Good Afternoon Chairman Felder and members of the Governmental Operations Committee. I am Doug Israel, Director of Public Policy and Advocacy for Citizens Union, a century old good-government organization committed to ensuring fair and competitive elections. Citizens Union has long been a supporter of the city's campaign finance program since its inception in 1988. Even more so, Citizens Union has supported the notion that ensuring a level playing field for candidates competing for office and limiting the role that money plays in elections and politics are two of the cornerstones of a healthy and participatory democracy. We have actively supported the enactment of legislation aimed at reducing the reality and appearance of "pay-to-play" whereby large contributors to candidates either gain or suffer from the perception of special access and influence over the political process. We are pleased that the city has moved one step closer to making this a reality.

In addition to our support of "pay-to-play" legislation, Citizens Union has consistently advocated for changes to the city's campaign finance program to ensure its relevance and effectiveness by adapting to changing times and making it more appealing and easier for candidates to participate and comply with the program's requirements.

Introduction 586 strengthens the city' model campaign finance program in all of these ways. While there will always be ways that the city can improve the program, Citizens Union strongly supports the introduced legislation and commends the Committee on Governmental Operations, the Mayor, the Speaker and the Campaign Finance Board, and their respective staffs for their collective abilities and leadership in reaching a vitally important agreement on how best to improve a program that has been essential to supporting viable candidates, ensuring clean campaigns, and providing more competitive elections in our city. We specifically want to thank you, Chairman Felder, Speaker Quinn, Deputy Chief of Staff Maura Keaney, Legislative Director Rob Newman, Deputy Counsel Jim Karas, and Committee Counsel DeNora Johnson for all of our innovative thinking and hard work on behalf of New Yorkers and in support of the public interest.

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Richard J. Davis, Chair • Dick Dadey, Executive Director

Specifically, Citizens Union supports the following modifications to the city's model campaign finance program:

1) restricting the level of contributions from those "doing business with the city," making those contributions non-matchable under the campaign finance program and creating appropriate databases for the city to track these entities and individuals;
2) broadening the definition of a fundraising intermediary, or "bundler," to include anyone who solicits a contribution for a campaign. Under the current system, only those outside a campaign who receive and deliver contributions on behalf of the campaign are considered intermediaries. This reform requires that those who *solicit* contributions are also listed as bundlers;
3) giving small contributors a greater say in the process of electing our local representatives by creating a six-to-one match for contributions of $175 or less which will increase the importance and value of small contributions;
4) expanding the existing ban on corporate contributions to include limited liability companies (LLCs), limited liability partnerships (LLPs) and other forms of non-incorporated businesses;
5) closing the loophole that allowed contributors to give above the limit contributions to transition and inaugural committees;
6) clarifying the definition of permissible and impermissible campaign expenses;
7) streamlining the audit process to provide candidates with more timely audits;
8) making it more difficult for incumbents to receive matching funds in noncompetitive elections.

We are pleased that the Council in crafting improvements to the administration of the program and enforcement of the law consulted with the Campaign Finance Board to ensure that their authority and prerogative were respected and maintained, and therefore support the administrative changes that have been proposed.

While we offer our strong support today for the bill, there are also several issues that may require us to provide continued review and thought to ensure the program's ongoing success.

The city needs to monitor closely the impact of the new caps on pay-to-play contributions to ensure that it does not result in unintended consequences of unwittingly denying worthy candidates, particularly those for borough and citywide offices, enough legitimate dollars from civic minded individuals who also do business with the city.

Additionally, as the city moves to limit further institutional contributions in the form of LLCs, the city needs to ensure that an even hand is being applied and review other institutional contributions like those from unions. While there may be compelling and supportable reasons for union contributions to be handled differently from other contributions, the city should engage in a public discussion on the pros and cons of that issue.

Finally, while we recognize that this bill is not the place to tackle this issue, the campaign finance program is challenged with finding a way to address the disparity that exists for candidates participating in the program who face a well-funded or self-funded opponent. This has been an issue in past mayoral races and will most likely be in the future as well. The campaign finance board has proposed some smart measures in the past and hearings should be held on this topic to address this issue moving forward.

Thank you for the opportunity to provide testimony today and for all the work that has been put in to date to craft this legislation. It is encouraging to see the city government, including the Council, approach this issue in such an inclusive and thoughtful manner.

New York
COMMON CAUSE
Holding Power Accountable

Testimony of
Megan Quattlebaum
Associate Director of Common Cause/NY
before the
New York City Council Governmental Operations Committee
Hearing on
Intro 586
To amend the New York city charter and the administrative code of the city of New York, in relation to campaign finance
June 12, 2007

Good morning Chairman Felder and members of the Governmental Operations Committee and thank you for inviting us to present testimony here today.

Common Cause/NY supports Intro 586, and we urge its enactment by the Council. I want to note at the outset that Common Cause/NY greatly appreciates the consideration given by the City and the Council to the input of civic groups, including our own. We feel that the suggestions we have offered in public hearings on the issue of "doing business" and when asked for comment by Council and Mayoral staff were thoughtfully and respectfully considered, and we appreciate the hard work that went into crafting this difficult and important legislation.

In particular, we would like to thank Council staff Maura Keaney, Rob Newman, DeNora Johnson and Jim Caras, and Anthony Crowell, Frank Barry and Patrick Wehle with the City Administration, all of whom spent very long hours crafting this reform. We would also like to express our special appreciation to Government Operations Committee Chair Simcha Felder, who today follows in the footsteps of his predecessors and continues a 19-year tradition of strengthening the campaign finance program through his leadership on this committee.

We believe that the legislation will strengthen New York City's landmark campaign finance program by, among other things:

1) Putting a cap of $250 to $400 on contributions to any city candidate by a broad range of individuals who are determined to be "doing business" with and seeking favors from the City of New York;

2) Making those "doing business" contributions non-matchable under the public financing program;

3) Broadening the definition of "intermediaries" to include not only those delivering contributions, but also those soliciting them;

4) Creating a six-to-one public funds match for contributions of $175 or less (as opposed to the current four-to-one match for contributions up to $250). While this does not substantially increase the amount of public funds expended (the maximum will rise from $1,000 per contributor to $1,050 per

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contributor) we believe that it will have the effect of further incentivize the soliciting of small dollar contributions by candidates;

5) Prohibiting contributions from LLC's and LLP's;

6) Limiting contributions for transition and inaugural expenses; and

7) making it clearer what are permissible and impermissible expenses by enacting what we believe is a very strong and clear prohibition on the conversion of campaign funds to personal uses.

In all of these ways, the legislation before you today strengthens our city's landmark campaign finance program and protects it for future generations of citizens and public servants. In passing these reforms, this Council and Mayor will prove themselves to be forward-thinking guardians and supporters of this important city program.

On a technical note, we would like to say that we strongly agree with the point made in the committee report that if the portion of this legislation that pertains to "doing business" contributions should at any point be struck down by the courts as applied to candidates not participating in the city's public financing program, it should also not be applied to participants. As we have emphasized at numerous previous hearings on the topic, we strongly feel that if these limitations only apply to participants in the public financing program, it will provide a strong disincentive to other candidates from entering the program.

In addition, we do want to note that the strong new rules and prohibitions laid out in the "doing business" portion of the bill represent the beginning but not the end of reform. Difficulties remain in implementing these provisions. The legislation calls for "certifying" by November 2008 that "complete and accurate" data bases of individuals with applications or bids for contracts (above $100,000); land use matters; economic development incentives; concessions and franchises; and leases. This will be challenging, as the recent experience with a much smaller lobbyists' data base shows. We agree with the November deadline. Any certification date that went into Mayoral 2008-2009 election cycle would be unfair. If such deadline proves impossible to make, than we support certifying data bases after November 2009, as the legislation mandates.

Before I conclude, I also think it is important to highlight some reforms not included in this bill, but which Common Cause/NY hopes will remain on the table for future consideration:

1) We are disappointed that the current bill does not extend the ban on organizational contributions to unions, and we hope to see this matter taken up at a future date;

2) We still believe that it is sensible to consider lowering contribution limits for city races across the board. An individual may still give more ($4,950) to a candidate for Mayor than they are legally allowed to give to a candidate for President of the United States ($4,600) over the course of the primary and general elections. Lowering contribution limits across the board helps to limit concerns that campaign donors are able to garner access or influence through their donations, regardless of whether or not they fall under the "doing business" definition.

We hope that this strong bill will serve as a positive example to members of the state legislature in Albany, who we very much hope will pass similarly forward-thinking campaign finance reforms before the end of session.

Again, thank you for your time and we are happy to answer any questions you may have.

NYPIRG
NEW YORK
PUBLIC INTEREST
RESEARCH GROUP

Testimony
of
NEAL ROSENSTEIN AND GENE RUSSIANOFF
Government Reform Coordinator and Senior Attorney
NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
before the
NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENT OPERATIONS
hearing on the
INTRO 586 (CAMPAIGN FINANCE)
City Hall
June 12, 2007

The New York Public Interest Research Group, Inc. (NYPIRG) supports Intro 586, which extensively amends the city's landmark campaign finance program. We urge its enactment.

We believe this legislation will strengthen the campaign finance program. It will do this by:

1) putting a cap of $250 to $400 on contributions to any city candidate by a broad range of individuals "doing business" and seeking favors from the City of New York;

2) making those contributions non-matchable;

3) broadening the definition of "intermediaries" to include not only those delivering contributions, but also those soliciting them;

4) providing an incentive for taking smaller matches by creating a six-to-one match for contributions of $175 or less;

5) prohibiting contributions from LLC's and LLP's;

6) limiting contributions for transition and inaugural expenses; and

7) making it clearer what are permissible and impermissible expenses.

We would like to make three points about the legislation.

First, we greatly appreciate the outreach by the City and the Council to civic groups in formulating this legislation. We feel our suggestions were seriously considered and a number incorporated into the legislation before you. NYPIRG would like to thank Maura Keaney, Rob Newman, DeNora Johnson and Jim Caras on City Council staff and Anthony Crowell, Frank Barry, and Patrick Wehle who negotiated the bill for the City Administration.

NYPIRG would also like to express our special appreciation to Government Operations Committee Chair Simcha Felder. He has continued a 19-year tradition by his predecessors, all of whom strengthened the campaign finance program through their leadership and political savvy.

Second, we feel it right to note the difficulties that are before the City in implementing the "doing business" provisions of the legislation. The legislation calls for "certifying" by November 2008 with "complete and accurate" data bases of individuals with applications or bids for contracts (above $100,000); land use matters; economic development incentives; concessions and franchises; and leases. This will be challenging, as the recent experience with a much smaller lobbyists database shows. We agree with the November deadline. Any certification date that went into Mayoral 2008-2009 election cycle would be unfair. It such a date proves impossible to make, than we support certifying data bases after November 2009, as the legislation mandates. NYPIRG is counting on the City and the Council to provide both the Campaign Finance Board and DOITT with the financial resources they need to achieve the new mandates under the legislation.

Third, if the legislation is struck down by the courts for candidates not participating in the program, we support not applying the "doing business" provisions of the law to participants. That's because if only participants were limited in taking "doing business" contributions, this would seriously discourage candidates from entering the program. This point is made in the committee report.

One final note: While the campaign finance legislation has been improved after each election cycle, as a civic group there are changes we will continue to urge when the program is considered after the next legislative cycle. These include: lowering overall contribution limits; restricting union contributions as are corporate and partnership contributions; and further addressing the problem of wealthy candidates self financing their own campaigns and dramatically outspending participants.

TESTIMONY OF ANTHONY W. CROWELL, COUNSELOR TO THE MAYOR, BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENT OPERATIONS

JUNE 12, 2007

Good morning Chairman Felder and members of the Government Operations Committee. My name is Anthony Crowell, and I am Counselor to Mayor Michael R. Bloomberg. I thank you for the opportunity to testify today on Intro. 586, a bill to limit so called pay-to-play contributions to candidates for municipal elected office from those doing business with the City. With me today are Frank Barry, a policy advisor in the Mayor's Office, and Marla Simpson, Director of the Mayor's Office of Contract Services.

Indeed, the Administration strongly supports Intro. 586, which is the culmination of nine years of complex discussions on this topic by City government, beginning with the approval of a 1998 Charter referendum which called for disclosure and regulation of campaign contributions from those who do business with the City. Today's partnership between the Administration and Council on this bill will result in a cutting-edge municipal reform, building on the success of our partnership last year when we reformed the City's lobbying law, including exempting campaign contributions by lobbyists from receiving matching funds.

In drafting the provisions of this bill, the Mayor's and Council's staffs have collaborated closely with the Law Department, the Campaign Finance Board, and the City's good government groups to develop what we believe represents the country's strongest and most vigorous campaign finance law. The primary reason that the Campaign Finance Program was adopted 19 years ago was to reduce corruption and

diminish the influence that special interests hold over candidates and elected officials who seek campaign contributions from them. Yet, as the approval of the 1998 Charter revision indicated, the City's electorate supports further restrictions on the various types of campaign contributions that created a conflict of interest, or at least the appearance thereof. This bill addresses those issues and creates a more transparent, fair and open campaign finance system. And while we have tried to address as many of these issues as possible, we do recognize that this program will further evolve, and thus as the Mayor has stated repeatedly through this process, we cannot let the perfect be the enemy of the good.

Up front, I would like to state that, in drafting this bill, we have worked to ensure that it will withstand any legal challenge. Our proposal builds on existing campaign finance legislation, and aims specifically to limit the amount of money that can be contributed by people who do business with the City. It is a bill to combat "pay-to-play" and improve public confidence that the government's decisions are made wholly on the merits and not political favoritism. As the Law Department has stated publicly, the bill was carefully drafted in light of applicable Supreme Court precedent, and we are confident it is constitutional. To be clear, and to address questions raised about this bill since last Tuesday's announcement, our proposal is very different from the Vermont law that was struck down by the U.S. Supreme Court last year. That law set low, across-the-board contribution limits and attempted to restrict overall candidate spending. Our bill, focused on pay-to-play, is clearly different and in no way imposes any such new expenditure limits.

Doing Business Contribution Limitations

The new law will significantly limit donations from those who do business with New York City, including individuals and entities with City contracts, concessions, and franchises, or grants valued at or greater than $100,000; land use applicants; parties to discretionary economic development agreements, and private equity and other investment firms. The existing ban on corporate contributions will be widened to include Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs) and other forms of

non-incorporated businesses. These limitations would also apply generally to contributions made to transition and inaugural entities. This bill also introduces strict contribution caps on these individuals doing business with the City: $250 for Council races, $320 for borough-wide races and $400 for city wide races, and none of these contributions will be eligible for matching funds. This will ensure that taxpayer money is not used to supplement an entity or individual attempting to influence government decision making through their campaign contributions.

Database Development

The development of a dynamic doing business database to serve as a ready check on campaign contributors is at the crux of an effective campaign finance program aimed at deterring pay-to-play. To implement today's reforms, such a database will be created jointly by the Mayor's Office of Contract Services (MOCS) and the Department of Information Technology and Telecommunication (DOITT), and made accessible to the Campaign Finance Board and the public, to identify all those that fall under the definition of doing business. Because of the tight timeframes involved in implementing this system, Ms. Simpson and her staff, along with DOITT, have already begun discussions about developing the database when the bill is passed.

OTHER REFORMS

In addition, to addressing pay-to-play contributions, the Mayor and Council also took the opportunity to introduce other reforms in this bill designed to open up participation in the electoral process and to enhance the efficiency of the campaign finance system, including proposing changes to the structure of the CFB matching funds program, addressing the longstanding problems with non-competitive elections, and proposing internal reforms at the CFB concerning audits and adjudications.

Changes to Matching Funds

Contributions by ordinary citizens, who often give smaller campaign donations will be given much more weight now with an increase in matching funds from 4-1 to 6-1 for the first $175 donated to a campaign. Thus, for someone who wanted to give $175

contribution, instead of it being matched at the 4 - 1 rate for a total contribution value of $875, the contribution would now be worth $1,225. This amount is practically the same amount a candidate can now receive under the current matching formula. Accordingly, this change empowers citizens and will aid many candidates in being more competitive because these lower value contributions will now be more meaningful to the overall impact individuals can have on a candidate's race.

Disclosure of Intermediaries

The bill also broadens the definition of an intermediary, also known as bundlers, to include anyone who solicits a contribution for a campaign. Under the current system, only those from outside of a candidate's campaign who receives and delivers contributions on behalf of the campaign are considered intermediaries. This proposed amendment would now require that those who solicit contributions also be listed as intermediaries, which will ensure that campaigns disclose those who act as such regardless of whether such agents personally deliver the checks. This reform will close the loophole in the current disclosure process and allow the public to see the variety of relationships between intermediaries and candidates.

Reining In Matching Funds for Noncompetitive Elections

Non-competitive elections in which candidates running against nominal opposition receive public matching funds are often cited as an example of wasteful spending. Currently, in such instances where their opponent has spent less than 20% of the expenditure limit, a candidate only has to submit a statement of need with no other documentation to receive full public financing. The new proposal establishes clear criteria that must be met in order for a race to be deemed competitive. Those would include receiving significant endorsements, or having name recognition documented from previous races or significant media exposure. A candidate would need to prove that his or her opponent meets one of these criteria to qualify the race as competitive and to merit the release of public matching funds. The proposal also eliminates the automatic trigger for public funds that results when a candidate's opponent receives public funds.

Establishes Definition for Allowable Campaign Expenditures

This bill also makes amendments to the definitions of what campaign funds can and cannot be used for. By outlining with clarity what is not acceptable, any gray area that has existed will be eliminated, and donors can be assured that all their contributions will be spent appropriately without benefiting a candidate personally.

Improving the Campaign Finance Board's Operations

This bill also takes steps to improve the CFB's auditing procedures, making them more efficient and comprehensive, and bolsters the fairness of the adjudicative process by establishing new procedures. The Administration and the Speaker have taken seriously concerns from candidates about the auditing and adjudicative procedures of the CFB and we believe the changes will make the system more efficient and fair.

Indeed, the campaign finance program, like many other reform initiatives, will always be a work in progress. However, the proposed bill represents, a new era in transparency and openness that enhances New York City's position as the vanguard of elections and government reform. The Mayor is pleased to stand shoulder to shoulder with Speaker Quinn, Chairman Felder, and the rest of the City Council in enacting and implementing this important legislation.

Thank you and we would be happy to answer any questions you may have.

New York City Campaign Finance Board

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Testimony of Amy Loprest, Executive Director
New York City Campaign Finance Board

City Council Committee on Governmental Operations
June 12, 2007

Good morning, Chairman Felder, and Committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board (CFB). With me are Deputy Executive Director Carole Campolo and General Counsel Sue Ellen Dodell. I am here to testify on Intro No. 568.

First, I would like to congratulate the City Council and the Mayor for reaching agreement on legislation that has the potential to transform the relationship between money and politics in New York City.

We are pleased to have been able to inform these negotiations with the practical lessons of two decades successfully administering the Program. While it's true there are significant challenges ahead in implementing the "pay-to-play" restrictions under consideration, the Board has always believed those limits should have the force of law if they are to be effective. We're confident that with continued cooperation among the Campaign Finance Board, City Hall, and the responsible agencies, the databases that the bill envisions will be created in a timely fashion, and this reform will succeed.

Intro No. 568 contains several other provisions that could help advance some of the Program's underlying goals. One central aim of the Program is to amplify the voice of small donors in New York City's political system; lowering the contribution amount eligible for matching funds from $250 to $175 should encourage candidates to focus even

more attention on ordinary New Yorkers who lack the means to make large contributions to political campaigns.

The proposed ban on contributions from LLCs and partnerships is a positive step towards eliminating all organizational contributions, as the Board has recommended since the creation of the Program. The new, more inclusive definition of intermediaries will help the Board provide New Yorkers with more complete disclosure of those interests funding campaigns for City office. And the provisions meant to limit the amount of matching funds provided to participating candidates with nominal opposition should provide taxpayers with greater protection against the waste of public resources.

* * *

As I'm sure you are aware, other parts of the bill—especially the proposed deadlines for CFB audits—will require significant changes in the way the Board operates. We have already begun a thorough evaluation of our audit procedures, which we will continue in conjunction with completing the last of the audits from the 2005 election cycle.

In order to enable the Campaign Finance Board to hold all candidates for covered offices to the highest standard of integrity, the lawmakers who created the Board gave it a certain measure of independence from the political process. Subsequent City Councils have found it appropriate to respect the independence of the agency that regulates them in their role as candidates for City office.

Despite our reservations about any legislative intrusion into the Board's administration of the Campaign Finance Act, we are supporting Intro. No. 568 because we are confident we will meet the bill's mandates without sacrificing the independence of the Board or the quality of our work.

We have communicated a statement of the Board's revised fiscal needs for FY2008 to the Mayor and the Speaker of the Council, and we will further assess our staffing and

funding levels for the years to come in light of the bill's requirements. We appreciate the Council's commitment to provide the resources the Board will need to meet these new mandates while making it possible for the Board to protect the public's investment in the political process with the same diligence New York City taxpayers have come to expect since the Program was created almost twenty years ago.

There are some outstanding technical issues with this legislation we are working with Council staff to resolve. These include some recommended improvements to the debate program, and providing for bonus payments to candidates facing high-spending non-participants.

Thank you for the opportunity to testify, and we look forward to answering any questions you may have.