

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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250 Broadway - 14th Fl.

B E F O R E:
GALE A. BREWER
Chairperson

COUNCIL MEMBERS:
Inez Dickens
Erik Martin Dilan
Domenic M. Recchia, Jr.
Peter F. Vallone, Jr.

A P P E A R A N C E S (CONTINUED)

Amy Loprest
Executive Director
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Mimi Marziani
Attorney
Brennan Center for Justice

Deanna Bitetti
Associate Director
Common Cause New York

Carol Simon
Concerned Citizen

CHAIRPERSON BREWER: So good morning. My name is Gale Brewer, City Council member and head of Governmental Operations. And I'm really honored to be here with Seth Grossman, who is the counsel to the Committee and to Tim Matusov, who is the policy analyst to the Committee. And we're here today to talk about some campaign finance issues. So what I'll do is just go through a few minutes and we hope we'll have more colleagues join us, but it's an incredibly positive amicus brief in terms of our interest, not in terms we hope that it ends up correctly on the national level.

Anyway, so on March 28, 2011, the Supreme Court will hear all arguments in the *McComish v. Bennett*, a case involving a challenge to Arizona's campaign finance law. I think everybody in the audience probably knows about this, but it's not known to the public. It's the latest in a series of legal challenges to campaign finance reforms that have come before the Supreme Court. Most notably last term the Supreme Court decided *Citizens United*, a controversial decision that many commentators feel display the hostility

1
2 toward campaign finance reform.

3 Public campaign financing systems
4 are voluntary programs that seek to reduce
5 corruption in politics by providing candidates
6 running for office public funds in place of large
7 private contributions. There are public campaign
8 financing systems operating in several states,
9 including Arizona, Connecticut, Florida and Maine,
10 and cities here in New York and L.A. Several
11 recent lawsuits have challenged public campaign
12 financing systems in Arizona, Connecticut and
13 Florida.

14 These cases challenge the trigger
15 funds provision, a common feature that provides
16 additional public funds to participating
17 candidates facing high-spending non-participating
18 candidates. Opponents argue the trigger funds
19 provision has a chilling effect on the speech of
20 non-participating candidates. The 9th Circuit of
21 Appeals upheld Arizona's Trigger Funds Provision.
22 In ruling on similar laws in Connecticut and
23 Florida, the 2nd and 11th Circuits have reached the
24 opposite conclusion. The Supreme Court's decision
25 amicus will resolve this split of authority.

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2 We here in New York have unique
3 insight regarding this issue. Our campaign
4 finance program and much thanks to the CFB is one
5 of the nation's oldest public campaign financing
6 systems—I think we all know that. It is widely
7 lauded as a national model for campaign finance
8 reform. We in New York, our law differs from
9 Arizona's law in important ways. New York's
10 experience with its own campaign finance program
11 and the impact of high-spending non-participants
12 is instructive however.

13 The New York City Law Department
14 intends to file a brief as amicus curiae, known as
15 friend of the court, on behalf of the City of New
16 York. This amicus will argue that the Supreme
17 Court should uphold the trigger funds provision as
18 reasonably advancing the government's interest and
19 avoiding corruption in campaign finance
20 activities. And already, the Mayor, the public -
21 - and the campaign finance board or CFB have
22 agreed to join the City's brief.

23 So again, much thanks to everybody
24 who worked on this and we'd like to first call our
25 persons who are going to testify and certainly the

1
2 executive director, Amy Loprest of the very well-
3 respected New York City Campaign Finance Board and
4 Mimi Marziani, who is from the Brennan Center,
5 also very well-respected in the City of New York.
6 So, we'd like to have them both join us at the
7 table if you would. And we'd like the Campaign
8 Finance Board to go first.

9 [background noise]

10 CHAIRPERSON BREWER: We've been
11 joined by Council Member Erik Dilan from Brooklyn.
12 Good morning.

13 AMY LOPREST: Good morning,
14 Chairwoman Brewer and Committee members. I want
15 to commend you on the PowerPoint presentation.
16 Very clear. I'm Amy Loprest, executive director
17 of the New York City Campaign Finance Board.
18 Thank you for allowing me the opportunity to
19 testify before you today. Reformers have long
20 sought to enact regulations on campaign finances
21 as a safeguard against real or perceived
22 corruption. In recent years, even the most
23 reasonable of these reforms have come under attack
24 in the courts. Challenges against voluntary
25 public campaign financing systems like ours have

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2 called into question whether additional public
3 funds can be awarded to participating candidates
4 who face high-spending non-participants.

5 Arizona's Clean Elections Program
6 created by that state's voters in 1998 is one of
7 those systems facing judicial challenge. In May
8 2010, the U.S. Court of Appeals for the 9th Circuit
9 upheld Arizona's bonus funds provision in McComish
10 v. Bennett. Last November, the U.S. Supreme Court
11 agreed to consider the plaintiff's appeal of that
12 ruling. This system's opponents claim that the
13 provisions of Arizona's public financing system
14 that provide additional grants to candidates
15 facing high-spending opponents or significant
16 independent expenditures violate the First
17 Amendment. They argue that these additional funds
18 chill the speech of non-participating opponents or
19 outside groups.

20 I wanted to take this opportunity
21 to encourage the Council to weigh in on an issue
22 that may determine the future of public campaign
23 financing programs across the nation, including
24 ours. I also would like to talk briefly about our
25 program's experience with high-spending non-

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2 participants in recent elections, which disproves
3 the theory underlying the plaintiff's First
4 Amendment claims.

5 Candidates who join New York City's
6 Campaign Finance Program and are opposed by a
7 high-spending non-participant are eligible to
8 receive additional public funds at an increased
9 matching rate or bonus rate, and their spending
10 limit is raised—removed completely. This has been
11 true since the program's inception in 1989.
12 Originally, the bonus rewarded matching funds at
13 the rate of two public dollars for every dollar
14 raised, rather than the standard one for one rate.
15 With the regular matching rate now at six to one,
16 there are now two bonus tiers; one for candidates
17 facing high-spending non-participants who raise or
18 spend more than half the spending limit and a
19 second for candidates facing opponents who raise
20 or spend more than three times the applicable
21 limit.

22 It is important to note that there
23 are fundamental differences between New York
24 City's Matching Funds Program and the Clean Money
25 Program at issue in Arizona and other

1 jurisdictions. In Clean Money programs,
2 participating candidates receive all of their
3 campaign funds from the public financing system.
4 In Arizona, candidates who face high-spending
5 opposition may receive equalizing funds to match
6 their opponent's spending up to two times the
7 original spending limit. In our Matching Funds
8 system, participating candidates must continue to
9 gather private support from New Yorkers to
10 maximize their access to public funds. All public
11 financing programs however have the common goal of
12 preventing corruption and the appearance of
13 corruption—a goal that is best achieved when more
14 candidates participate in the system. If public
15 financing programs are not able to offer an
16 adequate level of public funds to candidates
17 facing high-spending non-participants, these
18 programs will be unable to attract participants.
19 The disincentive to participation created by high-
20 spending non-participants is a serious challenge
21 to any public financing program. Opponents claim
22 that so-called trigger funds or bonus funds
23 suppress the speech of a non-participating
24 candidate because the non-participant spending may
25

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2 cause additional payments of public funds to his
3 opponent.

4 In our long experience, we have
5 seen no evidence whatsoever of a chilling effect
6 on non-participant spending. If it were true, we
7 would see many candidates who spend up to the
8 trigger amount and stop before they exceed it, but
9 to the contrary, practically all candidates who
10 opt out of the system spend either well below or
11 well above the bonus trigger amount. Since 1989,
12 35 high-spending non-participants have triggered
13 bonus payments for participating candidates. A
14 clear majority, 23 candidates, spent more than
15 double the trigger amount. 11 of these candidates
16 spent more than 6 times the trigger amount—even
17 excluding Michael Bloomberg, non-participants who
18 spending resulted in bonus determinations averaged
19 more than four times the trigger amount. On the
20 other end of the spectrum, many non-participating
21 candidates conduct small campaigns or report no
22 spending at all. Of the 313 non-participants
23 since the 1989 who did not spend enough to trigger
24 a bonus, only 53 candidates had enough financial
25 activity to require itemized reports of their

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2 spending. On average, these participants spent
3 82.5% below the bonus trigger amount. Only two
4 candidates came as close as 5% of the bonus
5 trigger and both were candidates in the same City
6 Council race in 1997.

7 The truth is that public funds have
8 increased rather than restricted the volume of
9 political speech in New York City elections. For
10 example, in the most recent mayoral election
11 Michael Bloomberg, a non-participant in the
12 program, outspent William Thompson, a participant,
13 by nearly \$100 million. There is no suggestion
14 whatsoever that Bloomberg's campaign felt
15 compelled to curtail its spending in order to
16 limit the amount of public funds available to his
17 opponent. His campaign spent what it felt was
18 necessary. Additional public funds distributed
19 through the campaign finance program provided
20 Thompson with a greater ability to get his message
21 out, helping provide voters with a real choice.

22 Public financing helps ensure
23 candidates have the resources to communicate with
24 potential voters, even if they lack access to
25 large contributions or personal wealth. Our

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2 program's ability to provide an appropriate level
3 of funding to participants competing against high-
4 spending non-participants has been absolutely
5 critical to maintaining high levels of
6 participation in the program. Thank you again for
7 allowing us the opportunity to speak about our
8 experience and for stepping forward to take a
9 leadership role on this important issue.

10 CHAIRPERSON BREWER: Thank you very
11 much and feel free to go ahead and we've been
12 joined by Council Member Inez Dickens.

13 MIMI MARZIANI: First I'd like to
14 extend thanks to Amy Loprest here at the Brennan
15 Center works on campaign finance issues across the
16 country and thinks very, very highly of New York
17 City's groundbreaking program, so thank you for
18 all of your work. Thank you also to the Council
19 for inviting me here today. My name is Mimi
20 Marziani. I'm an attorney with the Brennan Center
21 for Justice. In addition, I am counsel for one of
22 the intervening defendants in the McComish
23 litigation and on top of that, I am a New Yorker.
24 And for all of those reasons, I strongly urge this
25 Committee and this City Council to authorize

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2 Resolution 646 and join the amicus brief that will
3 be filed before the Supreme Court. This case,
4 McComish v. Bennett presents the Court with its
5 first opportunity to consider a public financing
6 system since 1976, when it upheld the presidential
7 public financing system. By participating then,
8 this Council could play a significant role in a
9 case that will very well determine the future of
10 public financing for years to come. And as you
11 have both noted, I mean what's at stake here is a
12 jurisdiction's ability to design a workable and
13 cost-effective public financing system that can
14 also offer viable alternatives to potentially
15 corrupting private money. And in fact, an adverse
16 ruling in McComish could immediately disrupt the
17 public financing systems in over 20 jurisdictions
18 across this country, including New York's
19 groundbreaking system.

20 So to start, and this has been hit
21 on, but I wanted to just briefly go over what's at
22 stake in McComish. As noted, the case involves
23 one of the most hotly contested issues in campaign
24 finance law and perhaps in constitutional law
25 today, and these are triggered supplemental funds.

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2 Arizona's Clean Election Program gives every
3 candidate in Arizona a choice from the onset.
4 They can either opt in and run their campaign
5 primarily on, or exclusively on public funds or
6 they can opt out and run their campaign the old-
7 fashioned way through private contributions.
8 Participating candidates receive 1/3 of the total
9 grant they're allowed at the onset; however,
10 they're eligible for additional funds when they
11 find themselves caught in a particularly high-
12 spending race and high-spending is defined by the
13 spending of their non-participating opponent, but
14 also by third party independent expenditure
15 groups. And so the high-spending of these other
16 parties triggers additional funds to a
17 participant. It's important to note that as Mr.
18 Brewer said, the funds that go to participating
19 candidates are ultimately capped at two times the
20 initial grant; whereas, non-participating
21 candidates and third-party spenders have
22 absolutely no restrictions on their ability to
23 fundraise and raise money. And so as you can
24 imagine, the system is designed to give
25 participating candidates a chance to be

1 competitive in an expensive race, to respond when
2 they are the target of attack ads or a spending
3 blitz from an opponent, but it's also very
4 carefully tailored to allow Arizona to protect its
5 public fisc [phonetic].
6

7 Historically, these sort of
8 provisions have been upheld, and they were upheld
9 for years and years and years—never been
10 considered by the Supreme Court, but they were
11 upheld years and years and years by courts of
12 appeals in the federal system. Recently, however,
13 they have been under siege and you know, right now
14 the results are mixed. Some courts have upheld
15 these provisions in recent years. Some have
16 struck them down. Most notably, the 9th Circuit in
17 our McComish litigation upheld Arizona's trigger
18 funds. The 2nd Circuit whose law governs New York
19 State struck down very similar provisions in
20 Connecticut's law last summer. And so as others
21 have mentioned, challengers claim that the
22 prospect of triggering funds burdens their ability
23 to spend freely in the election, and they claim
24 specifically that they're forced to self censor
25 and refrain from spending.

1
2 As Amy Loprest here noted, the
3 experience in Arizona and in every single other
4 jurisdiction that we have worked in—and by the way
5 the Brennan Center has for better or for worse
6 been litigating this issue across the country, so
7 we've actually gotten to do this empirical work
8 across the country—there is absolutely no sign
9 that candidates or any substantial number of
10 candidates ever refrain from spending to avoid
11 triggering funds and in the Arizona litigation, an
12 expert testified that there's no sign that
13 candidates spend right up to the triggering
14 threshold, but no more. There are also—some of
15 the challengers themselves when their deposition
16 was taken actually could not remember when pressed
17 whether or not they had triggered these funds in
18 the past. Their campaign managers affirmed that
19 the prospect of triggering funds did not in fact
20 effect their decision, so there's absolutely no
21 evidence. And on the legal side, the Brennan
22 Center is confident that trigger funds are
23 constitutional under well-established First
24 Amendment Law, just as they have always been
25 considered.

1
2 There is however reason to be
3 seriously concerned about this litigation. First,
4 after the 9th Circuit upheld Arizona's trigger
5 funds in late spring of 2010, the Supreme Court
6 issued a stay enjoining the trigger funds
7 throughout Arizona's 2010 election. And clearly,
8 the Court's willingness to reach out and disrupt
9 Arizona's elections right in the middle sent some
10 sort of predetermined hostility perhaps with-to
11 these provisions.

12 Also, as was noted, the Supreme
13 Court under our current Chief Justice, John
14 Roberts, has issued a series of decisions in
15 recent years striking down campaign finance
16 provisions under state and federal law. Notably
17 in 2006, it struck down for the first time state
18 contribution limits as being too low. In 2008, it
19 invalidated the so-called Millionaire's Amendment
20 under federal law that provided enhanced
21 contribution limits to privately funded candidates
22 who were facing a Bloomberg-like opponent. And
23 then in 2010, perhaps most notoriously, the
24 Supreme Court issued its decision in Citizens
25 United and freed business corporations from long-

1 term restrictions on their political spending.
2
3 And indeed some amicae in our McComish litigation,
4 perhaps sensing some sympathetic allies in the
5 Court, are urging the Court to issue a very broad
6 ruling that could undermine public financing
7 generally. And so just to very quickly say that
8 McComish—so there's a very real worry that the
9 Court will issue a broad ruling. Such a broad
10 ruling could affect, as I said, the public funding
11 systems in over 20 jurisdictions. Ten other
12 jurisdictions have triggered supplemental funds.
13 On top of that, at least ten jurisdictions,
14 including New York, have some sort of triggered
15 benefit worked into their law. These provisions
16 as they are in Arizona are often key to
17 encouraging participation, while protecting the
18 public fisc. And by broadly ruling against
19 Arizona's system, there's a very real risk that
20 the Court could handicap the ability of state and
21 local governments to properly protect the
22 integrity of their elections. And so, with that
23 I'll end, but thank you very much and let me know
24 if you have any questions.

25 CHAIRPERSON BREWER: I'm sure we

1
2 do-been joined by Council Member Peter Vallone,
3 Jr. from Queens. Two things that just off the top
4 of my mind-come to mind. One of course is you
5 know Michael Bloomberg spent a lot in the
6 elections, but other candidates did pretty well,
7 so it was a-I think the people realized that they
8 understand that our campaign system does work.

9 MIMI MARZIANI: Yes.

10 CHAIRPERSON BREWER: He almost lost
11 and didn't-obviously, the other candidate, Mr.
12 Thompson was outspent, so I think that says
13 something. And second, when you hear Arizona-it's
14 so ironic because with the Clean Money law
15 obviously passed in the 90s, you pointed out, and
16 then today there's a lot of challenges in terms of
17 some of their other policies. I'm not related to
18 the Governor. I just want everybody to know that.

19 [laughter]

20 CHAIRPERSON BREWER: A couple of
21 questions for our Campaign Finance Board for Amy
22 Loprest. I know you talked-but first of all,
23 thank you for your testimony 'cause I think that's
24 the first time I've heard sort of the number of
25 races that have been part of the trigger program

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2 and you know, so that was really helpful to see
3 those numbers.

4 AMY LOPREST: Thank you.

5 CHAIRPERSON BREWER: And so can you
6 just again elaborate why the provision—the trigger
7 funds provision is such an important feature of
8 the system? Even though you did it in your
9 testimony—some of our colleagues came in and I
10 just think it should be re-emphasized.

11 AMY LOPREST: You know as you
12 pointed out and I think as the Brennan Center
13 pointed out in their testimony, it's very
14 important to encourage participation because the
15 idea that you may run against a person who has
16 unlimited amount of spending and unlimited access
17 to personal wealth could cause some candidates to
18 consider whether or not they should participate in
19 the program. And New York City has always enjoyed
20 very high participation rates and I think the
21 ability to you know, not match one to one, but
22 certainly to give a bonus when you're facing
23 someone who is spending a large amount of money
24 definitely allows candidates who choose to
25 participate the freedom to do so. And I think if

1
2 we didn't have these kind of provisions, there
3 would definitely be—we would see a reduction in
4 participation.

5 CHAIRPERSON BREWER: Okay. And I
6 think you have—I mean there are many reasons that
7 I would give for New York City's historically high
8 participation rate, but what are some of the
9 reasons that you would give 'cause we do have a
10 very high participation rate in general.

11 AMY LOPREST: I think that
12 definitely we have—the City Council has passed a
13 law that gives a very generous matching rate.
14 It's one to one from 1989 when the law was passed
15 up until 1998 when it was changed to four to one,
16 then again in 2007, the rate was changed to six to
17 one. I think definitely that matching rate has
18 encouraged participation and also I think you
19 know, the flexibility to not worry about high-
20 spending non-participants has allowed candidates
21 to participate. And also I think that, you know,
22 there is a culture in our electoral system that
23 participation is good.

24 CHAIRPERSON BREWER: And do you
25 find that the tier one and tier two, which I'm not

1
2 as familiar with 'cause I haven't had to run
3 against somebody who had--spent a lot of money, but
4 how do you feel that those two tiers work in terms
5 of the way that you described in your testimony?

6 AMY LOPREST: Yes, I mean I think
7 that tier two was only passed after the 2001
8 election. Before that, candidates received the
9 bonus was triggered when their opponent raised or
10 spent 50% of the spending limit and that worked
11 fine, but then--and they got a small bonus and I
12 think it was felt that if you're facing someone
13 who spends a large amount of money, 3 times the
14 spending limit, that you really should be entitled
15 to an additional amount of money, so I think that
16 that two-tiered system has worked.

17 CHAIRPERSON BREWER: If you could
18 talk a little bit about, Mimi, about some you
19 outlined some of the other states, but could you
20 be even more specific about what you think could
21 happen at the Supreme Court and maybe some of the
22 other cases that are also, you know--

23 MIMI MARZIANI: [Interposing] Sure.

24 CHAIRPERSON BREWER: --in the
25 pipelines so to speak?

2 MIMI MARZIANI: Of course. And for
3 the Committee and the Council's convenience, I
4 actually included with my testimony a memo that
5 sets out all the other public financing systems in
6 the country and discusses the various types of
7 triggering mechanisms.

8 CHAIRPERSON BREWER: [Interposing]
9 That's great. Thank you.

10 MIMI MARZIANI: There are so many
11 ways the Court could rule, we feel very strongly
12 that our position is correct in that the Court
13 should affirm the 9th Circuit's decision and simply
14 uphold Arizona's law. Alternatively, the Court
15 could strike down Arizona's law for specific, you
16 know, arguable problems within that law and in
17 that case, a very narrow ruling like that would
18 only effect I think Arizona's jurisdiction. More
19 broadly, the Court could find that any sort of
20 triggered supplemental funds are unconstitutional.
21 That would I think call into serious question the
22 triggered supplemental funds in the ten
23 jurisdictions that have that type of trigger.

24 CHAIRPERSON BREWER: It also scares
25 me because those states and cities that don't yet

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2 have campaign finance, you know, that should, like
3 a federal government or state governments—

4 MIMI MARZIANI: [Interposing] And
5 that's a really great point. I mean another—one
6 danger with the—I mean the Court has been very
7 sympathetic in recent years to challenges to
8 campaign finance regulations in general and
9 because of that, jurisdictions have been very
10 skittish about enacting reform and particularly
11 robust reform, like public financing. And just to
12 answer your initial question, we're currently
13 litigating the triggered supplemental issue in—
14 those provisions were repealed in Connecticut, so
15 that's out of that case, but in Maine in their
16 Clean Elections System, in Wisconsin's newly
17 enacted Judicial Public Funding system, of course,
18 Arizona and I think that's actually it for right
19 now.

20 CHAIRPERSON BREWER: So let me just
21 ask you, so all of the campaign finance systems,
22 L.A. and the states that do have them and New
23 York, do they all have a trigger at this point
24 except for anything that has been litigated?

25 MIMI MARZIANI: No. There are some

1
2 systems that don't have any sort of triggered
3 benefit and it is important, particularly with
4 pending litigation in New York City, to stress
5 that New York City's—the triggered benefits in New
6 York City I think are legally distinguishable from
7 the triggered supplemental funds at issue in
8 Arizona. Certainly an adverse ruling could cast
9 some constitutional shadow on those, but it
10 wouldn't—unless the Court issues a very broad
11 ruling, it should not knock them out per se.

12 CHAIRPERSON BREWER: And that's
13 because—Amy help me—because we have a different
14 system?

15 AMY LOPREST: I mean there are two
16 main differences between New York City that mean
17 that one, we have a matching funds program whereas
18 Arizona is you know, you get dollar for dollar for
19 each person's spending and in New York City, the
20 candidates still have to raise the money in order
21 to get additional money. The other is that at
22 least in Arizona the—one of the triggers is
23 independent spending—spending by third parties and
24 our law does not have that kind of trigger. Our
25 trigger is only triggered by spending by your

1
2 opponent in your election, not by third party
3 actors.

4 CHAIRPERSON BREWER: We don't
5 want this to happen, but say for instance, there
6 is a broader ruling, are there some other means
7 available to enhance candidates to participate?
8 Would there be some other way that we could
9 achieve the same goals? I mean it's a hard
10 question, and maybe there's no answer.

11 MIMI MARZIANI: Sure, I mean I'm
12 sure that there are and something that New York
13 City should feel comforted by is that there is—it
14 is highly, highly, highly unlikely that the
15 Court's ruling could disrupt the heart of the New
16 York City system, which is the small donor—

17 CHAIRPERSON BREWER: [Interposing]
18 I'm mostly concerned just nationally though. I
19 mean, New York City, thank goodness, but also you
20 should know that the clean elections system—we
21 know we have a good system here, but there are
22 others - - others who also love the clean
23 elections.

24 MIMI MARZIANI: Right, and to tell
25 you the truth I mean in recent years and as

1
2 evidenced by the Brennan Center's recent report
3 about the New York City system, in general we
4 support any jurisdiction's enactment of public
5 financing and we think it's typically best for a
6 jurisdiction to decide what works for it. That
7 being said, we tend to endorse systems that are
8 much closer to New York City's because in addition
9 to fighting corruption, it also directly
10 encourages participation from voters, by
11 supercharging their small donations and as you
12 know, in New York-New York's a great example of
13 this—it also really spurns increased competition
14 in a way that I think is very valuable for the
15 democratic system.

16 CHAIRPERSON BREWER: Is Brennan
17 filing amicus, are you also—is it appropriate to
18 do this?

19 MIMI MARZIANI: We are not. We're
20 representing one of the parties.

21 CHAIRPERSON BREWER: Okay.

22 MIMI MARZIANI: Yes, so we're
23 actually co-counsel in the case—actually arguing
24 the case before the Court.

25 CHAIRPERSON BREWER: Thank you both

1
2 very much. We're very excited, and we appreciate
3 this, and I want to thank the Speaker because her
4 policy is that if the City Council is to file an
5 amicus, then we need to have the buy in of the
6 members as opposed to just doing it as the
7 Speaker, so we appreciate your participation to
8 help us do that.

9 AMY LOPREST: Thank you.

10 CHAIRPERSON BREWER: Thank you very
11 much. So Deanna Bitetti from Common Cause. Thank
12 you for spending so much time.

13 DEANNA BITETTI: I know. I feel
14 like I've always seen you, Councilwoman. Well
15 good morning, Chair Brewer, members of the
16 Committee on Governmental Operations. Thank you
17 again for the opportunity to speak today. My name
18 is Deanna Bitetti. I'm the Associate Director for
19 Common Cause New York. We are a non-partisan,
20 non-profit to citizen lobby, a leading force in
21 the battle for good government. We've also of
22 course been a longstanding advocate of campaign
23 finance across the country and in New York. We've
24 remained a steadfast and ardent supporter of
25 public financing of our elections, or as we now

1
2 like to say—this is a new catchphrase—voter-owned
3 elections.

4 So to just go in really to the crux
5 of what we've been seeing over the years in study
6 after study with our partners, NYPIRG, Brennan
7 Center for Justice has of course detailed this, a
8 very disquieting situation. It is one that causes
9 the public to perceive that special interest
10 campaign dollars and not the public interest is a
11 controlling factor in elections. This
12 disillusionment with the political system has
13 fostered great momentum for public financing
14 system of elections—common cause is actually now a
15 part of the larger coalition that supports voter-
16 owned or publicly financed elections on the state
17 level, using New York City's current system as a
18 frame for that. It's gathered a lot of support in
19 the state legislature. As many of you have heard,
20 Governor Cuomo of course in the State of the State
21 address, even pledged to make campaign finance
22 reform a main tenant of his legislative priorities
23 and to support public financing system, so it's
24 very germane here in New York State as well. And
25 of course, we applaud this Committee for

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2 introducing this resolution in support of
3 upholding Arizona's trigger fund provisions of its
4 campaign finance law. As we have heard, this will
5 mark the first time in nearly 35 years that the
6 Supreme Court has ruled in a public financing
7 case.

8 At issue of course, are trigger
9 matching funds issued to participating candidates
10 who face high-spending non-participating
11 opponents. These funds enable states such as
12 Arizona and of course New York City to provide
13 candidates who opt into the program with enough
14 money to run in competitive races and very
15 importantly, forgo corporate and special interest
16 dollars. Trigger matching funds place no limits
17 on the amount that privately financed candidates
18 may raise or spend on their campaign;
19 nevertheless, as we have also heard, plaintiffs
20 have claimed that this system halts the speech of
21 non-participating opponents and violates the First
22 Amendment. Common Cause supports the position of
23 course of the defendants in this case, who claim
24 that the provision in no way infringes on freedom
25 of speech rights as guaranteed by the 1st and 14th

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2 Amendments to the Constitution, but rather simply
3 encourages candidates to forgo corporate money in
4 exchange for participation in this program. The
5 9th Circuit Court of Appeals declared the trigger
6 provision constitutional and of course, we hope
7 that the Supreme Court will uphold this ruling.

8 As we all know, many of you sitting
9 here in the Committee, there is constant pressure
10 on elected officials to raise money for campaigns.
11 In this - - way, we force the even the best
12 elected officials into untenable situations. A
13 comprehensive and robust campaigns finance system
14 in the form of public financing helps to clearly
15 articulate the line not only for elected
16 officials, but for constituents alike and helps
17 restore faith in our election process.

18 Without such a system, we will
19 continue to see a widening disparity in the amount
20 of money given by special interests versus that
21 given by small donors or regular citizens, as
22 actually documented very well by a recent study
23 put out by NYPIRG. We need to put elections back
24 into the hand of voters. The current political
25 landscape, which is easily dominated by big money

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2 contributors—a situation of course compounded by
3 the U.S. Supreme Court's decision in Citizen
4 United, as we saw in last year's election has once
5 again fosters great momentum around the nation in
6 support of this type of system. We must all stand
7 up and support the right to secure trigger funds
8 as a main tenant of this process that for states
9 that publicly finance election will re-risk
10 undermining the process throughout the nation. A
11 robust public financing system will help to
12 emphasize and amplify the impact of small dollar
13 donations, encourage district and voter directed
14 campaigns over dialing for dollars, decrease
15 significantly the amount of time candidates must
16 spend fundraising, and increase the involvement
17 and investment of small donors and grassroots
18 participants in our state election campaigns.
19 Therefore, we wholeheartedly support the intention
20 of this resolution, which would authorize the New
21 York City Council to join in the amicus brief to
22 be filed with the U.S. Supreme Court to uphold
23 the trigger funds provision. At such a critical
24 juncture in the shaping of our campaign finance
25 law around the nation, which is constantly or

2 seems constantly under attack, this case will have
3 a deep and lasting impact in how publicly financed
4 election systems will be crafted for years to
5 come. So thank you very much for the
6 opportunities.

7 CHAIRPERSON BREWER: Thank you for
8 your testimony. Thank you for always being here
9 on the important issues. Are you—is Common Cause
10 maybe nationally or New York filing an amicus on
11 this case, do you know?

12 DEANNA BITETTI: As of right now,
13 we are not. I think it's under consideration by
14 our national offices as of right now.

15 CHAIRPERSON BREWER: Thank you very
16 much. Thank you very much.

17 DEANNA BITETTI: Thank you.

18 CHAIRPERSON BREWER: Carol Simon?

19 CAROL SIMON: Hello. My name is
20 Carol Simon. I'm formally of Texas, but I'm
21 concerned with this country's economic spending,
22 so basically I've come to speak on these issues.
23 As the trigger fund was briefly discussed there is
24 an issue that lies at hand. Of course, there
25 needs to - - and well constructed plans to be

1
2 established on an earnest budget. Overspending
3 should not be accepted on any margin or scale.
4 Not only does the State of New York suffer from
5 corruption, but several states deal with this
6 horrid transformation of spendage [phonetic].
7 These unethical transfers only hurt those of us
8 who are unaware of where our monies are spent and
9 what expenses accrue. We must be first focused on
10 the world around us as well as the World Bank—not
11 only paying attention to these countries'
12 currency, but the Euro, the Franc, the Yen, be
13 aware even of the value of gold and what actually
14 backs the U.S. dollars. There is so much
15 corruption daily reported in government agencies
16 it makes you question who are the real criminals.
17 Don't be fooled by suits. Some wear suits and
18 ties and be slacking. The topic discussed here is
19 corruption and overspending on a budget that's
20 barely visible. The most U.S. citizens have
21 untrained eyes and when the target has been marked
22 by trigger funds, fundamentally the government is
23 playing with our heads and having fun mentally;
24 therefore, we should indeed pray and ask our
25 Heavenly Father for discernment. There are

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2 private conventions such as the Berne [phonetic]
3 Convention, which I've acknowledged on the Web,
4 that goes unnoticed; therefore, take heed of the
5 monies that are spent and given 'cause every gift
6 isn't free. Don't sell out by voting in a
7 negative direction. They're willing to even
8 infect us all--affect us all. And others for
9 longer periods of time, while you're counting your
10 money, you should really count first and foremost
11 on God. Even if you suffer from minute or
12 incredible circumstances, such as a lisp, and are
13 seeking professional help from a speech therapist,
14 you must primarily be persistent on seeking God.
15 Who will be in support of the filing in McComish
16 and Bennett? Does each individual stand behind
17 their statement wholeheartedly? Are all decisions
18 that affect only those or us as well?

19 The Committee of Government
20 Operations are currently considering resolutions
21 with opposing views, so these opposite conflicts
22 are like magnets bound to collide. There needs to
23 be further litigation, including more public
24 briefing to establish a boundary--to acknowledge
25 basically and discern if this is the stuff we

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2 should have to follow. Are we even following
3 policy, procedure and law? So just those topics
4 are enough to balance it all, you know what I
5 mean? So that's all I basically wanted to say, but
6 I hope that these opposing views come to some type
7 of conclusion and a resolution.

8 CHAIRPERSON BREWER: Thank you very
9 much. I want to thank those who testified and I
10 want to thank the wonderful colleagues and staff
11 and to let the public know in particular that this
12 is an issue that many people in general have
13 worked on campaign finance reform and I think it's
14 a good sign that there are so many people that are
15 paying attention at the national level, but a
16 chilling effect just not only in terms of those
17 laws that currently exist, but for those who have
18 been trying really hard to make sure that all
19 states and all municipalities are—and certainly
20 the federal government—participating campaign
21 finance reform. This has a just many, many
22 aspects to it and I'm delighted that this City of
23 New York is participating in terms of friend of
24 the Court. I'm sure the City Council will vote to
25 do the same and we hope that the Supreme Court

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2 understands the concerns that are bringing to
3 light today, so that you very much. This hearing
4 is adjourned.

5 [gavel]

6 CHAIRPERSON BREWER: Sure. I'd
7 also like to introduce Council Member Domenic
8 Recchia from Brooklyn. Thank you.

C E R T I F I C A T E

I, Kimberley Uhlig certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

Kimberley Uhlig

Date

March 3, 2011