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Testimony before the New York City Council
Committee on Governmental Operations
Concerning Intro. 1325 of 2019

Carolyn Lisa Miller
Executive Director, NYC Conflicts of Interest Board
January 14, 2019

Good morning, Chair Cabrera and members of the Committee on Governmental Operations. I am Carolyn Lisa Miller, Executive Director of the New York City Conflicts of Interest Board. With me is COIB's General Counsel, Ethan A. Carrier. We are to testify about Intro. 1325.

In March 2017, COIB issued Advisory Opinion No. 2017-2, making public advice it had given to a public servant as to whether that public servant may be the beneficiary of a fund established to raise money to defray that public servant's legal expenses. The Board concluded that, in the absence of specific legislation to permit legal defense funds, it had no legal basis to treat contributions to a legal defense fund any differently from other gifts to public servants.

COIB appreciates the Council's action in addressing the regulatory gap identified by COIB in Advisory Opinion No. 2017-2. Intro. 1325 creates a necessary framework for permissible legal defense trusts that manages the possible conflicts of interest raised by creating, fundraising for, and administering these funds. COIB commends that the Council included in Intro. 1325 strict limits on when a fund may be established, who may donate, how much donors may give, who may solicit donations, and how the donations may be spent. And, importantly, COIB thanks the Council for providing in Intro. 1325 both a disclosure regime that provides meaningful transparency for the public and an enforcement regime that obligates beneficiaries and trustees of legal defense trusts to comply with the limitations the Council has set forth.

As a City agency dedicated to promoting good government, COIB notes for Council's consideration one aspect of Intro. 1325 that intersects with the City's campaign finance law. Section 3-1102(f)(2) prohibits a fund from paying "criminal fines or penalties imposed upon an individual

beneficiary,” and thus permits a fund to pay civil or administrative fines, such as fines imposed by the New York City Campaign Finance Board. We defer to our learned colleagues at CFB to address how this provision might impact the integrity of the City’s campaign finance system.

While COIB embraces the new regulatory scheme proposed in Intro. 1325, this will, without question, entail substantial additional work for COIB. COIB, a small agency with an even smaller budget, will require additional funds to fulfill the requirements of the legislation. These new costs fit into two categories: first, the initial cost to build a reporting portal for use by trustees and by the public and the related recurring cost of managing the portal; and second, the ongoing personnel cost to hire staff to perform the law’s required quarterly audits.

We have made an initial inquiry to a software vendor with whom the City regularly contracts to estimate the cost to build a new reporting portal, and the initial estimate was approximately \$40,000, in addition to subsequent annual licensing costs. Second, because Intro. 1325 requires COIB to audit each legal defense trust fund on a quarterly basis, and because COIB currently performs no auditing functions nor is certified in generally accepted government accounting standards (GAGAS), we will also need to contract with a GAGAS-certified auditor, which we have been advised will cost between \$5,000 and \$10,000 per audit. COIB has only 26 employees fully staffed and a very limited budget allocated for other than personal services. We have no leeway in our budget for the substantial new expenditures that Intro. 1325 would require us to make. Thus, we ask for additional budget allocations to permit COIB to implement and administer the legal defense trust law with the speed and care it merits, especially in light of the fact that the law comes into effect immediately upon passage -- and as the law itself recognizes, there will likely be quick demand to register legal defense trusts with COIB.

We stand ready to work with the Council and with the regulated legal defense trust funds to ensure the smooth implementation of this law. We are happy to answer any questions the Committee may have.

**WRITTEN TESTIMONY
FROM COMMON CAUSE/NY TO
THE COMMITTEE ON GOVERNMENTAL OPERATIONS
RE INT. NO. 1325-2019**

Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, not simply the special interests. We have been a long-standing advocate for innovative campaign finance and ethics laws in New York City and State, as well as throughout the country. Last year, Common Cause/NY released a [Policy Proposal for the Regulation of Legal Defense Funds Under New York City Laws](#). In that proposal, we recommend that New York City adopt legislation to permit and regulate legal defense funds for elected officials. We are pleased to see Int. 1325-2019, which follows many of our specific suggestions as to what such a law should provide.

STRONG SUPPORT FOR INT. NO. 1325

We believe that Int. No. 1325 properly addresses the gap in New York City's ethics and campaign finance law that we identified in our Policy Proposal. Requiring that Legal Defense Funds must be set up as trusts is an appropriate regulation of such funds, which insures that the money raised will be used only for legitimate legal defense costs. Prohibiting contributions from lobbyists and those doing business with the City, as well as limiting contributions to \$5,000, properly protects the city's well-regarded public campaign financing system.

We believe that the bill would be strengthened by removing subparagraph 6 of Sec. 3-1102 (e). Permitting officials other than those who are the beneficiaries of a legal defense trust to speak at fund-raising events for the trust, even if they do not make a direct solicitation or fund-raising appeal, creates an appearance of conflict of interest.

Additionally, we strongly recommend that the Conflict of Interest Board be required to provide any listing of information relating to Legal Defense Trusts disclosed on its website in machine-readable, manipulatable format (i.e., not in portable document format).

We urge the Committee on Governmental Operations to amend Int.1325 as recommended and pass it out to the floor for a vote.

FOR FURTHER INFORMATION, PLEASE CALL SUSAN LERNER, 212-691-6421



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

**City Council Committee on Governmental Operations
January 14, 2019**

My name is Amy Loprest and I am the Executive Director of the New York City Campaign Finance Board. Thank you Chair Cabrera and members of the committee for the opportunity to submit testimony on Int. No. 1325 which would allow the creation of legal defense funds.

We appreciate that care was taken in drafting the legislation to ensure that the permissible expenditures are well-defined, that legal defense trusts cannot be used to defray any campaign-related costs, and that influence-seeking by donors is minimized. With that, we have some concerns with the bill as drafted that we would like to share with the members of the committee today.

It is our understanding that the purpose of this bill is to provide elected officials and other public servants with an avenue for paying certain legal fees they may incur if they are under investigation, while minimizing the risk of corruption or conflicts of interest associated with fundraising. The bill defines these fees as “legal expenses in connection with a governmental, administrative, criminal or civil investigation, audit or action... that is related to a political campaign, issue advocacy, or the holding of a civil office or appointment, public office or political party position.”

Our interpretation of Int. No. 1325 as drafted is that it would allow legal defense trusts to make expenditures for legal representation in connection with CFB audits and enforcement actions, and towards any penalties incurred.

Int. No. 1325 meets an identifiable need—it provides elected officials and other public servants with an avenue for raising funds to defray the costs of a legal defense for a matter related to their work, in instances when the Corporation Counsel is not available to represent them. It sets limits that protect against the corrupting influence of large contributions, and it requires transparency and public disclosure of contributions.

However, there is already a mechanism in place that allows candidates to raise funds for defense costs related to a CFB post-election audit. Any candidate for city office—including sitting elected officials and other public servants—can cover these costs through their campaign committee, subject to contribution limits and disclosure requirements. The Campaign Finance Act permits candidates to spend campaign funds on legal fees associated with responding to a CFB audit or any other legal defense of a non-criminal matter arising out of a political campaign. Candidates can also use campaign funds to pay any non-criminal penalties or fines with campaign funds. To the extent that such costs are incurred post-election, as most are, they are not bound by the expenditure limits that apply to Program participants.

By providing certain candidates, i.e. those who are elected officials or public servants, with an additional vehicle to raise funds, Int. No. 1325 creates a path for those candidates to solicit and accept contributions from individuals that aggregate well over the existing contribution limits. A clear majority of voters in last November's Charter referendum voted to reduce these limits by more than half, with reducing the risk of corruption as the main rationale. As such, we recommend amending the bill to clarify that legal defense trusts may not be used to make expenditures that are already a permitted use of campaign funds.

In setting limits and rules around fundraising for legal defense trusts, it would be useful to find other parallels to those that apply to candidates for city office generally. As drafted, Int. No. 1325 prohibits donations from people who are doing business with the city, including lobbyists, and extends this prohibition to anyone appearing before a city agency. It matches the Campaign Finance Act's prohibition on donations from corporations, limited liability companies, and partnerships.

We recommend that the \$5,000 limit on donations be amended to \$3,500, to match the highest contribution limit for non-participants. We urge the Council to consider requiring disclosure of bundled donations, as required in the Act. We also urge the Council to make it clear that the limit applies to donations in the aggregate to a single beneficiary over a fixed timeframe. For example, the limit could apply to aggregate contributions made in a 12-month period, so that even if the beneficiary is under two simultaneous investigations, no contributor could donate \$10,000 all at once to both trusts. Finally, transition and inauguration entities (TIEs) should also be designated to ensure consistency with how the bill determines which political committees are not deemed to be trusts. This is yet another way to make certain that any funds dedicated for a different purpose cannot be used to form trusts.

As always, the CFB appreciates the Council's collaboration in our joint work.

Thank you for the opportunity to provide testimony today.

Subject: Steve Levin's proposal allowing legal defense fund for public officials

Submitted on January 11, 2019 for Public Hearing scheduled January 14th, 2019 at City Hall, 10 AM

To Whom It May Concern:

Mayor de Blasio has requested that a bill be passed allowing a defense fund to aid public officials with their legal expenses. The names of contributors would be recorded with amounts given, so that the process would have the appearance, at least, of propriety. But how easy it is to disguise actual names and amounts and motives for contribution! Passing such a bill would give permission for even more corruption and would create a new, even longer list of victims. And corrupt officials would not be deterred by the fear of personal expense in a lawsuit. Moreover, we would be back to square one when de Blasio was under scrutiny for questionable campaign donations to him from people with business pending before the city. Or for donations to his so-called non-profit funds, which were actually from lobbyists in disguise. That was Campaign for One NY. People contributing to such a fund are looking for favors in return for their donations. Printing their names and amounts does not hinder them since they escape with a shrug, saying that they were favored simply because their project was deemed the best. And the politicians who benefit from these contributors concur with the same explanation.

Naturally, de Blasio would request such a bill, and naturally his good friend Steve Levin would promote it. De Blasio may have had charges of corruption dismissed against him, but thousands of people were astonished when word came through, only days after the firing of Preet Bharara by Trump, that de Blasio was exonerated of all wrongdoing! Preet Bharara's investigation was meant to continue for a long time until all investigations were complete. That never happened. The prosecutors admit that although they could not indict him, it was clear that he had engaged in corrupt practices. And I recently learned that the taxpayers, who were actually his victims, ended up paying for his legal troubles involving Campaign for One NY. Now he is looking to pay off his remaining \$300,000 debt to a private law firm. He knows he can't get the taxpayers to do it for him again!

One example where de Blasio escaped investigation altogether regards the Brooklyn Heights Library. Bharara had a full report of the corruption, but was fired before the investigation of the pay-for-play campaign contributions to de Blasio from the developer who tore down the Brooklyn Heights Library to replace it with a luxury condo. What we were promised was a replacement library less than half the original size, crushed beneath the condo, half below ground, and the ugliness of construction noise and toxins, traffic tie ups, shadows over our park from a condo that no one wanted, except the people who would benefit financially from the deal. There was hard evidence of pay-for-play with pictures, names and dates of the developer's fund raiser, and hard print evidence of other campaign donation amounts from the developer, all occurring illegally during the time his application to build was still pending. The so-called affordable housing connected to the condo will be built two miles away in another neighborhood.

That is only one example of de Blasio's corruption throughout the city, never properly investigated. One could cite many examples that stir up anger and bitterness against this mayor who responds by dismissing the accusations as unimportant, or nonsensical. We remain his victims in this city. He won the re-election on only 24% of voters, people who dutifully came out on that raw, rainy, windy day, but had no choice other than de Blasio. No one knew who was running against him because his excellent opponent Sal Albanese was kept off the second debate on some absurd technicality. Bo Dietl was allowed to debate him, a man that no one took seriously. Even de Blasio's re-election created suspicion.

Now de Blasio wants a handout, and his friend Levin is providing it with bill #1325. Levin betrayed 98% of his constituents, a percentage he himself offered in a video that revealed the fierce opposition to the condo plan. Yet he gave us the clear impression at the final City Hall hearing that he would stand by his constituents. We even made calls to his office to extend our praise and thanks for the way he questioned the developer there. And in a radio interview one day before the vote, he said that he had no compromise in mind with the developer.

But clearly, he did not want to cross, or fall out of favor with de Blasio, who took the pay-for-play donations from the developer and gave permission for the library demolition and the luxury condo construction on the site. So Levin made a last-minute backroom deal with the developer and stunned us all with his vote against us as we sat at City Hall waiting for him to save our library. Nor did members of the council cross Levin since they feared retaliation, not getting whatever they might need for their district in the future. And, as for the STEM program he received in that deal--the chancellor, Carmen Farina, had already told him that the Department of Education absolutely did not want a STEM program, that the district already had more than enough, that he was depriving the Department of Education of funds that were much needed elsewhere for students throughout the city. So we see that even before the last-minute deal, he was already conferring with the developer about a compromise he was hiding from his constituents. How can we possibly respect any bill Levin puts forward on behalf of de Blasio? It is already tainted, and it would fail to be taint-free in the future.

Let de Blasio pay his own legal bills, and let all politicians who have to fight corruption charges pay their own bills. De Blasio is a public official who escaped punishment, having slipped through many loopholes that were cleverly designed for him. Our outrage is against him, not his accusers, since we are his victims. Let public officials keep clean, and no one will be able to sully them. If anyone tries and fails, that false accuser should be forced to pay the legal expenses incurred.

De Blasio was simply lucky that Trump fired Bharara. He got off free because the ones aiding in Bharara's investigation perhaps could not manage all the bulk of evidence, or the heavy pressure coming from friends of de Blasio in corrupt government. He got off free, but we remain his victims. And he with his smug, self-important attitude, dismisses our complaints as unimportant.

Please don't set up a defense fund for him or any other public official. It is sure to end in more corruption since the regulations applied will be no stronger than the people who oversee them. And they, too, will be easily corrupted. Nor do the regulations, in themselves, protect against corruption. The loopholes are huge, no different from the ones that have already eased de Blasio's path. And it is not believable that anyone contributing to such a fund would not want a favor in return. Levin wants the limit to be \$5000! Who would give that kind of money without a favor in mind? Nor would anyone want to contribute even the \$50.00 amount, considering that it is essentially a gift for corrupt politicians. De Blasio has wreaked destruction here and cares nothing for our consternation. Let him pay his own legal fees..

I repeat, please do not support this bill proposed by Steve Levin regarding a legal defense fund for public officials. It will only lead to more corruption in government, give unsavory politicians a free pass to act without regard to ethics and the law. They will do what they do with impunity and will not have to think twice about any consequences they might have to suffer for it in an expensive law suit. Nor will they ever have to worry about their victims and the price we have to pay.

I end by saying that there is good in everyone, in de Blasio, in Levin--but the good must not be an excuse to ignore the deeply harmful effects of corruption in our city. That corruption will be made all the more possible, if the proposed bill is passed into law.

Thank you for your attention to this.

Respectfully submitted,
Marilyn Berkon

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Citizens Defending Libraries

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January 14, 2019

Committee on Governmental Operations
Fernando Cabrera, Chair
Committee on Governmental Operations
c/o Elizabeth Adams eadams@council.nyc.gov

Re: Testimony respecting Councilman Steve Levin's proposed change in law respecting a legal trust fund to facilitate Mayor de Blasio's payment of legal bills related to investigation of his conduct.

Dear City Council Members and Committee on Governmental Operations:

This letter states why Citizens Defending Libraries is opposed to the current move to change the law to allow much larger scale donations for the purpose of enabling Mayor Bill de Blasio to pay his legal fees for fending off and defeating investigations of his conduct while in the office of mayor, including what appears to be pay-to-play conduct involving public assets that need to be properly protected by our public officials in office.

Citizens Defending Libraries has called for Mr. De Blasio's conduct in selling off the Business, Career and Education Brooklyn Heights Library to be investigated. See our letter attached and available on-line:

Open Letter to US Attorney Preet Bharara, NYS Attorney General Eric T. Schneiderman, NYC Comptroller Scott Stringer, et al: Use Your Staggering Powers as Law Enforcers & Public Guardians To Immediately Halt the Corrupt Sale & Shrinking of Brooklyn Heights Library

<http://citizensdefendinglibraries.blogspot.com/2016/07/open-letter-to-us-attorney-preet.html>

We do not currently feel that investigation has ever been properly attended to.

We feel that passage of this change in the law to deal retroactively with this situation of concern still outstanding signals that impunity for Mr. De Blasio is acceptable, rather than the appropriate further investigation that would be appropriate and should be conducted.

As for what is signaled to be "acceptable," we must note that while we and others think that there should be investigation as to whether criminal and/or civil laws have been broken, it is widely

viewed that Mr. De Blasio's conduct was at least improper to the degree that it skirted the law thus raising both the question of whether the law has actually been broken, and, if it hasn't, whether the law needs to be changed. Changes to the law that retroactively coddle this conduct sends the wrong message about what we expect from our public officials.

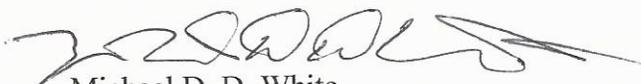
Next, and very significantly, we have a problem with the fact the change in this law (this change in the administrative code of the City of New York) is sponsored for adoption by another public official, Councilman Steve Levin, who worked with Mr. de Blasio to hand off the valuable downtown Brooklyn Heights Library to a developer for a pittance. (This recently enlarged and completely upgraded central destination library was Brooklyn's second biggest library.) Department of Education funds were also raided to push through the deal. Quite clearly, if the investigation we have called for were to be conducted Councilman Levin would be central to its scrutiny. It is therefore a public embarrassment that Mr. Levin is the one who is proposing this change in the law at this time.

Lastly, the law as it currently stands serves a good purpose: It allows the public to deliver a verdict. Contributions can indeed currently be made to pay fees to defend Mr. de Blasio's conduct, it is just that they must be limited to \$50.00 per person. The reason a change is being requested in this law is because, without that change, there are too few New Yorkers with whom Mr. de Blasio's conduct would find favor to pay these bills. Mr. de Blasio and his administration officials represent that he is selling off valuable libraries to give the public a better deal. But that is not actually believed by enough of the eight million-plus New Yorkers so that the minimal number will endorse the mayor's conduct by paying his bills. More typically, we regard such conduct on Mr. de Blasio's part as generating public losses that hurt the average citizen.

Changing this law, allows Mr. De Blasio to turn to another, quite different, class of citizen for his verdict. It's a more well-healed, less democratic elite able to pay \$5,000 without flinching, and they are the same class of citizen, who are more likely to be involved in schemes to sell off our libraries, turning them into real estate deals like the deals we have asked be adequately investigated.

Accordingly, we oppose this change in the law that blesses past behavior of the mayor, which we think should be investigated rather than blessed.

Sincerely,



Michael D. D. White
Citizens Defending Libraries

Citizens Defending Libraries

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July 27, 2016

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Re: *Using Your Powers to Halt Immediately the Corrupt Sale and Shrinking of the Brooklyn Heights Library*

Dear Honorable Law Enforcers & Public Guardians:

In just weeks, weeks that might more readily measured in days, New Yorkers and the communities of Brooklyn and the city can expect to suffer the loss of the Brooklyn Heights central destination library in Downtown Brooklyn. It's Brooklyn's second largest and second most valuable library, an entrusted asset that was meant to be and should be preserved. . .

. . . This is what will happen only if our elected officials and public guardians do not do what they are able to stop the destruction. That's why we write this letter to you in your official capacities: We ask you, without delay, to exercise your powers to protect the public.

This central destination library in Downtown Brooklyn is a sturdy well-designed building that was substantially expanded and fully upgraded in 1993. It is five years newer and more up-to-date than adjacent Forest City Ratner building (part of the same real estate parcel for development purposes) that houses Hillary Clinton's national campaign headquarters. It is, significantly, one of Brooklyn's very best libraries, probably its second best, in terms of the computer resources it affords, but it is even more important for what it was designed to be as a library, a place to find and discover books, including service as a federal depository.

The stories offered about why the library is to be destroyed would all be laughable jokes if they were not so tragically inane and cynically concocted. The library is to be sold for a pittance, less than the value of the property as a vacant lot, and this critically valuable and irreplaceable library is far from a vacant lot. While benefitting the real estate industry the sale of the property deeply harms and wrongs the public with the property being handed off for less than its tear-down value to an inferior bidder, one of the low bidders who bid *\$6 million less* than another. That \$6 million left on the table in a deal with a developer who has a political contribution relationship with the mayor under investigation is a huge negative adjustment to the paltry amount the sale will likely net. Like the New York Public Library's sale of the Donnell Library, the sale of this Library is likely to net the Brooklyn Public Library less than \$20 million when all is accounted for.

Moreover, and more important, the library that is being sold and shrunk to net such a small amount would cost more than \$120 million to replace.

"A Stitch In Time" vs. "Spilled Milk"

These are not matters we should wait to lament in retrospect. These are reasons for you to exercise your powers now to prevent this imminent tragedy and injustice.

Now that the so-called '*replacement*' for the Donnell Library has opened, the lessons afforded thereby teach us in retrospect everything we need to know about why the loss of the Brooklyn Heights must be actively stopped by your intervention now, not grieved in the future as an unfortunate past. See: **New York Magazine**, The New 53rd Street Library Is Nice, Unless You Like to Read Books, by Justin Davidson, July 12, 2016, ("*a real-estate*" that "*sloughed off the leftovers on the public*") **City Journal**, Books in the Basement- Midtown Manhattan's new library falls short of what a world-class city should provide to its citizens, by Nicole Gelinas, July 1, 2016, ("*one of the worst decisions made by a local public institution in decades*". . . "*what is the city's excuse for asking people to be happy that they've been relegated to the basement?*") **Jeremiah's Vanishing New York**, On Donnell's Replacement & \$375 Cocktails, by Jeremiah Moss, July 13, 2016. **Jeremiah's Vanishing New York: On Donnell's Replacement & \$375 Cocktails**, by Jeremiah Moss, July 13, 2016, ("*a surreal nightmare of modern neoliberal urbanization*" that "*seems doomed to fail as a library.*") **New York Times**, N.Y. / Region-An Amphitheater- A Laptop Bar. It's a New York Library Like No Other.- Building Blocks, By David W. Dunlap, June 20, 2016 ("*secretive plutocrats buying investment aeries in the sky while public institutions are relegated to basements*").

Clearly, although it is nearly nine years since the impending loss of Donnell was suddenly

announced this is not a plundering the public is prepared ever to forget.

The closing of the Donnell, another beloved and critically valuable central destination library, was announced accompanied by the telling of multiple fictions that included the assuring promise that the library that “*replaced*” Donnell would likewise bear the name Donnell. Quite tellingly, as it turns out, library officials haven’t dared to christen the shrunken, sunken inadequate library “*Donnell*.”

The sale of Donnell, the sacrificing of public benefit for private profit it represents, is another matter that has long cried out for the delivery of an investigation report to the public. We look to you for such a report which we consider long overdue. Hopefully statutes of limitations will not have been carelessly allowed to lapse. That is why we have been a conduit of information respecting the same to your offices. Especially when the private profit and luxury is so conspicuous, it is naive to believe that such abjectly bad decisions respecting our libraries have been made out of sheer stupidity and nothing else. We credit city and library officials, both present and former with far more intelligence than that.

As has been documented, the sale, shrinking and sinking of the Brooklyn Heights Library is not only closely modeled on the sale, shrinking and sinking of the Donnell Library, behind the scenes there is a linkage of the people involved and the timing with which these plans were launched. If not stopped here and now, this past will be prologue for depredation of even more libraries, and likely, with that, more attacks on our public commons as we incite developers by demonstrating how easily juicy deals can be dreamed up to wrest away the public’s property.

Investigative Powers

All of your offices have investigative powers. And your attendant powers extend beyond mere investigation. The purpose of investigation is not to Monday morning quarterback. We may punish *after* investigations and *after* bad deeds have occurred, but we do it in order to deter future misconduct and protect the public from harm. Although investigations may take time to mature and carefully document, the idea of having investigative powers is not to let harm be done and then ask for an accounting afterwards. While often we may stand back and wait on the theory that we are giving people enough “*rope to hang themselves*,” the bottom line should always be to do everything necessary to prevent harm to the public and that means doing what can be done to prevent it *before* it occurs. The destruction of a library that would cost over \$120 million to replace, if it could be replaced at all, is not a small matter to let slide by.

Individually, the powers of each of your offices are immense; collectively what you can accomplish is utterly staggering.

Among other things, including prosecutorial powers, the office of the New York State Attorney General is charged with oversight and regulation of the conduct of public charities to ensure that assets entrusted to them are neither squandered nor raided for private gains or purposes other than intended. In fact, as of 2014 these powers were statutorily augmented to strengthen the “*Attorney General's power to police fraud and abuse*” by, among other things, “*granting clear power to bring judicial proceedings to unwind interested-party transactions.*”

Similarly, it was only last July that Comptroller Scott Stringer commanded headlines informing the public about how he was expanding the use of his offices powers to investigate and root out corruption in connection with which he unveiled a new *“Research and Investigation Unit. . . comprised of a team of lawyers and data analysts with extensive backgrounds in financial, criminal and public corruption investigations,”* the investigation team being *“a powerful addition to our arsenal”* with their work enabling us *“to dig even deeper into the agencies we audit as we fulfill our mandate to root out fraud and save City taxpayers' hard-earned money.”* The unit’s first work product involved a library system investigation. Indeed, as of February 5, 2014 Comptroller Stringer assurance to the public was already in place that he was going *“to look at the three library systems”* and *“to examine, through a performance audit and a financial audit”* the *“entire system,”* noting that *“there is a big city stake in the libraries.”*

And clearly the Brooklyn Heights Library abuses are connected with other investigations the Comptroller has underway. When we last questioned Comptroller Stringer about the Brooklyn Heights Library sale this year he brought up by analogy his current participation in investigating the very similar set of facts concerning the Rivington House nursing home deal where City Hall turned a nursing home over to a developer making contributions to the Mayor, extinguishing its nonprofit public purpose so that it could be replaced by luxury condominiums. While de Blasio said, as facts were unearthed, that the deal should not have been done and that it happened without the involvement of anyone high up in his administration, an investigative report shows that the most senior City Hall officials charged by de Blasio with handling such matters, Deputy Mayors Alicia Glen and Anthony Shorris and Shorris’s chief of staff, Dominic Williams, were quite informed about the transaction. The de Blasio administration is stonewalling against the release of additional emails that would show more.

Likewise, de Blasio and City Hall officials, Deputy Mayor Glen particularly, were exceedingly aware and involved in the deal to shrink and sink the Brooklyn Heights Library. Despite the emails from the investigation of the Rivington deal, that investigated deal, like the library deal, is inexplicably progressing despite its crookedness and the ways in which it substantially shortchanges the public.

As has been dramatically demonstrated with multiple high profile cases, the U.S. Attorney’s office, particularly the U.S. Attorney’s office for New York’s Southern District can effectively pursue and prosecute political corruption including malfeasance, and the abuse and neglect of duty by elected public officials. Conversely, the U.S. Attorney’s Office is able to work with local elected officials so that their combined powers and jurisdiction doesn’t leave gaps where the public is told that *‘nothing can be done’* in the face corruption and abuse.

Whatever reassurance may flow from seeing elected officials prosecuted after the fact for feeding at the public trough, the deterrence value of such actions is severely truncated if the financial deals fueling such corruption are permitted to come to full fruition regardless. The public is rightly skeptical of any true progress if a continuing round robin of indictments, prosecutions, convictions and removals does nothing more than clear the decks of one set of elected leaders just so that another will be less impeded to step up into their place whilst the powerful interests driving things behind the scenes still benefit and deals continue to be consummated at a huge toll to the public. Real deterrence requires shutting down those deals.

The New York Times has become adept at what is now almost a signature leitmotif where it sorrowfully eulogizes, after the fact, losses that should not have occurred, losses that might have been prevented except for the Times own failure to exercise journalistic vigilance, take note of what was obvious, investigate and sound the alarm. Notably, such commiseration and belated fulfillment of “*paper of record*” functions doesn’t upset any financial applectarts and thus does not align the paper with or serve the public interest.

Similarly, it doesn’t serve for an ascending set of political hopefuls to lament and lambast the conduct of and loss caused by ousted leaders if they, themselves, did not do everything they could in their power to prevent the harm visited upon the public.

Where Will the Blame Be Cast, Where Should the Blame Be Cast For the Destruction of the Brooklyn Heights Library?

There are those who are no doubt prepared to say that, in the end, the destruction of the Brooklyn Heights Library will be laid squarely at the feet of a mayor, Bill de Blasio, with many now being eager to predict his imminent departure. Mr. de Blasio is the man who, while running for mayor, said of our multiple libraries besieged by sale schemes specifically including the Brooklyn Heights Library in his list:

“It’s public land and public facilities and public value under threat. . . and once again we see, lurking right behind the curtain, real estate developers who are very anxious to get their hands on these valuable properties”

So well did Mr. de Blasio know of the real estate developers “*right behind the curtain*” coveting the libraries that just months later, even while still campaigning he was taking money from the development team to whom he would later award sale of the Brooklyn Heights Library.

To only cast blame on and then expediently shed from public office such a politician as Mr. de Blasio would be too simple and would be to give into a bad habit in corruption investigation where we only blame elected officials for selling out the public, excusing developers and others involved in these schemes as their innocent victims. Mr. de Blasio’s sale of the library to a low-bidding, campaign-contributing developer for \$6 million less than another bidder would not have been possible without the complicity and coordination of Brooklyn Public Library trustees and officials in “charitable” office already intent to sell off, and rationalize post hoc, the library for a minuscule fraction of its true value to the public as a library.

Certainly the developer and those on his team with him are very far from innocent or bone fide purchasers for value and they are not ignorant of the machinations in which they were participating, but it is clear from the minutes of the Brooklyn Public Library trustees meeting that concoction of the Heights library scheme pre-existed the selection of the developer as well as any knowledge on the part of those formulating plans that Mr. de Blasio would be mayor and participate in the scheme’s final effectuation.

The long secret plan to sell the library was developed contemporaneously and with an overlap of players with the sale of Donnell (announced in 2007) which it so closely mimics. At the BPL

October 11, 2011 trustee meeting, BPL president Ms. Johnson made absolutely clear on the record the goal of locking the next mayor (the mayor to follow then Mayor Michael Bloomberg) into the real estate plans that were secretly underway. Reporting on the real estate plan, Ms. Johnson *“reminded the Board of past conversations about the plan and let them know that the goal was to get far enough into the plan with this Mayor so that when a new Mayor takes office, the plan will be deep in progress and he or she will not derail it. She thanked Board Chair Crowell and Trustee Kimball for their work helping with moving it forward.”*

At the same time, in order to avoid public objection, information about the BPL’s real estate plans were being kept secret and, as Linda Johnson told the BPL trustees who did not object, *“in strict confidence.”* The BPL’s secrecy continues today with a copious amount of information we have informed you about that should be public that is being withheld by a stonewalling BPL, including information legally requested and required to be made available pursuant to Freedom of Information Laws.

Although the Brooklyn Heights Library was entrusted to the BPL for the benefit of the public, the plan that was fixed for its sale and shrinkage down to a preordained 15,000 feet above aground, was intended to be justified with post hoc rationalizations no matter what preceded and that included, not having any assessment of its value the public, the community’s need for it, or what would be paid for the library or netted by the sale. Among other things, the so-called *“replacement”* for the library has apparently still never been designed.

While de Blasio will no doubt be properly blamed for signing onto this crooked deal, the developer and the trustees, not his innocent victims, will also be properly blamed. The public will also have a potent recall of those who failed to exercise their power to stop this deal if it is not stopped.

Again, we ask you to stop this deal now.

Comptroller Stringer

Comptroller Stringer, we thank you for the December 9, 2015 letter from your office to the de Blasio administration addressed to Deputy Mayor Glen (also, as per the investigation emails, Glen is also involved in the Rivington House nursing home scandal) in which you made clear what folly it was for the administration to be pretending that the sale of this library could somehow accord with the public interest.

Since that time there was the last minute revelation of the backroom deal worked out at City Hall, pushed through by Deputy Mayor Glen, that made the deal significantly worse, especially with respect to City Hall’s blank check raid of Department of Education funds for the benefit of the developer, a whole new matter demanding investigation.

In addition, similarly, it was *after* your letter was delivered that your assessment that the value of the library was being disregarded with the public grossly shortchanged was confirmed and documented by revelations that the de Blasio administration and library trustees and officials had acted in concert to award the hand-off of the library to an inferior low bidder.

There is much here you can prevent and much here you should prevent. In their trustees meeting the trustees of the BPL were led to believe they have nothing to fear from you. We hope you act to prove them wrong.

Attorney General Schneiderman

The fact that you have jurisdiction hangs in our minds. We remember (and we brought to this to the attention of your office) how the trustees of the NYPL involved in selling the Donnell and the launch of the impossible to justify Central Library Plan, were assured of good a relationship with your office when the subject of your increased authority concerning conflict of interests on their behalf came up.

Similarly, the trustees of the BPL were told about the BPL's hosting of your Brooklyn Community Forum event as reassuringly good relations with your office were described.

There is also the concern of how BerlinRosen is working with the BPL to push through the Brooklyn Heights Library sale. Acknowledging that BerlinRosen is, overall, problematically tied up in far too much of our city's politics together with the deals that go along with them, we nonetheless hope that your own relationship with that firm would not be an issue in terms of doing the right thing here.

Your office is doing much good work, including some of the things you have done with respect to the fracking industry. You have a lead role amongst the state attorneys general conducting the fraud investigation about what oil companies, including Exxon, knew and intentionally concealed as they sought to mislead the public (as well as its own investors) about climate change and the need to limit the use of fossil fuels.

The fossil fuel industry's creation of a false and manipulative narrative burying the truth is an example of another for private profit driven and selfish assault on what is, in essence, the public commons, that which we collectively own and should be entitled to collectively benefit from, the environment, the earth's climate, our future safety, security and perhaps even our continued existence on this planet. Your work to investigate this stealing is important and should bring you deserved recognition.

At the same time, you also have a similar job that needs to be done with respect to some more home-grown problems right here in the backyard of the people who elected you: The real estate industry's attacks on our public assets, libraries, hospitals, parks, schools.

One of the most important things Eliot Spitzer, one of your predecessors, did in this regard was the lawsuit he filed that saved Manhattan, Eye, Ear and Throat Hospital from a predatory real estate sale. In accordance with his responsibility to monitor charities, Spitzer challenged as "*unacceptable*" the MEET board's decision-making process and overall behavior in the sale of that hospital invoking his power to seek removal of the board in court because their pursuit of a sale did not respect the duty of the board of directors, as a not-for-profit corporation, to use its entrusted charitable assets to keep first priorities in mind and further the organization's charitable mission. Now of course, in a similar situation we see that one of the federal "*pay to play*"

investigation going on respecting the de Blasio administration concerns the sell-off of Long Island College Hospital to the real estate industry.

The ostensible reasons for selling, shrinking and sinking the Brooklyn Heights Library are false in multiple, easy to document ways. Just as the fossil fuel industry manipulated and lied to present a false and fraudulent narrative to the public concerning climate change, Love Brooklyn Libraries! presented to the Attorney General's office documentation of how the Brooklyn Public Library was cooking its books concealing over \$100 million in unspent capital funds while it was claiming that impoverishment was forcing it to sell the Brooklyn Heights Library.

After Attorney General Schneiderman refused to review these patterns of fraud and by the BPL (ostensibly for lack of jurisdiction), this was taken to the US Attorney for the Eastern District of New York where the response from the attorney assigned was that this needed to be handled by New York State Attorney General Eric Schneiderman because of the Attorney General Office's jurisdiction over misconduct by New York State charities.

US Attorney Bharara and Capers

US Attorney Bahrara, we thank you for your investigation of the library sale. As previously communicated we stand ready to provide you with more information in addition to that which we have already furnished. We can also offer information to US Attorney Capers' office additional to that which was previously furnished.

Public Advocate James

Your office has standing and resources to address the theft and waste of public assets that far surpass any individual citizen's or even organizations thereof. We appreciate how you highlighted the issue of so protecting our public assets and specifically our libraries during your campaign for the office of Public Advocate, your acceptance speeches after the elections and in your inaugural address for that office. As we thank Comptroller Stringer for the December 9, 2015 letter he issued from his office we also thank you for the December 9, 2015 letter you similarly issued echoing his.

While you may not have the same powers to criminally prosecute as the US Attorneys and Attorney General, we note that this often gives you a freer hand to take initiative when required for the public's protection. And, exceedingly pertinent to our writing, it is within the power of your office to ensure that information that should be public is made public. Lastly, we note that the revelations with respect to investigations markedly change the situation since you last dealt with it in connection with the City Council.

Why We Write to You Collectively

We write to you collectively to avoid improper runarounds and/or gaps in authority and jurisdiction and we hope that you, collectively, will do all that is certainly in your power to ensure that the public does not lose this library, this extraordinarily valuable public asset. We implore you individually and collectively to act so that this does not happen because any public

officials are shirking their responsibility or abusively neglectful of their duties to protect the public.

Conclusion

We are well aware that investigations are often long-term, going on behind the scenes and secret from the public for years so that sufficient evidence for the strongest possible, most airtight cases can be collected and so that trails leading to related misconduct can be pursued. We are also aware that there are tradeoffs that must be evaluated as to whether the continued keeping of such investigations secret is worth the additional and irremediable pending harm that will befall the public.

We hope that you are already well advanced into your investigation of these matters. In any event, we urge you to act immediately. The loss of such a valuable irreplaceable library is too much of a loss to ask the public to sustain as public officials stand by.

We request that your actions also include communications that make clear that anyone complicit in any harm that may hereafter befall the library risks personal financial jeopardy by virtue of future pursuit of restitution.

The announced sale of Donnell is already nearly nine-year-old history and still nothing has been done about it. Just as the public remembers and is appalled by that episode, the destruction of the Brooklyn Heights Library will not pass from public memory and all will be remembered in terms of what public officials did or *did not* do that was within their power to prevent it.

Thank you for your consideration and thank you for acting immediately to prevent this grotesque harm to the public.

Sincerely,

Michael D. D. White

Carolyn E. McIntyre
Co-founders of
Citizens Defending Libraries

CC: James Sheehan, Esq. 120 Broadway
Alaina Gilligo, Municipal Building
Ibrahim Khan, 1 Centre Street,
Barbara Sherman, 1 Centre Street,
Governor Andrew Cuomo
New York State Comptroller, Thomas P. DiNapoli

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 01.14.19

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Name: CAROLYN MILLER

Address: _____

I represent: NYC CONFLICTS OF INTEREST BOARD

Address: 2 LAFAYETTE ST, SUITE 1010 NY, NY

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 1/14/19

(PLEASE PRINT)

Name: Ethan Carrier

Address: 2 Lafayette St Suite 1010

I represent: NYC Conflicts of Interest Board

Address: _____

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