

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON STANDARDS AND ETHICS

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November 21, 2016
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HELD AT: Council Chambers - City Hall

B E F O R E: Alan N. Maisel
Chairperson

COUNCIL MEMBERS:

Julissa Ferreras-Copeland
Brad S. Lander
Carlos Menchaca
Steven Matteo
David G. Greenfield
Helen K. Rosenthal
Ben Kallos

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

Henry Berger
Special Counsel to the Mayor

Wayne Hawley
Conflicts of Interest Board Deputy Executive
Director

Carolyn Miller
Conflicts of Interest Board Executive Director

Amy Loprest
Executive Director of Campaign Finance Board

Sue Ellen Dodell
General Counsel of Campaign Finance Board

Eric Friedman
Assistant Executive Director for Public Affairs
at Conflicts of Interest Board

Dominic Mauro
Reinvent Albany

Dick Dadey
Citizens Union

Gene Russianoff
New York Public Interest Research Group

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2 CHAIRPERSON MAISEL: Good morning. Good
3 morning and welcome to this hearing of the Committee
4 on Standards and Ethics. I am the Chair of the
5 Committee, Councilman Alan Maisel. Today we will be
6 holding a first hearing on 14 bills. The first of
7 the bills being heard today is Introduction 1345
8 sponsored by the Speaker Melissa Mark-Viverito and
9 Council Member Dan Garodnick, Elizabeth Crowley, and
10 Brad Lander in relation to conflicts of interest and
11 organizations affiliated with elected officials. In
12 2013 Mayor-elect Bill de Blasio announced a campaign
13 to lobby for Universal Pre-kindergarten in Albany.
14 That campaign which was later called Campaign for One
15 New York was incorporated as a 501C4 tax exempt
16 organization. The campaign for One New York was not
17 only such organization as two additional tax exempt
18 organizations were spun off from it, but it was the
19 most active and well-known of them. According to the
20 Campaign Finance Board, many of the contributions
21 received by the organization greatly exceeded the
22 campaign contribution limits or from sources that
23 would have been prohibited from contributing to
24 campaigns, including large amounts from unions, real
25 estate interests and entities with business before

1 the City. The Mayor actively fund-raised for the
2 organization. The money funded several prominent
3 public communications featuring the Mayor's name or
4 image as well as over 200,000 robo-calls, using his
5 name in a mailer to residents in Brooklyn praising
6 the Mayor's actions on an issue un-related to
7 universal pre-kindergarten. In 2016, Common Cause
8 filed a complaint with both the Campaign Finance
9 Board and the Conflicts of Interest Board, alleging
10 violations of the Campaign Finance Act the City
11 Conflicts of Interest Law. They also expressed the
12 belief that the campaign for One New York's
13 activities raised questions about money and influence
14 and created a perpetual campaign, confusing the role
15 of government in politics to the detriment of public
16 interest. The Mayor responded that his involvement
17 had been pre-cleared by the Conflict of Interest
18 Board, and distinguished his organization from others
19 based on its laudable policy goals. In March of this
20 year, the Campaign for One New York was disbanded.
21 An investigation by the Campaign Finance Board stated
22 that the Campaign for One New York was established by
23 the Mayor to support and promote his policy agenda
24 was run by his closest advisors and staff by
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1 personnel and consultants from his 2013 campaign.
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3 But the CFB's role was to determine if the
4 expenditures of the organization were in connection
5 with his 2017 re-election campaign. They decided
6 that to the extent of current law and this
7 jurisdiction permitted them consider the issue, the
8 public communications that occurred in 2014 were not
9 technically in connection with his re-election, in
10 part, because they did not occur in an election year.
11 However, they called on the City Council to pass
12 legislation to close this loophole. Other
13 investigations may be ongoing, but we meet today to
14 discuss the legislation addressing this issue. Also
15 being heard today are 13 bills related to campaign
16 finance, each of which will be discussed in more
17 detail by their sponsors. Our campaign finance
18 system is a voluntary one. We want candidates to
19 participate, but if the system becomes too difficult
20 or expensive to navigate, there's a danger that
21 participation will decrease, ensuring fairness and
22 partiality and the straightforward process with
23 timely feedback from the Campaign Finance Board.
24 There's a key to the system, and this what this
25 package of bills seeks to promote. I want to thank

1 the sponsors of these bills, Council Member
2 Garodnick, Council Member Greenfield, Council Member
3 Lancman, Council Member Lander, and Council Member
4 Van Bramer, and Council Member Salamanca. I will now
5 tour to them and turn to read an opening statement,
6 but before I do that, I just want to make one
7 additional point. In order to encourage people to
8 participate in elections, which is the whole point of
9 this, we are asking people who are not politically
10 savvy, people who are not experienced in running for
11 office to navigate complex issues, and to reiterate
12 when we make these rules so complicated and so
13 difficult to understand, we undermine the very point
14 of what we're trying to achieve, which is to get more
15 people involved in the system. So, now, if there's
16 anybody who would like to-- Council Member Lander?

18 COUNCIL MEMBER LANDER: Thank you, Mr.
19 Chairman. I look forward to this hearing this
20 morning. I appreciate the opportunity. As you know,
21 I'm an extremely strong supporter of the New York
22 City Campaign Finance Board, and I've worked very
23 hard over the years, both through Amicus Briefs and
24 some of the lawsuits and with legislation to
25 strengthen the system, to do more to restrict

1 independent expenditures, and I think it's an
2 important thing that the Council is spending time
3 thinking about how to continue to strengthen and
4 improve our laws. Obviously, what has happened
5 around 501C4 and 501C3 organizations affiliated with
6 or controlled by or aligned with elected officials
7 has opened up a place we didn't realize that we
8 needed to regulate before and it's critical to
9 regulate, and I'm proud to be pre-intro co-sponsor of
10 the legislation that will do that. I look forward to
11 hearing testimony from the public to make sur we have
12 it right. I believe this is the first of its kind
13 legislation in the country to restrict these types of
14 organizations and make sure ta there is not conflict
15 from in particular organizations or individuals that
16 are doing business with the City to make sure that we
17 prevent the conflicts that we're all here to
18 strengthen. I can't resist saying I only with the
19 President-elect were so concerned with conflicts of
20 interest in government as New York City Council is
21 showing itself to be today, but they're really
22 important. It is critical that we get these laws
23 right, and that we do everything we can to keep the
24 undue influence of money out of our political system
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1 and make sure that elected officials are focused on
2 doing their jobs. As to the remaining package of
3 bills, I guess I just want to echo what you said. I
4 support some other legislation that's already been
5 heard by this Council to strengthen the City's
6 Campaign Finance Laws, and we've talked about those
7 in other hearings and I hope we'll have an
8 opportunity to consider and vote on them in the near
9 future, and I think it's no secret to the people in
10 this room that the challenge of building a strong
11 campaign finance system that works to protect the
12 public from the undue influence of money and the
13 potential risks of corruption and politics also
14 requires having a system that's functional and that
15 works for those people who are running for office,
16 and that's not easy to do. You know, I've joked
17 before that the New York City Campaign Finance Board
18 is a total pain in the ass and absolutely essential
19 to the preservation of our local democracy, and we
20 need a system that is strong, that really looks at
21 every detail, and that's going to be a headache for
22 people running for office. It were easy, that's where
23 the problems and the errors and the cheating and the
24 corruption seep in, but designing that system means
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2 there's a lot of work to do to try to get the details
3 right and make sure the system can be as effective as
4 possible, and certainly the piece of legislation in
5 that package that I'm co-sponsoring or that I'm the
6 lead sponsor on which would allow elected officials
7 to use their campaign funds for public purposes is
8 one thing like that. Today, I could buy 5,000 pieces
9 of Halloween candy and put my name on them and give
10 them out to 5,000 kids at the Park Slope Halloween
11 Parade, but I can't buy a bowl of fruit for people to
12 come to a participatory budgeting meeting and engage
13 with their neighbors in collective decision-making
14 and democracy. That seems to me something that we
15 should fix, and I'm proud to be the sponsor of a bill
16 that would help us do that. I look forward to
17 hearing all the public feedback on the other items in
18 this testimony, but that's the spirit that we're
19 doing this in, and I would just submit to everybody
20 in the room it is the right spirit, the goal of a
21 system that is strong and that works and is
22 effective, and that is-- achieves the right balance.
23 That's the system that we want, and I'm proud the
24 Council is moving forward today to try to improve,
25 strengthen and achieve it. Thank you.

CHAIRPERSON MAISEL: Council Member
Greenfield?

COUNCIL MEMBER GREENFIELD: Thank you,
Mr. Chairman. I'm proud to join my colleagues today
to introduce a package of good government and common
sense campaign finance reform legislation. The
package of legislation will eliminate some
unnecessary red tape and provide clarity to
candidates who are running for office, especially
first-time candidates who, as the Chair pointed out,
are beginning to be dissuaded from the process due to
the complexities of the process. These bills
maintain the accountability and transparency of our
campaign finance system while making it easier for
first-time candidates to participate and follow the
rules. For example, the documentation reform
legislation that I am sponsoring, 1355, will make it
easier for first-time candidates run for office by
once and for all clarifying what documentation is
required to receive matching funds. All of these
bills are designed to ensure that we streamline the
process of running for office without sacrificing the
safeguards and ensure the integrity of our democratic
process. I'm also very proud of the legislation of

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2 1345 which for the first time, and as Council Member
3 Lander has pointed out, first city in America that is
4 going to regulate political slush funds. I think
5 that's an importance piece of legislation as well,
6 and you know, I took a sneak peek at some of the
7 testimony. I get it. I understand that no agency in
8 the City of New York likes to have oversight by the
9 oversight body which is what we are in the City
10 Council. The reality is that the Campaign Finance
11 Board is a very important agency, but it is an agency
12 nonetheless of the City of New York, and it's
13 important and appropriate that from time to time we
14 come in as the legislature and say, hey, you guys are
15 great, but you could be doing some things better, and
16 that's really what we're looking at today. And so I
17 look forward to working with the Chair and my
18 colleagues on passing all of this legislation and
19 hearing the important feedback that we're going to
20 get today. Thank you.

21 CHAIRPERSON MAISEL: Thank you very much,
22 Councilman Greenfield. I want to thank the Conflicts
23 of Interest Board and the Campaign Finance Board and
24 the Mayor's Office as well as the advocates who are
25 present today for joining us today for this hearing

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2 and discussion. So, now I'd like to call on Henry
3 Berger from the Mayor's Office to present some
4 testimony. Please be prepared to be sworn in.

5 COMMITTEE COUNSEL: Do you affirm to tell
6 the truth in your testimony before this Committee
7 today and to respond honestly to Council Member
8 questions?

9 : Is this on or off? You hear me?

10 Okay. Good afternoon, Chair Maisel, Council Members.
11 My name is Henry Berger. I'm Special Counsel to the
12 Mayor, and thank you for having me here today and for
13 holding a hearing on these important issues. You
14 have my written testimony before you. I assume
15 familiarity with the structure and program of the
16 Campaign Finance Board, and I will skip that part,
17 because I know there are several people who want to
18 testify and just move into the testimony on the
19 bills. Before I discuss the legislation, I do want
20 to note that the CFB is non-partisan, independent
21 agency, and for many of these proposals, they will
22 set forth their own position on the bills. I'm glad
23 that Amy Loprest has joined us today to outline the
24 CFB's position. Nevertheless, I'm happy to share
25 with you Administration's thoughts on some of these

1 bills. My testimony on these bills should be viewed
2 in the context of my prior testimony on the eight
3 bills proposed by the CFB. All these bills together
4 constitute a package of reform to the CFB
5 legislation. Intro 1345 has been introduced by the
6 Speaker, and this bill would require donor disclosure
7 for all non-governmental entities affiliated with an
8 elected official of the City, a concept which is
9 defined by bill to encompass several different
10 circumstances including, for example, where an
11 elected official is a principal owner or an officer
12 of the entity. This information will be available on
13 the website of the Conflicts of Interest Board which
14 would be responsible for administering the law. The
15 bill would also prohibit donations about 400 dollars
16 per year from people who are lobbyist, have city
17 contracts, who otherwise do business with the city or
18 their close relatives to non-governmental entities
19 affiliated with the elected official. However, this
20 limit would only apply to organizations that spend or
21 expect to spend 10 percent or more of their annual
22 budget on public finance and communications that
23 include the name or picture of the elected official
24 affiliated with them. Speaking on behalf of the
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1 Administration only, we are generally supportive of
2 the intent of this bill, but have concerns about the
3 definition of organizations affiliated with an
4 elected official and which organizations would be
5 covered. For example, as currently drafted it's not
6 clear whether an organization has some but not all
7 board members appointed by the Mayor would be covered
8 under this definition. Also, certain organizations
9 whose members are appointed by the Mayor do not
10 engage in fund raising, but would be required to
11 register and disclose under the bill as drafted. I
12 note that some of these organizations potentially
13 subject to this bill are already subject to extensive
14 reporting requirements under other laws. In short,
15 the current definition is over-broad and may be
16 problematic, but we believe that this can be cured.
17 The relationship between the bill's potentially broad
18 sweep of coverage and its targeted purpose could also
19 raise additional legal concerns given the bill
20 addresses the speech and governance of private
21 entities. These concerns would need to be addressed
22 in future discussions at the staff level, and we are
23 prepared to work on that. Also, the definition of
24 persons with business dealings with the City is
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1 expanded to include family members. Mayor's Office
2 of Contract Services thinks this would be a
3 logistical and technical issue because it expands the
4 current definition of "doing business" that is the
5 Campaign Finance Act. For MOCS the current database
6 doesn't accommodate the new data points required by
7 the bill and the current process for collecting,
8 processing, storing, and reporting the data will have
9 to be evaluated by MOCS, DoITT, the COIB, and
10 potentially revamped. It is important for the
11 Council to hear from the actual organizations and
12 foundations that will directly impacted by this
13 legislation, and I cannot speak on behalf of those
14 organizations. Intro 1349 introduced by Council
15 Member Garodnick would strengthen the requirements
16 that CFB software be compatible with State Board of
17 Elections as is currently required by the law, and
18 would require that if CFB disclosure software does
19 not enable users to meet their disclosure
20 requirements under state law, then CFB should prepare
21 a complaint electronic file for any requesting
22 candidate and shall issue a report. This legislation
23 will require CFB to be fully compatible of state law
24 and we are supportive. Intro 1350 introduced by
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1 members Garodnick and Greenfield would require
2 candidates and their own discretion to have the right
3 to select a hearing before a tribunal of the Office
4 of Administrative Trials and Hearings for alleged
5 violations and propose penalties. Currently, while
6 the CFB clearly has the right to bring a case before
7 OATH. It is not clear that the accused candidates
8 have the right to bring their case to OATH, and we
9 think it's fair to give both candidates and the CFB
10 this option. Intro 1351 introduced by Council Member
11 Greenfield would extend the time to deposit
12 contributions from 10 to 20 business of receipt,
13 except that cash contributions continue to be
14 required to be deposited within 10 business days. We
15 think this a fair amendment. Intro 1352, also
16 introduced by Member Greenfield, repeals the
17 requirement that inquiries be made of each
18 contributor whether they do business with the City.
19 Every campaign is already required to check each
20 donation greater than the "doing business" limit
21 against the "doing business" database. This bill
22 requires only the campaigns have a form that sets
23 forth the "doing business" limits, and we have no
24 objection to this bill. Intro 1354 introduced by
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2 Member Greenfield requires the Board to provide a
3 review of any disclosure statements at least 30 days
4 before the next disclosure is required, giving the
5 campaign an opportunity to make corrections as
6 necessary. The bill also restricts the Board from
7 invalidating matchable [sic] contributions in later
8 reviews unless the Board obtains new information not
9 available in this initiative review. We think this
10 is a fair amendment, and I will mention it again
11 later in my testimony. Intro 1355 from Council
12 Member Greenfield does three things. One, it
13 specifies what documentation is required for
14 contributions. Two, it allows campaigns to fill out
15 contribution cards where required and have the donor
16 sign the card, and three, it removes the obligations
17 to collect a contributor card when the name and
18 address of a donor are on the check or money order.
19 We are generally supportive of the first two pieces,
20 but oppose the third piece of this bill. It could
21 potentially lead to fraud, and there is other
22 important information a contributor card contains
23 that should be captured. Intro 1356 from Council
24 Member Lancman authorizes that a uniform standard be
25 applied to the transfer of funds between a

1 candidate's City campaign account if those accounts
2 are filing timely financial disclosure statements,
3 and we have no objection to this bill. Excuse me.
4 Intro 1358 from Council Member Lander would permit
5 the use of campaign funds for activities related to
6 holding office, provided the public funds could not
7 be used for that purpose. The Council Member's
8 already spoken to that. We agree this his statement
9 and we think that this is a fair amendment. Intro
10 1361 from Member Salamanca requires that the doing
11 business database to provide the dates the person on
12 the list is considered "doing business," and it would
13 require a list of people removed from the "doing
14 business" list in the past five years to be posted to
15 the City website, and we think this is a fair
16 amendment. Intro 1362, also introduced by Council
17 Member Salamanca would require the contributions in
18 special elections be counted both with threshold for
19 eligibility and for matching the same as
20 contributions in primary or general elections. We
21 support this change. Intro 1363 also by Council
22 Member Salamanca would permit candidates to rescind
23 their written certification for participation in
24 matching fund program until the ninth Monday
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1 preceding the primary election or until they have
2 received public funds, whichever comes first. This
3 will permit a candidate to determine whether to
4 participate after designating petitions have been
5 filed by potential opposing candidates. Currently,
6 once a candidate opts in, they cannot opt out, and
7 that's done by June 10th which is before the time
8 that petitions are field. We think this is a fair
9 amendment. And Intro 1364 by Council Member Van
10 Bramer prohibits CFB staff other than an independent
11 clerk hired for the specific purposes to attend
12 executive session of the Board. We have no objection
13 to this bill, and I'm glad to respond to questions
14 about this bill or any others. There are three
15 other matters we'd like to raise that we think the
16 Committee should consider I would like to note that
17 the current CFB proposals and these bills do not
18 address CFB's long-standing reliance on post-election
19 auditing and post-election enforcement procedures
20 which threaten the proper Administration of public
21 matching fund payments. We would like to discuss
22 with the Council legislation that would enable CFB
23 enforcement and payment determinations early in the
24 election cycle. CFB's current deferral of all final
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1 enforcement actions creates an unduly burdensome and
2 lengthen CFB post-election audit process. Indeed, the
3 CFB did not even begin to issue final audit reports
4 for public fund recipients in the 2013 election until
5 May 2015 and several remain outstanding as we head
6 into this election year. Rather than piecemeal
7 adjustment, the City needs a comprehensive overhaul
8 to give every candidate a full and fair opportunity
9 to respond to and resolve specific allegations in a
10 timely manner before the election. No candidate
11 should be deprived of any public matching funds he or
12 she has earned on the basis of unresolved
13 allegations. This would also assure that the post-
14 election audits could be concluded in a timely
15 fashion. I note that Intro 1354 from Council Member
16 Greenfield is as a step in this direction, but we
17 believe that it needs an even broader and more
18 comprehensive approach, and we would like to work on
19 that with the Council. Second, when a candidate has
20 to respond to an issue raised by the CFB, the cost
21 for legal fees for responding to that issue are not
22 currently exempt from expenditure limits as certain
23 other legal fees are. So, if CFB raise an issue
24 about a filing and the compliance lawyer responds,
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1 his or her fees count against the spending cap, and
2 we believe that this should be changed. Third,
3 candidates who face a primary and general election
4 frequently need to raise money for the general during
5 the primary season. These fundraising expenses since
6 they are made prior to the primary count against the
7 primary cap, not the general cap. We believe these
8 funds should be attributed to the general election
9 cap and not the primary cap, and we look forward to
10 working on legislation that would accomplish that.
11 We look forward to working with the Council on all
12 these proposals, and I welcome any questions that the
13 members may have.

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15 CHAIRPERSON MAISEL: Alright, thank you
16 very much, Mr. Berger. Do you believe it's
17 appropriate for non-governmental organizations that
18 are created by sitting elected officials and which
19 engage in political activity to raise unlimited sums
20 of money from people and businesses that have matters
21 pending before the office of that elected official?

22 HENRY BERGER: No, we are supportive of
23 1345 and we understand the concerns raised. You
24 know, we start from the premise that the work that
25 the Campaign for One New York did was very valuable

1 and we would probably not have uniform-- Universal
2 Pre-K without the work they did. We also note that
3 before the committee was created we sought guidance
4 from the Conflicts of Interest Board as to the
5 structure and methods of fundraising for that
6 committee and we complied with the advice given by
7 the Conflicts of Interest Board, and we also note
8 that although not required by law, we provide a
9 disclosure of all the contributions to the campaign
10 for one New York. Having said that, you know, that
11 was a bit of an unusual circumstance, but when we
12 created it, we knew it was a short term organization,
13 because we would close it down long before the
14 election cycle. We didn't want it to compete with
15 the election cycle. It was not raising campaign
16 funds, and therefore the campaign contribution limits
17 didn't apply. Having said all of that, 1345 provides
18 very strong assurances that would avoid the
19 appearances of conflicts of interest, and that's
20 important. Confidence in our government requires
21 that. We think 1345 is a step in the right
22 direction, and we are supporting it, and we think it
23 goes a long way to resolving the issues that were
24 raised, you know, after we'd already created campaign
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2 for one New York you know, by its operation, and we
3 look forward to, you know, some work on it, but
4 adoption of it essentially in the form that now
5 exists.

6 CHAIRPERSON MAISEL: Thank you. Do you
7 support the concept of limiting donations to non-
8 governmental organizations affiliated with elected
9 officials from people with business before the City,
10 and if so, would you define the organizations? How
11 would you define the organizations that should be
12 covered?

13 HENRY BERGER: The limits should be
14 imposed on organizations that create a perception
15 that they are benefitting the individuals rather than
16 the program that they work on. As you may be aware,
17 there are a number of funds that have been created
18 over the years, not limited to the Mayor's fund, you
19 know, the fund for public schools, the fund for
20 public health, the fund for public housing, and
21 certainly to the extent that the activities of these
22 funds benefit an elected official rather than the
23 program themselves, there have to be limits. We
24 think the bill draws the line on that. One of the
25 concerns we have in this bill is that it applies not

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2 only to entities that raise funds, but all the other
3 entities that don't raise funds. One example under
4 this defendants, the Economic Development Corp is
5 covered. They don't raise public funds. They also
6 report extensively under the Public Authorities
7 Accountability Act, you know, and there's no reason
8 for an entity like that to be covered. We're also
9 concerned that the way the definition is written
10 here, it could apply to an entity where the Mayor or
11 other elected officials make appointments such as
12 Lincoln Center or the museum, Metropolitan Museum of
13 Art. We want to make sure that this focuses on the
14 issue that we think has been raised, which is
15 entities created by public officials that do public
16 fundraising and may benefit that public official
17 rather than the program that is being advanced. So,
18 we're looking for some tightening, but you know, yes,
19 we ought to have those limits, and those limits ought
20 to be imposed and we think this bill comes very close
21 to drawing the line properly [sic].

22 CHAIRPERSON MAISEL: How does the Fund
23 for the City of New York fit into this?

24 HENRY BERGER: I'm sorry?

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2 CHAIRPERSON MAISEL: The Fund for the
3 City of New York, the Mayor has a fund for the City
4 of New York.

5 HENRY BERGER: The Mayor's--

6 CHAIRPERSON MAISEL: [interposing] Which
7 is about 40 years in existence.

8 HENRY BERGER: It's been around for a
9 long time. It goes back several Administrations.
10 Under this bill they would be required to register
11 and disclose. They would not be subject to the
12 fundraising limits, the Campaign Finance Board,
13 because they do not spend or expect to spend more
14 than 10 percent of their money on any communication
15 that mentions the Mayor or has the mayor's likeness
16 in it, and so it would continue to do its programs.
17 Its programs are largely programmatic with that
18 specific reference to the Mayor, building soccer
19 fields and a lot of other things. Yeah, so it's
20 covered under the registration requirements and the
21 reporting requirements, but not the fundraising
22 limits--

23 CHAIRPERSON MAISEL: [interposing] Does it
24 ever say "sponsored by the Mayor's Office," or-- it's
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2 the Mayor's funds, so everybody knows who the Mayor
3 is. Is that reasonable?

4 HENRY BERGER: There are some
5 communications that go out that do have the Mayor's
6 name on it, you know, somewhere's [sic] along the way
7 it will say, you know, "Mayor Bill de Blasio, Mayor
8 of the City of New York." That's in a limited number
9 of communications. There are brochures that go out.
10 There are some subway posters, I think, and things
11 like that that have that.

12 CHAIRPERSON MAISEL: But it's not 10
13 percent.

14 HENRY BERGER: It's less than 10 percent.

15 CHAIRPERSON MAISEL: So, if a-- who would
16 to be responsible if an organization accepts a
17 prohibited contribution? Should it be the elected
18 official, the staffer or the organization itself?
19 Who should be responsible?

20 HENRY BERGER: Well, if the fund is
21 created by the elected official, ultimately it would
22 be the elected official is responsible. You know,
23 most of this is a matter of disclosure more than
24 anything else, and if there are abuses, the elected
25

1 official is going to be held accountable. That's how
2 our system works.

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4 CHAIRPERSON MAISEL: Okay. Before we
5 continue, I just want to announce that we have
6 Council Member Lander-- I'm sorry, Councilman Kallos,
7 Matteo is here and Council Member Menchacca. I think
8 those are the latest additions. And now Council
9 Member Lander has a question or so.

10 COUNCIL MEMBER LANDER: Thank you. Yeah,
11 I just want to drill down a little bit on this issue
12 of organizations that are covered and not covered,
13 and you know, I think you're right that-- I mean, I
14 generally agree with your points, and I think you're
15 right that of course the core of this bill is getting
16 to preventing any pay-to-play or corruption risk.
17 You know, but as someone who had asked a lot of
18 questions about the NYPD Foundation in the prior
19 administration, I'll be glad for this law to take us
20 further in strengthening oversight and visibility of
21 donations in that wider range of organizations, and I
22 do think that's important and appropriate. And so I
23 just want to be clear, so you-- you know, those that
24 don't do more than 10 percent of communication of a,
25 you know, that advanced the brand of the principal,

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2 but that are covered and, you know, that are like
3 that would comply just with the registration on the
4 reporting requirement, and you generally-- you
5 support that?

6 HENRY BERGER: Right. We think that the
7 disclosure parts of this are very important, one of
8 the reason why we disclosed donations. We think, you
9 know, sunlight is wonderful and we think there ought
10 to be disclosure on all of these contributions.

11 COUNCIL MEMBER LANDER: We-- yes. And
12 the Campaign for One New York, you know, without it
13 being law did all these disclosures, but many of
14 those affiliated other entities. Funding for public
15 schools, funding for public health, NYPD Foundation
16 have not made those kind of disclosures previously.

17 HENRY BERGER: You know, as you describe
18 the CFB, it's a pain in the ass.

19 COUNCIL MEMBER LANDER: Sure. No, no.

20 HENRY BERGER: But it's important. It's
21 important.

22 COUNCIL MEMBER LANDER: One other type of
23 entity that you and I have talked about in this
24 context is something like the committee that gets
25 created if you're trying to woo one of the Democratic

1 or Republican National Conventions or the Olympic,
2 you have to create an entity that has to raise a lot
3 of money, and it's appropriate that the donors be
4 made public, but for those if you restricted, if you
5 prohibited entities doing business with the City from
6 giving money, you'd-- we would take New York City out
7 of competition for those kinds of things. But at
8 least as I read this legislation, they would be
9 required to report their contributors, but they're
10 not today. So that's a good step, but they would not
11 be covered since those entities would not be doing
12 elected official communications as defined by the
13 bill. You generally share that?

14
15 HENRY BERGER: Yes, we had those
16 discussions, and you know, it was some of the issues
17 we raised because it was shortly after our bid for
18 the DNC, which would have required raising
19 approximately 100 million dollars. It's hard to
20 raise, I mean, but it's-- but there's no reason why
21 those who give should not be disclosed, and you know,
22 and that's perfectly appropriate.

23 COUNCIL MEMBER LANDER: super. Thanks.
24 I just, you know, I think it's worth clarifying that.
25 There's a lot of issues here that we've done our best

1
2 to think through in ways that will give us the
3 disclosure we want while still enabling New York City
4 to be competitive in those places and those place
5 and--

6 HENRY BERGER: [interposing] To be New
7 York City [sic].

8 COUNCIL MEMBER LANDER: Right, and all the
9 other-- in all the other ways we're talking about.
10 And just one point, I guess, on family members. It
11 sounds like you're raising logistical concerns, how
12 is that going to be expanded, and those obviously
13 need to be addressed. Obviously, one issue here
14 that's different from the campaign finance laws and
15 the Campaign Finance Law, they are covered by the
16 larger single-giver cap, so that doing business
17 entity, I'll use City Council limits, is you know,
18 the-- you know, it's covered by the 250 limit. Their
19 spouse can give 2,750, but if we don't do something
20 like that here, this-- you know, the doing business
21 individual could give 400 and their spouse could give
22 infinity. So, the reasons for making sure we provide
23 that here seem sensible.

24

25

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2 HENRY BERGER: Yeah. We don't object to
3 the inclusion of close family members. I think MOCS
4 and DoITT are going to need some time--

5 COUNCIL MEMBER LANDER: [interposing]
6 Fair.

7 HENRY BERGER: in order to adjust the
8 data collection and implementation part. That's the
9 only issue that we're reducing.

10 COUNCIL MEMBER LANDER: Got it. Thank
11 you very much. Thank you, Mr. Chair.

12 CHAIRPERSON MAISEL: Councilman
13 Greenfield?

14 COUNCIL MEMBER GREENFIELD: thank you,
15 Mr. Chairman. So, Counselor, thank you for coming
16 out here. Thank you for your testimony, and thank
17 you certainly for your support of the Speaker's bill
18 regarding disclosure of thee nonprofits. I also just
19 want to clarify some of the specifics as well, so, in
20 terms of your suggestions. So, you say that for
21 example, as currently drafted it's not clear whether
22 an organization has some and not all board members
23 appointed by the Mayor be covered under this
24 definition. Can you expound on that? So, what's
25 your concern over there?

1
2 HENRY BERGER: Well, the Mayor appoints
3 members to approximately 200 boards. They run from
4 park conservancies to the Economic Development Corps
5 and the Land Development Corps to Lincoln Center, the
6 Museum of Modern Art, the Metropolitan Museum of Art
7 and lots of other entities. You know, I think we
8 have to be careful. Just because the Mayor appoints
9 a member of the board to the Metropolitan Museum of
10 Art I don't think it's necessary that they be covered
11 by this bill. They have their own structure and
12 whatever, and certainly what they're doing while it
13 benefits the whole City isn't a specific benefit to
14 an elected official. You know,--

15 COUNCIL MEMBER GREENFIELD: [interposing]
16 See, in that case you're concerned about the
17 disclosure part. You're not concerned about the
18 public facing communications part, right? Is that
19 what you're saying?

20 HENRY BERGER: Well, I don't think
21 public-- right. I don't think the public facing--

22 COUNCIL MEMBER GREENFIELD: [interposing]
23 I mean, if it--

24 HENRY BERGER: communications even come
25 into--

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2 COUNCIL MEMBER GREENFIELD: Yeah, no, my
3 point is that if the Mayor appointed someone to an
4 entity and then they spent 10 percent of their funds,
5 the public facing communications of the Mayor, it
6 wouldn't be unreasonable, right, for us to say, "Hey,
7 that case you-- we would like to know-- we'd like to
8 limit your contributions and also know more
9 information in terms of how you're spending that
10 money." So, I just want to be clear we're separating
11 the two, right? So you're talking about a situation
12 where the Mayor appoints someone to an organization
13 where it's a pro-form [sic] appointment and that
14 organization is not in fact engaging in public-facing
15 communications that may benefit the Mayor.

16 HENRY BERGER: Well, that's--

17 COUNCIL MEMBER GREENFIELD: [interposing]
18 And I'm only using the Mayor as an example, by the
19 way. To be fair, I'm not beating up on him, I'm
20 just using him because you brought it up. So, yeah.

21 HENRY BERGER: And he's the one who
22 makes--

23 COUNCIL MEMBER GREENFIELD: [interposing]
24 Yes.

25

1 HENRY BERGER: more appointments than
2 anybody else.
3

4 COUNCIL MEMBER GREENFIELD: Yes, it's
5 good to be mayor.

6 HENRY BERGER: Most of the time--

7 COUNCIL MEMBER GREENFIELD: [interposing]
8 Yeah.

9 HENRY BERGER: I'm told. But the-- no, I
10 think you're correct, and you know, we don't expect
11 that these organizations do that, although in
12 fairness, you know, the Metropolitan Museum of Art
13 and some of the others do list the Mayor on a lot of
14 their literature.

15 COUNCIL MEMBER GREENFIELD: Well, yeah,
16 but not 10 percent. I mean, I think-- so, I mean, if
17 you have a problem with threshold. My point is we're
18 certainly interested. I mean, the point of the today
19 is we want to get feedback. We want to improve these
20 bills. So I just want to drill down on the concerns
21 so that we could do that. So, we're okay. Obviously,
22 once in a while the Met has the Mayor at an event or
23 the Mayor's on the literature. That's okay. If for
24 some reason the Met said, you know, "Metropolitan
25 Museum of Art sponsored by Bill de Blasio" in all

1
2 their communications, it might be fair for us to say
3 well, it's a little bit strange. Perhaps you want
4 that to be captured under these regulations.

5 HENRY BERGER: One, I think it would
6 certainly be strange, but you know, I think what
7 we're looking at are entities that an elected
8 official controls, and you know, the question is how
9 you define control, and then the other concern we
10 have with the definition is that it goes to entities
11 that don't do any fundraising, and for them to even
12 have to do the registration and disclosure seems
13 unnecessary particularly when many of them such as
14 EDC or LDC do extensive reporting under the Public
15 Authorities Accountably Act. So, all we're asking I
16 think for is a tightening of that definition without
17 in any way harming not only the intent of the actual
18 applicability of the law.

19 COUNCIL MEMBER GREENFIELD: Great. A
20 couple of other questions just to clarify. So,
21 appreciative that the Administration is supportive of
22 virtually all of our bills with the-- with some
23 caveats in terms of some items that you'd like to be
24 tweaked. I want to speak actually about one of my
25 bills, 1355. I'm not sure what you mean when you say

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2 that removes obligations to collect the contributor
3 card when the name and address of a donor are on a
4 check or money order. I mean, right now there is no
5 obligation when a donor's name and address is on a
6 check, for example. Are you referring just to the
7 money order in particular, in that particular case?

8 HENRY BERGER: Well, my understanding is
9 even with the check a donor card is provided-- I may
10 be wrong on that. Certainly on money orders it
11 isn't, and if there's a husband and wife check, I
12 believe that a donor card is required. The donor
13 card contains a couple of other pieces, one of which
14 we think is important, and that is a certification
15 that the contributor says, "This is my own money."
16 And you know,-- and we think it's important given a
17 lot of what we've seen over the years, that a
18 contributor certified that the contribution they're
19 making is their own, that there aren't straw donors,
20 and we don't want to lose that at all. So,--

21 COUNCIL MEMBER GREENFIELD: [interposing]
22 Okay. I mean, it's my understanding it's actually
23 not required currently.

24 HENRY BERGER: Oh, well--
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COUNCIL MEMBER GREENFIELD: [interposing]
We'll have the CFB clarify that when they come up here.

HENRY BERGER: They're here.

COUNCIL MEMBER GREENFIELD: And testify, absolutely. But my impression is that currently if you have a name and address on a check you don't actually have to have-- you don't have to have a signed contribution form. But I'm certainly happy-- I'm happy to look into that. The other question I have is once again just as a purpose of clarity. Can you explain a little bit more of what you mean by the C-- in deed, the CFB did not even begin to issue final order reports to the public recipients [sic] in 2013 elections until May 2015. So, what exactly does that mean? That's around two and a half years after these elections have concluded. So, can you clarify or sort of expound on what exactly that issue is you'd like us to deal with?

HENRY BERGER: Yeah. A few years back, as I recall, the council adopted a law calling for completion of audits essentially within 18 months.

COUNCIL MEMBER GREENFIELD: Yeah.

1
2 HENRY BERGER: What's happened certainly
3 in this cycle is that preliminary audit reports and
4 proposed violations and penalties didn't go out until
5 much later, in fact, 2015. And as I mentioned in my
6 testimony-- it's not in the written testimony, but I
7 mentioned it. There were still a number of 2013
8 audits that have not yet been completed, and you
9 know, some were completed, you know, there was a CFB
10 meeting last week and penalties were imposed, and
11 here it is November, you know, less than a year
12 before the election and they're announcing penalties
13 that the press of course picks up and makes big play
14 of. There are some that have not even been completed
15 yet. And to drag the process out so that it begins
16 to impinge upon elections we think is unfair to
17 candidates, but it's not necessary, and if auditing
18 were done on an ongoing basis with resolution on an
19 ongoing basis, the final laws would be much briefer,
20 much of the work would have been done already, and
21 these audits could be completed in a timely manner so
22 that one, the campaigns can wrap themselves up, you
23 know, holding these things open for three, four or
24 more years is a nuisance. But two, the results

1
2 wouldn't impinge upon future elections that the
3 candidate may be participating in.

4 COUNCIL MEMBER GREENFIELD: So that's an
5 interesting point. You're saying that your second
6 concern is that these are becoming political
7 footballs, and because they're becoming so close to
8 the next election, right, three years in and one year
9 before the election, that now political opponents are
10 harping on this and saying, "Hey, you know, why
11 hasn't this been resolved?" And they're coming too
12 close to essentially or some cases the middle of the
13 campaign season at this point, right? I think it's
14 fair to say, you know. I'm not-- once again, I'm just
15 picking on the Mayor, but yesterday he did announce
16 some endorsements, and last week he announced some
17 endorsements. So I think it's fair to say we're in
18 the campaign season and by waiting this long it does
19 have an unfair impact on campaigns.

20 HENRY BERGER: That is the effect of it,
21 yes.

22 COUNCIL MEMBER GREENFIELD: that's a fair
23 point, and I actually, as you know, I have two pieces
24 of legislation that I think would make this a little
25 bit better, but you're right, I think we should look

1 at it a little bit more broadly. The first course
2 would be Intro 1354, which would have an expedited
3 timeline on when you need to get information back
4 from the board, and the second is a bill that I'm co-
5 sponsoring with Council Member Garodnick who's the
6 prime sponsor which would in fact give campaigns the
7 very clear right to bring a hearing before OATH so
8 that they can conclude that process, because as you
9 probably know, one of the problems that we hear from
10 candidates all the time is that when they want to go
11 to OATH it can take a year, or a year and a half or
12 two years until they get to OATH, and that just drags
13 on the process as well. So, I think these are two
14 pieces of legislation that hopefully will improve
15 that, but I hear your broader point, and certainly
16 we're going to ask the CFB about that, which is why
17 does it take so long to get these audits complete.
18 And so I appreciate that point as well. Thank you
19 very much.

21 HENRY BERGER: Thank you, Councilman.

22 CHAIRPERSON MAISEL: Do you have any
23 thoughts on how one calculates the percentage of
24 material that's related to a particular individual?
25 I mean, that 10 percent, first of all, it seems

1
2 arbitrary, but when I first heard about it I didn't
3 really understand. What-- so what constitutes an
4 expenditure that gets added to that 10 percent?

5 HENRY BERGER: Any money that is spent on
6 a brochure that has the name of the elected official
7 on it, any printed materials, any television ad that
8 has the name has a cost distributed to it. You know,
9 for those of us who have worked in campaigns that
10 cover multiple candidates where we have to do
11 apportionment, you learn very quickly how to
12 segregate out, you know, this candidate's name is on
13 this and it's-- you know, it's this percentage of it.
14 This candidate's name is on that. This will be very
15 similar.

16 CHAIRPERSON MAISEL: So, but if the
17 Mayor's name is on a brochure which has four other
18 people, five other people, six other people whatever,
19 it's not specifically meant just for the mayor. Is
20 there a way of apportioning the--

21 HENRY BERGER: [interposing] That would
22 not be apportioned. My understanding is that if a
23 communication costs 100 bucks and the Mayor's name is
24 on it, the entity gets charged a hundred bucks as--

1
2 CHAIRPERSON MAISEL: [interposing] Even if
3 there are other elected officials on it?

4 HENRY BERGER: Even if-- right. As long-
5 - and any other elected official whose name may be on
6 it who, you know, who may be covered by the law,
7 it's--

8 CHAIRPERSON MAISEL: [interposing] So,
9 they get charged with a hundred bucks also.

10 HENRY BERGER: They may, yes.

11 CHAIRPERSON MAISEL: Okay. Let's hear
12 from Councilman Menchaca. You have a question?

13 COUNCIL MEMBER MENCHACA: Thank you,
14 Chair, and thank you for being here today and giving
15 mostly positive remarks about the bills before this
16 committee, and I wanted to have just a brief
17 conversation a little bit about the-- one of the
18 pillars of this program. And as recently elected,
19 for the first time elected official, I definitely
20 appreciate the merits of this program. For, and I
21 like how you said it, anyone can build a viable,
22 competitive campaign for office by relying on small
23 donations from neighbors and colleagues. That's the
24 spirit of this program, especially those without
25 access to wealth. And there's a real kind of push

1 for expansion of the participation of New Yorkers.
2 What is the Mayor's responsibility in educating our
3 New Yorkers around contributions? And if you can
4 kind of speak for the Mayor right now, what
5 responsibility does the Administration hold in doing
6 that? And I'll just kind of make a point. We have a
7 lot of education about voting, getting the word out
8 about voting. Where does the Mayor-- where is the
9 Mayor's responsibility about contribution side of
10 this process?
11

12 HENRY BERGER: You know, I think
13 contributions are part of the whole participation
14 process, getting people to participate in the
15 process, and certainly I think the number was almost
16 99,000 people made contributions in the 2013 election
17 cycle. I mean, you know, it's important, and I think
18 one of the issues we have to look at is whether the
19 current contribution limits actually do encourage
20 people to make the smaller contributions. I recall
21 working at a campaign in 1974 where a candidate ran
22 for US Senate and claimed he would not accept a
23 contribution greater than 100 dollars, and in 1974
24 even a hundred dollars was a small amount, and that
25 candidate raised more money doing the 100-dollar

1 contribution because people felt that their
2 contributions made a difference. You know, certainly
3 we do a lot of work on the whole participation
4 process. The Mayor's been speaking out on those
5 issues recently. The voter Advisory Assistance
6 Commission does some terrific work in terms of the
7 participation. Council Members have been doing great
8 work on the student voter registration days, and this
9 is all a matter of bringing people into the process,
10 and all things that, you know, we are encourage.
11 Certainly, you know, our work would -- all the new
12 languages for voter registration forms, 11 new
13 languages. There's an effort to--

14
15 COUNCIL MEMBER MENCHACA: [interposing] So
16 if I can-- if I can-- I'm sorry to pause you there,
17 but so we're all aware of the kind of mechanics of
18 the process. What's the responsibility of the mayor
19 to get this information out and make this a value for
20 this Administration for people that don't know about
21 the contribution side? And you're going to probably
22 know where I'm going next, people who aren't fluent
23 in English, our immigrant communities, our public
24 housing communities, I'm talking about people who are
25 still disconnected from the voting side can get real

1
2 excited maybe on the contribution side. What is the
3 responsibility of this mayor to get that word out and
4 really make it digestible beyond the candidate? So,
5 I'm going to do my job as a candidate out in the
6 community. What's the mayor's role as the leader of
7 the City?

8 HENRY BERGER: He's a spokesperson.

9 Every time he speaks, you know, he gets more
10 coverage, and I think he's, you know, he's speaking
11 out on these issues. I think a lot of it is done
12 just by the Administration. You know, VAC [sic] I
13 think has a responsibility for it, and you know, and
14 we encourage their activity. I'm not sure that the
15 Mayor has any more specific responsibility than
16 anybody else. I think he's interested in getting
17 people to participate and encourages that and does
18 that every time he speaks out on these issues.

19 COUNCIL MEMBER MENCHACA: Okay, I think
20 we should-- we'll follow up. I disagree. I think
21 there's a lot of responsibility for this mayor to do
22 this and his agencies and the conversation that we
23 have in public as a public awareness campaign, but we
24 can work later. And I think that there needs to be a
25 stronger message coming from the Mayor. So it'd be

1 great for you and the team to think about this
2 question, because I think it's a different question,
3 and it can inspire a whole group of people that are
4 not there already, and for candidates that are small
5 in communities, that's great, but I think the
6 responsibility grows beyond the candidate to get this
7 information out. Thank you.

9 CHAIRPERSON MAISEL: Councilman Kallos?

10 COUNCIL MEMBER KALLOS: Morning, Henry.
11 How are you doing today?

12 HENRY BERGER: Council Member, how are
13 you?

14 COUNCIL MEMBER KALLOS: Good. I wanted to
15 start off about your testimony. Do you have any
16 concern that any of the legislation might change the
17 City's campaign finance system to be more similar to
18 the Albany's-- to Albany's campaign finance system?

19 HENRY BERGER: I think that they are so
20 fundamentally different. I think the changes here as,
21 you know, particularly as Council Member Lander said
22 and as the Chair said, makes-- it doesn't weaken the
23 system and makes it more accessible to people who
24 want to run for office. I don't think there are any
25 weaknesses here. You know, there are two major

1 differences between our system and the Albany system.
2 One is the legislation itself, and the other is the
3 Campaign Finance Board, and the fact that the
4 Campaign Finance Board is as assiduous and effective
5 as it is in enforcing the law, it's just not
6 paralleled in Albany. The Albany Board of Elections
7 by its structure is partisan and is fundamentally
8 unable to enforce whatever laws they have, and the
9 law itself is just so fundamentally different. So, I
10 think, you know, I think that these amendments as
11 I've testified for the most part with, you know,
12 really some minor objections really strengthen the
13 law and strengthen the ability of candidates to
14 participate in the program which is the goal.

16 COUNCIL MEMBER KALLOS: And I guess one
17 question is if you can explain some of the concerns.
18 What were some of the examples of what Albany has
19 done with their language of expenditures to
20 facilitate, support or otherwise assist in execution
21 or performance of duties to public office? So what
22 does that mean in Albany, and what are some of the
23 things people in Albany use that money for?

24 HENRY BERGER: I think in Albany it's
25 meaningless. I mean, there is no enforcement on that

1
2 provision of the law, and you know, I'm sure that the
3 Campaign Finance Board would be much more vigilant
4 about it. We hear stories in Albany about people
5 using it for country club dues and their automobiles
6 and their clothes and lots of other things, and that--
7 - you know, it just-- one, I think it's contrary to
8 the intent of the law. It's contrary to the language
9 of the law, and you know, certainly, you know, the
10 Board of Elections doesn't do anything about. I
11 think there are specific needs. You know, as a
12 former office-holder myself there are just some
13 things that government doesn't cover that the
14 officer-holder ought to be able to cover and ought to
15 be able to spend private campaign funds to do that
16 with.

17 COUNCIL MEMBER KALLOS: I learned
18 something new today. What office did you hold?

19 HENRY BERGER: I was a member of this body
20 in 1977.

21 COUNCIL MEMBER KALLOS: I didn't--

22 HENRY BERGER: [interposing] I sat on that
23 side of the desk and enjoyed every moment of it.

24 COUNCIL MEMBER KALLOS: Did not know
25 that. Took too long to find that out. I guess, are

1
2 you concerned that with the mirroring of the
3 language, that that brings us into case law where
4 perhaps even if the Campaign Finance Board is as
5 vigilant as it wishes to be, the courts might say,
6 well, we're going to lean on the state law as an
7 example?

8 HENRY BERGER: the advantage we have is
9 there is no case law, because the State Board of
10 Elections has never made any efforts to enforce that
11 provision of law. So, the Campaign Finance Board
12 would be creating the case law, and I have a lot of
13 faith in them in this area.

14 COUNCIL MEMBER KALLOS: I guess I have a
15 slight concern about that. And then, on another
16 piece, you, I and the Mayor are big proponents of
17 early vote and vote by mail. Why hasn't Albany done
18 so? I think we've been working on those issues going
19 back to 2005. So, why haven't we been able to get it
20 done in a decade? Do we have confidence that we can
21 get them to give us early vote and vote by mail in
22 special session or this coming session?

23 HENRY BERGER: You know, I think this is
24 part of the syndrome that affects a lot of things and
25 certainly among elected officials I think it applies,

1 and that is that the status quo no matter how bad is
2 better than any change no matter how good. I think
3 the state legislature in Albany is-- you know,
4 they're there, they've been successful with the
5 current methods and they're afraid to change anything
6 because it's unpredictable how it may affect them.
7 If we have early voting, that expands the electorate.
8 That might hurt an elected official, or they may
9 think it may hurt them. How do we-- yeah. The real
10 question is not why hasn't it happened so far. I
11 think we understand why it hasn't happened so far.
12 The real question is how do we get past that, and I
13 think the only way we get past that is with a public
14 crusade which, you know, has happened before on
15 campaign finance reform and a lot of other issues. I
16 think based on what happened in this past election, I
17 think Senator Sanders' campaign changed the way
18 people looked at elections, and I, you know, I think
19 there's an interest in expanding the franchise that
20 may not have existed before. Is it going to be easy?
21 No, but I think it requires a public outcry to get
22 some of the people who opposed this in the past to
23 realize that one, not only doesn't it hurt, but it
24

1 helps, and you know, it's absolutely necessary, you
2 know.

3
4 COUNCIL MEMBER KALLOS: What are the--
5 so, I guess one of the other concerns I have is
6 according to Citizen's Union, 56 percent of Senators
7 and Assembly Members who ran, you know, primary went
8 so without a challenger. And I guess one of my
9 concerns is do you believe that part of the reason
10 people may not be challenge is because of the size of
11 their war chests?

12 HENRY BERGER: I'm sure. I'm sure that's
13 part of it, and the fact that given the amount of
14 money at the state level, given the contribution
15 limits and the amount of money that comes in,
16 somebody looking to make the race may not have the
17 capacity to raise funds the way they can under the
18 New York City program. So they're less likely to
19 run. You know, there are lots of reasons for it, but
20 certainly the financial competitiveness part of it
21 is, you know, is a significant factor.

22 COUNCIL MEMBER KALLOS: Are you concerned
23 that by eliminating the requirement for permission
24 that I will make it easier for people to war-chest
25 within the city system?

1
2 HENRY BERGER: I'm not sure what you're
3 referring to, Councilman.

4 COUNCIL MEMBER KALLOS: With regards to
5 Introduction 1356, which you supported.

6 HENRY BERGER: Yeah. Yep. It's
7 interesting that what this does I think is
8 rationalize the system, which is that certain funds
9 can be transferred, other funds can't be transferred,
10 and this just makes the system uniform. The fact
11 that none of the transfer funds is matchable [sic]
12 puts limit on it. The fact that the funds that are
13 transferred are subject to the campaign finance
14 contribution limit limits what that transferability
15 is. I don't think it has the same impact that it has
16 under the state law which essentially requires un--
17 or permits unlimited transfer of funds.

18 COUNCIL MEMBER KALLOS: I guess my concern
19 is we want as many people to participate in the
20 public funds system as possible. That's why we're
21 spending 38 million dollars, and this creates an
22 incentive or it creates less of incentive to
23 participate and equalizes participants and non-
24 participants. Do you share that concern, or?

1
2 HENRY BERGER: I don't because I think the
3 limitations on the transfers are significant enough
4 it doesn't create the kind of imbalance that exists
5 under the state system.

6 COUNCIL MEMBER KALLOS: And I guess, have
7 you donating to campaigns?

8 HENRY BERGER: Have I donated to--

9 COUNCIL MEMBER KALLOS: [interposing] Yes.

10 HENRY BERGER: Of course.

11 COUNCIL MEMBER KALLOS: As a donor, do
12 you feel that your dollar should be able to be used
13 for whatever race that person has, or when you
14 contribute are you donating for that person's run for
15 Council or for Assembly, not necessarily for
16 Comptroller against somebody else who may have also
17 donated to--

18 HENRY BERGER: [interposing] I may not be
19 the best example--

20 COUNCIL MEMBER KALLOS: [interposing] for
21 mayor.

22 KEITH FITZGERALD: I'm very selective in
23 my donations and really donate to people who I really
24 have a lot of respect for and would want them to run
25

1
2 and run for anything. So, I may not be the best
3 example on that.

4 COUNCIL MEMBER KALLOS: Thank you.

5 CHAIRPERSON MAISEL: There are no more
6 questions. Thank you very much.

7 HENRY BERGER: Thank you.

8 COUNCIL MEMBER GREENFIELD: I actually
9 have one follow-up question, Mr. Chairman, if it's
10 okay.

11 CHAIRPERSON MAISEL: [interposing]

12 Alright, in the nick of time.

13 COUNCIL MEMBER GREENFIELD: One follow-up
14 question. I appreciate it. Thank you very much. I
15 just want to be clear, because I think there's been a
16 little bit of confusion over this, but you alluded to
17 it. I think we should just clarify this for the
18 record. The stories that we hear of people in
19 Albany, whether they're paying their country club
20 dues or whether they're using their campaign funds to
21 purchase pools in their backyards, those are clearly
22 illegal, right? I mean, let's just be clear about
23 that right? Those are illegal situations that are
24 simply not being enforced, right? I mean, is there

1
2 anyone who says that you can use your campaign funds
3 to build a pool in your backyard?

4 HENRY BERGER: Apparently somebody did.

5 COUNCIL MEMBER GREENFIELD: And your-- at
6 your--

7 HENRY BERGER: [interposing] They did it.

8 COUNCIL MEMBER GREENFIELD: They did,
9 that's right. But in your opinion, is that legal?

10 HENRY BERGER: I don't think so, but--

11 COUNCIL MEMBER GREENFIELD: [interposing]
12 Okay.

13 HENRY BERGER: They haven't elected me to
14 that job yet.

15 COUNCIL MEMBER GREENFIELD: And I would
16 add that under the New York City's Campaign Finance
17 Act which are stringent than the state's laws,
18 they're definitely illegal, right? I mean, there's no
19 question about that.

20 HENRY BERGER: Absolutely. Absolutely.

21 COUNCIL MEMBER GREENFIELD: Okay. I just
22 want to-- I just think it's an important point
23 especially as we talk about Council Member Lander's
24 legislation, I think it's important to note that, you
25 know, the actions that folks have discussed, those

1
2 are absolutely illegal actions which in no, way,
3 shape, or form, and as you pointed out, due to the
4 outstanding work of the CFB, I think if someone even
5 had a thought of purchasing a pool in their back
6 yard, the CFB somehow would find out about and would
7 certainly shut that down. So, thank you.

8 HENRY BERGER: Thank you, Councilman.

9 CHAIRPERSON MAISEL: Thank you very much.

10 Now I'd like to call on Wayne Hawley and Carolyn
11 Miller from the Conflicts of Interest Board. And ask
12 our Committee Counsel to swear you in.

13 COMMITTEE COUNSEL: Hi, please raise your
14 right hand. Do you affirm to tell the truth in your
15 testimony before this committee today and to respond
16 honestly to Council Member questions?

17 CAROLYN MILLER: We do. Good morning.

18 My name is Carolyn Miller. I'm the Executive
19 Director of the New York City Conflicts of Interest
20 Board. With me is Wayne Hawley, the Deputy Executive
21 Director and General Counsel of the Conflicts of
22 Interest Board, and we're here on behalf of the
23 Conflicts of Interest Board, or COIB, to offer
24 testimony about Intro number 1345-2016, a Local Law
25 to amend the Administrative Code of the City of New

1
2 York in relation to conflicts of interest and
3 organizations affiliated with elected officials. We
4 at COIB support a legislative approach to addressing
5 the management of City-affiliated not-for-profits.
6 We agree with the call made on July 6th, 2016 by the
7 New York City Campaign Finance Board in its statement
8 on determination regarding the Campaign for One New
9 York, "The Board calls on the Council to pass
10 legislation to close this loophole and amend the law
11 to more closely regulate fundraising by elected
12 officials and their agents for not-for-profit
13 organizations, especially 501-C4 entities." In
14 addition to placing clear limits on fundraising
15 solicitations, any reform should include
16 comprehensive public disclosure and audits to ensure
17 that disclosure is complete and accurate. In the
18 absence of that legislative approach, COIB has for
19 the past 12 years endeavored to provide guidance to
20 public servants about fundraising for City-affiliated
21 not-for-profits which the Board defined in its
22 Advisory Opinion 2003-04 as entities closely
23 affiliated with the City where the funds raised are
24 raised to support the purposes and interest of the
25 City. Since the issuance of that opinion, COIB has

1 received from City agencies biannual disclosures of
2 donations made to those agencies and their affiliated
3 not-for-profit organizations as provided for in that
4 opinion. Of the reports the Board collects twice
5 each year, approximately 20 come from City-affiliated
6 not-for-profits. We at COIB commend the Council's
7 efforts to codify and expand the limited reporting
8 scheme the Board implemented in its advisory opinion
9 in 2003-04. We further support the effort to place
10 some limitation on the types of contributions to
11 City-affiliated not-for-profits, an element that was
12 not part of the Board's advisory opinion. Finally,
13 we support the implementation of administrative
14 enforcement mechanism both for the reporting and the
15 contribution restriction components of the regulatory
16 plan, something beyond the scope of COIB's authority
17 and its issuance of Advisory Opinion of 2003-04.
18 However, we at COIB have a number of specific and
19 substantial concerns with the proposed legislation as
20 drafted. We will list a number of those concerns
21 individually and with particularity to enable the
22 council to both most fully appreciate COIB's
23 perspective on this matter and for possible use in
24 any amendments to Intro Number 1345. Although COIB
25

1
2 remains uncertain whether we are the right agency to
3 administer this legislation, we offered this list in
4 making-- we offered this list in the spirits of
5 readiness and willingness to work with the Council
6 and the Administration on making this legislative
7 approach as clear, effective and successful as it can
8 be. This list that I'm about to go through tracks
9 the issues as they appear in the current draft of the
10 legislation, Intro 1345. One: The title of the
11 chapter is "Chapter Nine: Organizations affiliated
12 with public officials." Given the content of the
13 legislation, it should read, "Organizations
14 affiliated with elected officials." And this is a
15 small point, but it illustrates a larger issue that
16 concerns COIB with this legislative approach. The
17 legislation appears intended only to regulate a
18 subset of organizations affiliated with public
19 service, namely only those affiliated directly with
20 elected officials. Based on our reading of the
21 legislation, and if this is not what is intended by
22 the legislation, the legislation is unclear, the
23 reporting requirements would not apply to
24 organizations affiliated with other high-level public
25 servants like the fund for public schools or the fund

1 for public health, each of which currently provides
2 biannual reports to the Board pursuant to Advisory
3 Opinion 2003-04. So, in reference to your question,
4 Council Member Lander, the way we read the
5 legislation, the list of organizations that you
6 mentioned would not be covered by this legislation.
7 So, either the legislation needs to be clarified or
8 we're reading it correctly and those organizations
9 that you mentioned wouldn't be covered. If the bill
10 is intended to apply to all City-affiliated not-for-
11 profits, then the current title of organizations
12 affiliated with public officials should stay, but as
13 discussed-- as I'll discuss later, the definition of
14 affiliated organizations must be modified to plainly
15 include not-for-profits affiliated with any City
16 agency, not just the offices of electeds. Two: The
17 definition of donation includes a loan. Thus, by the
18 terms of the legislation, an organization affiliated
19 with an elected official that spends or reasonably
20 expects to spend 10 percent of its expenditures on
21 elected official communications would be prohibited
22 from receiving a loan of 400 dollars from almost any
23 major financial institution since most such
24 institutions have business dealing with the City.
25

1 This seems unduly prohibitive and probably an
2 unintended result. Three: And this is a substantial
3 concern of COIB, so I'll just highlight it here, and
4 it also addresses a question that the Chair had
5 raised to Mr. Berger and his testimony concerning the
6 definition of elected official communications. In
7 the Board's view, the definition of elected official
8 communications is unworkable for a variety of
9 reasons. It is absolutely critical to clearly define
10 the entities that would be subject to the
11 contribution limits, and the definition in the
12 proposed legislation does not seem to be capable of
13 reasonable interpretation. This would thus leave the
14 responsibility of defining the scope of covered
15 communications and of calculating their cost to the
16 unchecked discretion of an independent administrative
17 body, in this scheme the COIB. It may well be that
18 there is a regulatory scheme elsewhere from tax law
19 or lobbying law or charitable corporation laws that
20 not only has a more precise definition for
21 distinguishing a subset of not-for-profits from the
22 universe of not-for-profits but also has a body of
23 standing precedent that could assist in the
24 interpretation of that standard. Such a scheme does
25

1 not appear to be present here, and without it, COIB
2 or any other entity overseeing this regulatory scheme
3 as drafted would be at sea. And again, four: The
4 definition of organization affiliated with an elected
5 official does not appear to include the wide range of
6 city-affiliated not-for-profits that are controlled
7 not by an elected official, but by an appointed
8 official such as the school's chancellor who has long
9 headed the DOE's funds for public schools. Five:
10 And this is another critical issue for the Board in
11 terms of the definitional structure of the
12 legislation. The definition of organization
13 affiliated with an elected official fails to define
14 the covered organizations by the purpose of the
15 organization. A covered organization should have as
16 its purpose the furtherance of the official duties of
17 the public servants city position. Under the current
18 definition, if a Council Member created a local
19 chapter for the alumni of his or her college, that
20 chapter would be covered by this definition and
21 legislation. Six: The definition of organization
22 affiliated with an elected official covers
23 organizations created by an elected official during
24 the previous two calendar years. Thus, if a member
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1
2 of the public created an organization for local pet
3 owners, successfully ran for elective office one year
4 later, turned full control of that organization over
5 to a fellow pet-lover, that organization would still
6 be covered by this legislation. Seven: The
7 definition of organization affiliated with an elected
8 official covers organizations with the official is a
9 principal owner. The legislation is designed to
10 regulate receipt of contributions which only flow to
11 a not-for-profit organization of which there is no
12 owner. And this, eight, this addresses a point
13 raised by Council Member Lander which the Board has a
14 slightly different view although recognizes your
15 concern about the family member component of the
16 legislation. The definition of person with business
17 dealings with the City includes not only those
18 persons listed in the "doing business" database, but
19 also the "domestic partner, spouse or unemancipated
20 child of such person." In our view, to extend the
21 definition this way is bad both as a matter of
22 practice and as a matter of policy, especially as
23 social progress moves forward to an understanding of
24 marriage or domestic partnership in which the
25 partners and spouses are able and expected to

1 function independently of each other without one's
2 interest or goals subsumed by the other.

3 Furthermore, in light of a prohibition on
4 contributions from corporations, labor organizations
5 and persons listed in the "doing business" database,
6 the addition of spouses, domestic partners and
7 unemancipatd children would as a practical matter
8 present very little in addition. And in any event,

9 any such contributions would be disclose. Nine:

10 Section 3-903 of the proposed legislation prohibits
11 the acceptance of certain contributions by

12 organizations that spend or reasonably expect to

13 spend at least 10 percent of their expenditures in

14 the current or next calendar year on elected official

15 communications. This definition, critical to the

16 legislation, remains unworkably vague, in that it

17 presents great uncertainty about what will be

18 considered an elected official communication, how the

19 cost of that communication will be determined as per

20 the Chair's question in the prior testimony, and how

21 that cost will be attributed to the 10 percent

22 threshold of expenditures. Ten: The timeframe of

23 the 10 percent threshold determination also seems

24 unworkably uncertain. The contribution prohibition
25

1 would apply if the organization spends or reasonably
2 expects to spend that 10 percent in "the current or
3 next calendar year." To impose upon relatively small
4 not-for-profit organizations functioning in the
5 City's interest. The obligation to assess their
6 expenditures two full years in advance seems
7 unreasonably and unworkable. Eleven: The
8 legislation prohibits the acceptance of donations
9 from person that the organization knows or should
10 know has business dealings with the City. Since this
11 category should be defined as being listed in the
12 doing business database, there is no need for the
13 "should know" language. Twelve: COIB strongly
14 recommends that the requirement for a written
15 submission of business dealing status found in
16 section 3-9034 be removed to be required to ask every
17 person who seeks to contribute 400 dollars, whether
18 her spouse or domestic partner does business with the
19 City, and if the answer is no, to put that fact in
20 writing, and then to be required to maintain that
21 written statement for three years is cumbersome and
22 labor-intensive at best with little added value to
23 the regulatory framework. This administrative burden
24 would no longer be necessary if domestic partners,
25

1 spouse and un-emancipated children were removed from
2 the definition of "persons with business dealings
3 with the City, "as COIB recommends. Thirteen: The
4 legislation does not make clear which person is
5 subject to the penalty provisions of section 3-905,
6 and this I believe was also a question by the Chair.
7 In our view, the only person should be liable for any
8 penalty is the high-level public official controlling
9 the organization whether that is an elected official
10 or an agency head, and the legislation should so
11 stay. Fourteen: The penalties are too high,
12 especially for fences with at "not less than"
13 provision. The Not Less than provision is unwise and
14 should be removed. Fifteen: The penalty provision
15 found in section 3-9053 should be removed once the
16 related requirement for written submissions of
17 business dealing status found in section 3-9034 is
18 removed. Sixteen: The reporting schedule described
19 in section 3-902 is annually by August first. The
20 reporting schedule under the Boards Advisory Opinion
21 in 2003-04 is biannual, May 15th for the six-month
22 period ending March 31st and November 15 for the six-
23 month period ending September 30th. We see no reason
24 to diminish the frequency of reporting and the
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1
2 sunlight [sic] goals of the legislation will be
3 amplified if disclosure is closer in time to the
4 contributions and expenditures in question. The
5 requirement to report twice a year would also
6 accommodate the requirement to refund donations over
7 400 dollars from persons added to the "doing
8 business" database within 180 days of the donation,
9 and that a donation would be disclosed in the report
10 for the sixth-month period in which it was received,
11 and a return of any such donation would be disclosed
12 in the report for the six-month period in which it
13 was refunded. Seventeen: Under section 3-902F, all
14 affiliated organizations whether or not they meet the
15 10 percent expenditure threshold are required to
16 report the name, address, date of donation, and
17 amount of donation for any donation received from a
18 person known to have business dealings with the City.
19 In our view, only those organizations meeting the 10
20 percent threshold should be required to report
21 donations from persons with business dealings with
22 the City while all organizations should report
23 donations of 1,000 or more as described in section 3-
24 902 prin [sic] G [sic]. Eighteen: The requirement
25 in section 3-9024 for affiliated organizations to

1 retain donor inquiry responses for three years should
2 be removed. Once the related requirement for written
3 submissions of business dealing status found in
4 section 39034 is removed. Nineteen: As I said
5 earlier, it needs to be made clear in section 39053A
6 that any person who violates would be the elected
7 official or agency head who controls the affiliated
8 organization. And finally, twenty: Under section
9 four of the proposed legislation, the contribution
10 restrictions would take effect on January 1st, 2018,
11 and the reporting and penalty requirements would take
12 effect on January 1st, 2019. In COIB's view, only
13 the penalty provisions of this legislation should be
14 delayed. The reporting requirements should take
15 effect at the same time as the contribution
16 restrictions. In conclusion, COIB salutes and
17 supports the Council's efforts to implement a
18 legislative approach in this area, but we have a
19 substantial array of concerns about the legislation
20 as currently drafted. We stand ready to work to help
21 craft legislation that effectively advances the goals
22 that we share. Thank you.

24 CHAIRPERSON MAISEL: Thank you very much.

25 Let me first congratulate the Board for putting

1 together a very exhaustive list of suggestions. We
2 know you work very hard on this. Let me ask, could
3 you work through the normal cycle of investigation to
4 give a sense of how enforcement of 1345 might work?

6 CAROLYN MILLER: How enf-- well, we,
7 depending on the reporting schedule that would be
8 implemented, we'd receive the-- I mean, that's one of
9 the challenges, I think, of the legislation is it's
10 unclear on what mechanism the Board would be able to
11 implement an investigation. We're not an auditing
12 agency. We don't have our own investigators. The
13 legislation contemplates that the investigations will
14 be conducted by the Department of Investigation. So,
15 the Board would have to have some reason to assume
16 that either the reporting requirements or the
17 contribution restrictions weren't met. Once we had
18 that information then a referral would be made to the
19 Department of Investigation which is an independent
20 organization that the Board doesn't control, and then
21 that investigation would take whatever time DOI
22 deemed appropriate.

23 CHAIRPERSON MAISEL: Okay. And do you
24 think you need any additional staff members for the
25 implementation of this, for your enforcement?

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2 CAROLYN MILLER: Because this is-- we
3 have our-- our staff is only fully staffed 26, and
4 they're already fully implemented. We imagine there
5 be some additional requirements. We don't have the
6 technological capacity on our website currently to do
7 any kind of the disclosure that would be required
8 both on the contributions and the expenditures. We--
9 some review would need to be done of all those
10 contributions and expenditures depending on how many
11 organizations were determined to be covered by this
12 legislation. So, I imagine both additional staff and
13 funding for those technological needs would be
14 required.

15 CHAIRPERSON MAISEL: Okay. Thank you.
16 Councilman Lander?

17 COUNCIL MEMBER LANDER: Thank you for
18 being here and for your detailed testimony, and you
19 know, we had a conversation during the budget season
20 last year about the need to provide the resources to
21 COIB that it needs to do its job well, and I think as
22 a Council Member who supports putting this-- to me,
23 the reason to put this legislation and its
24 enforcement with you is it is a core issue of
25 conflicts of interest. This is not-- even though we

1
2 are concerned about the public-facing communication,
3 what we're guarding against here is public
4 corruption. That's the goal of making sur that people
5 who have business interest with the City don't have
6 an avenue into giving that influences elected
7 officials. That's not primarily campaign finance.
8 That's primarily conflicts of interest, and that's
9 why it belongs with the Conflicts of Interest Board.
10 If we need to help the Conflicts of Interest Board
11 have the necessary resources to enforce the law, then
12 I look forward to seeing your testimony during budget
13 season and doing better this coming year than we did
14 last year to make sure you have the resources that
15 you need to do it. You can respond to that if you
16 want, but my question's going to go to this issue
17 that you raised about what's covered and what's not
18 covered, because I do read the legislation
19 differently than you do at 3901, the definition of
20 organizations affiliated with an elected official.
21 The term "organization affiliated with an elected
22 official means an entity for which a person holding
23 office as Mayor, Comptroller, Public Advocate,
24 etcetera or an agent authorized by such a person is a
25 principal owner or officer or which such a person

1
2 otherwise exercises control. I mean, I-- to me, the
3 police commissioner is authorized by the Mayor. The
4 school's chancellor is authorized by the Mayor. That
5 set of people who the mayor appoints and who then
6 have authority over funds related. I read to be
7 covered. So, you don't read it that way?

8 WAYNE HAWLEY: It's going to come on in a
9 minute. I think it's fair to say there was some
10 degree of uncertainty, and we certainly aren't in
11 favor of a step backward, where most of those
12 entities now are disclosing it to us.

13 COUNCIL MEMBER LANDER: Right.

14 WAYNE HAWLEY: And those disclosures are
15 posted on our website, and the Council intended that.
16 Either, or at least I'm glad to hear that it didn't.

17 COUNCIL MEMBER LANDER: Okay. So let's--
18 because that's on the list that you sent us, and I'll
19 just, you know, hat tip to Council Member Garodnick
20 even though he may have left because we had this-- we
21 got that list from you in relationship to a hearing
22 we did in the Rules committee just a couple of weeks
23 ago of the-- you call them what? Sorry. City-
24 affiliated nonprofits?

1
2 WAYNE HAWLEY: Yeah, I'm blanking on what
3 list e may have sent you. But that, is it possible
4 you're thinking of PAW entities which is a different
5 group--

6 COUNCIL MEMBER LANDER: [interposing] No,
7 no, no, no. You sent us the list of city-affiliated
8 nonprofits just about a month ago because in a
9 hearing you had given a ruling.

10 WAYNE HAWLEY: We're so good we can't
11 remember.

12 COUNCIL MEMBER LANDER: Okay. I'll get
13 it. We'll have it and we'll make sure we're talking
14 about the same thing, because we--

15 WAYNE HAWLEY: [interposing] We got it.
16 We got it.

17 COUNCIL MEMBER LANDER: I was-- I'll be
18 honest, I was surprised to find that it existed. I
19 didn't know that you actually had a list. I hadn't
20 seen it before.

21 WAYNE HAWLEY: No, no, I'm-- I stand
22 corrected. I stand corrected. I do recall the list.
23 I'd forgotten who we'd sent it to, but that's
24 essentially a pretty good list. Some of these entities
25 are defunct. As I recall that list is about 40--

COUNCIL MEMBER LANDER: [interposing]

Right. No, there was like a child care organization affiliated with Mark Green somehow that jumped out at me. In any case, we don't want to go backwards either. That list of organizations which seemed to me a little outdated, and I wasn't sure, and then I went back and looked at the rule you guys had made or the Advisory Opinion you submitted to define it. The goal here is to define it clearly, to include those organizations, and to cover them. So, you know, we'll take a look and make sure it is clear. To me, I think it is written this way to make clear it is covered to them, but we can-- we can make, you know, double sure, and if we want to amend the legislation, make clear in the committee report, that's absolutely our intention here. Again, on the disclosure side, not necessarily on the restrictions side, those entities for the most part are not doing the kind of elected official communications that the goal, you know, and I wish that you were right that there is, and if you can find it please give it to us, some other in tax law or in nonprofit law or some other place, we would be glad to have it. I know our counsel spent hours and hours and hours. I want to

1
2 give credit to Rob Newman here for doing a lot of
3 work to try to figure this out because the public-
4 facing communication piece of this is important.
5 That is what, you know, and how to define that is a
6 challenge, but so is these-- are these city-
7 affiliated nonprofits which could be like the Mayor's
8 fund which could be like your DNC or RNC or Olympics
9 Committee, and I think we're going to have to just
10 work with this legislation and get it as tight as we
11 can, because we were not able to find something else
12 that would serve as a proxy. And then finally, I
13 guess my last question, this just goes to this family
14 members issue. On the one hand I hear you, and I
15 appreciate that spouses and children have autonomy.
16 On the other hand, I just feel like, "Come one." At
17 least on the campaign finance side. I guess I'd ask
18 you to respond to what I-- well, two things. One, to
19 what I said before, at least on the campaign finance
20 side there is a max contribution limit, whereas here
21 we're talking about completely unlimited
22 contributions, and I just feel like giving the world
23 that we're living in right now as we speak, the idea
24 that the autonomy of-- the nominal autonomy of family
25 members outweighs the public's interest in preventing

1 corruption. Like, it's right in front of our faces.
2
3 We can't. you know, I think if we do this law and
4 then people's spouses have the ability to give
5 unlimited amounts, it would be hard for people to
6 feel that that was actually or any meaningful way
7 preventing the public corruption risk that this law
8 is designed for.

9 CAROLYN MILLER: Well, all those-- I
10 mean, the disclosure paradigm means that there was
11 "unlimited contributions" with--

12 COUNCIL MEMBER LANDER: [interposing] Did
13 that help with the campaign for One New York?

14 CAROLYN MILLER: It seemingly did, because
15 the result was--

16 COUNCIL MEMBER LANDER: [interposing] In
17 the public's confidence in lack of--

18 CAROLYN MILLER: [interposing] Well, I
19 can't speak to the public's confidence, but certainly
20 what the board, the sort of model that the Board has
21 and the functionality that the Board is about is
22 about disclosure. We collect annual disclosure
23 reports from public servants. This is a disclosure
24 paradigm. Once every six months the pub-- you know,
25 and if the Council chose to follow the model that

1
2 already exists from the Board's Advisory Opinion, a
3 very large donation from the spouse of an individual
4 doing business with the City would be public.

5 COUNCIL MEMBER LANDER: But then we
6 wouldn't need this law at all to be honest. Like, to
7 me, the core value of this law, do you think we need
8 the restriction on the individuals that are doing
9 business with the City or would they be
10 satisfactorily be covered by disclosure?

11 WAYNE HAWLEY: We've said we're in favor
12 of both this, and we understand the impetus to go
13 beyond disclosure for those that are in some way-- in
14 some way, and that's the trick. That's the trick,
15 and we'll add you in doubling down on that salute to
16 Rob Newman and his staff in working on this. The
17 trick is a definition that you can give to somebody
18 and they can work with it. Here us [sic], we did not
19 include, and we weren't shy as the exhaustive may
20 have been exhausting list. We didn't include an
21 objection to the fact that the Board was designated.
22 So we're not-- that wasn't on our list.

23 COUNCIL MEMBER LANDER: No, and I want
24 you to have the--

1
2 WAYNE HAWLEY: [interposing] But that
3 said, we don't want anybody and maybe much less us,
4 because we do have a little bit of self-interest
5 here, we wouldn't want to be stuck with having to
6 interpret that when it's that tough to interpret, and
7 if we could make a suggestion of a better model, we
8 certainly haven't-- I don't think anything about our
9 appearance here at ACHS [sic] were shy. We'd have--
10 Rob would have had this in a heartbeat. We don't
11 think this is quite it, but we're willing to help
12 beat the bushes and do anything we can to help, not
13 just to criticize.

14 COUNCIL MEMBER LANDER: So, I appreciate
15 that, and I'll end my questioning here, and I
16 appreciate the irony of like, you know, I value your
17 opinions, your judgements, your guidance. I don't
18 mean to be like arguing ethics with the ethics--

19 WAYNE HAWLEY: [interposing] Back at you,
20 likewise.

21 COUNCIL MEMBER LANDER: But I would just
22 say to me, I think I'm going to have to disagree on
23 these couple of points. Like to me, this is the
24 model that it makes sense to go with. Again, we can
25 look at some specific things. We need--

1 WAYNE HAWLEY: [interposing] Let me add--

2 COUNCIL MEMBER LANDER: to you the

3 resources to be able to enforce it and honestly to

4 have the level of discretion, and I think the CFB is

5 the right model here. We do our best to get the laws

6 right. That's why we're considering some tweaks

7 today, but we've set up an agency that has the

8 resources to try to figure out particular cases

9 because you just can't legislate everyone. So, yeah,

10 you know, I appreciate your testimony here. I think

11 at least from my point of view we're going to have to

12 ask you to do these things. You should think about

13 the resources that will be necessary to do them

14 effectively, and we'll work with you to make it work.

15 Thank you for your testimony. I'll yield my time.

16 CHAIRPERSON MAISEL: Councilman

17 Greenfield?

18 COUNCIL MEMBER GREENFIELD: Thank you,

19 Mr. Chairman. Thank you, Council Member Lander. I'm

20 not going to reiterate all of his points, but I

21 certainly will add that it definitely it was our

22 intent to cover agency heads and those entities as

23 well, and I think if necessary we'll be happy to

24 tweak it to reflect that. This is, you know, it's

1
2 sort of once again one of the odd situations for us
3 where in both these cases legislation that we're
4 discussing, we have immense respect for the Conflicts
5 of Interest Board and for the Campaign Finance Board,
6 and we genuinely believe that respectively you for
7 what you do, Conflict of Interest being the
8 organization that oversees conflicts in New York and
9 the CFB, the Campaign Finance in New York City, we
10 think you are respectfully the best in the country.
11 That's honest, our honest views. It doesn't mean
12 that we can't have honest disagreements on policy as
13 the body that is charged with oversight and the
14 ability to create a legislation to ensure that these
15 things happen. I think we may just have some honest
16 disagreements. For example, in terms of the
17 appropriateness of the COIB doing this, I have to say
18 if I had any doubt that COIB could do this well,
19 those doubts were pushed aside by very articulate 20
20 specific detailed points on exactly how you would
21 like to change and improve this legislation proving
22 to me that you folks are really good at this, and I
23 know that's perhaps not what you wanted to hear with
24 the feedback that you provided, but we think you're
25 really, really good and that you folks are really the

1
2 experts of conflicts. Speaking of conflicts, I
3 actually just want to raise a point, because I think
4 we might have to agree to disagree on this one as
5 well, and I go down on Council Member Landers side
6 and the Speakers side on this as well. An elected
7 official, an elected official who wants to hire their
8 spouse and put them on the City payroll, is that
9 okay?

10 CAROLYN MILLER: The Conflicts of
11 Interest Law prohibits a city employee from using
12 their city position to benefit someone associated
13 with them which would include a spouse.

14 COUNCIL MEMBER GREENFIELD: The spouse.
15 What about son-in-laws? I'm asking just because in
16 case Donald Trump is listening.

17 WAYNE HAWLEY: So, almost certainly not.

18 COUNCIL MEMBER GREENFIELD: Okay.

19 CAROLYN MILLER: We view that as
20 benefitting the child of a public servant.

21 COUNCIL MEMBER GREENFIELD: So you cannot?

22 CAROLYN MILLER: You cannot.

23 COUNCIL MEMBER GREENFIELD: Cannot hire
24 your spouse or your son-in-law. Very good. Dually
25 noted for those who are paying attention. So, I

1 think from our perspective, right, the definition, to
2 your point, specifically of item number eight, a
3 person with business dealings in the city which
4 includes only-- which includes domestic partners,
5 spouses and emancipated child. We don't think it's
6 unreasonable to include them in the similar vein of
7 when we would prohibit them from, for example,
8 getting a job with the City, right? And so just as
9 how we would say, "Hey, if you're an elected
10 official, your spouse or your child or your domestic
11 partner should not be able to get a benefit from
12 that." And even though that may conflict with the
13 realities that, you know, your spouse, child or
14 domestic partner may be an exceptionally capable
15 individual who in fact would do a fabulous job in
16 your respective office or staff, and it may not be
17 fair to that person, but that's just sort of the
18 realities of how the world works, right? You know,
19 in order to prevent even the appearance of conflicts,
20 we don't even say it's permissible, right? I mean,
21 it's not like they can come to you in some instances,
22 someone can come to you and say, "Hey, let's get a
23 waiver," right? There's no waiver for this, correct?

1
2 You can't get a waiver for your spouse to work on
3 your staff. Is that correct?

4 WAYNE HAWLEY: Hasn't happened yet.

5 COUNCIL MEMBER GREENFIELD: Hasn't
6 happened yet. Never say never. I appreciate that,
7 Counselor. But the point that I'm making is that
8 from our perspective, just so you understand where
9 we're coming from, we would sort of view it
10 similarly, and to Brad's point, at the very least in
11 the Campaign Finance Board system right now, there
12 are I fact caps, right? You know, for a Council
13 Member is a 2,750 or for someone running for Mayor
14 it's 4,950. You know, the ability to have unlimited
15 funds through a spouse or a domestic partners it
16 makes us concerned, and I hope you understand from
17 that perspective where we're coming from and why we
18 perhaps take a different view on that issue. Is that
19 fair in terms of just understanding where we're
20 coming from?

21 CAROLYN MILLER: We understand where
22 you're coming from, we just have a different policy
23 perspective in terms of the way, what kind of message
24 we think should be embedded in the legislation about
25

1
2 what it means to be married and what-- in what way a
3 spouse--

4 COUNCIL MEMBER GREENFIELD: [interposing]
5 We understand.

6 CAROLYN MILLER: can function
7 independently from their spouse, and to say in this
8 2016 that a spouse is restricted in their independent
9 activities and interests. And you know, there was a
10 question by Council Member Menchaca about encouraging
11 donations. And so this is a situation where there
12 would be because of the business, separate
13 independent business interests from their spouse--

14 COUNCIL MEMBER GREENFIELD: [interposing]
15 Yeah.

16 CAROLYN MILLER: you are restricted from
17 acting in your own good faith. And just that
18 principle we disagree.

19 WAYNE HAWLEY: And let's add to that. We
20 made clear too that the restrictions are there, and
21 nobody's here to at least at this table to pick on
22 the Campaign for One New York, but the concerns I
23 think in terms of major contributions were from labor
24 unions and corporations, and I don't think from any
25 spouses of high-ranking people. I think you've

1 targeted the right place. I think it's a reasonable
2 policy call to think about adding spouses, but I
3 think you've taken care of the majority of the evils,
4 and in exchange for that, would impose a rule that
5 is-- we use a word, mildly socially retrogressive,
6 but I don't mean that in a highly critical way, but
7 also adds an administrative burden of all this
8 asking. I think when you balance the two out, we come
9 out differently. You said it right, or perhaps
10 Council Member Lander. You're the policy makers. You
11 get charged to implement. We'll do what we're
12 ultimately charged to do. We thank you for the
13 compliment about what we've done to date, but we'd
14 rather get the task that we think is a better policy
15 for this city and one that can frankly be implemented
16 more efficiently.

18 COUNCIL MEMBER GREENFIELD: We appreciate
19 that, and my only point that I think it's legitimate
20 policy distinction just as how, you know, if the
21 Mayor of the City of New York, if he or she is
22 married to the most qualified person in the world who
23 could be commissioner of x, y or z, the reality is
24 that that person can still not be commissioner x, y
25 and z, because we decide that there are conflicts, so

1 we don't even want the appearance of conflicts, and I
2 think we're making a similar judgement over here, but
3 I certainly understand the other point. The final
4 point that's very important to me is I would love to
5 know, and if you don't have it now please get it to
6 us in the future, what costs you believe this will
7 incur. I certainly am dedicated to making sure that
8 you have the resources. I do not believe in creating
9 any sort of unfunded mandated. So, if you tell us,
10 you know, we need x amount of staff and we believe
11 this is what's going to cost, I can assure you that
12 we will do everything in our power to make sure that
13 it comes along with that as well. So, if you have it
14 now, that would be great, and if not, if you could
15 just follow up with us and get it to us, you know, in
16 a reasonable fashion and say, "Hey, we think that in
17 order to implement this bill we would require the
18 following amount of staff and resources or
19 technological resources as well," and I assure you
20 that we will do everything to make sure that you have
21 those as well. So, thank you.

23 CAROLYN MILLER: Thank you, Council
24 Member. The one thing I just say, that the challenge
25 of this legislation, and we appreciate the

1
2 compliments about our ability to analyze the
3 legislation, but the ability to-- the kinds of
4 calculations of what-- how to allocate costs and
5 contributions, how to allocate the expenditures, this
6 is not the work that COIB does. So, we will try to
7 endeavor to assess what kinds of funds we'd need, but
8 it's beyond the kind of work that we currently do.

9 COUNCIL MEMBER GREENFIELD: Okay. I
10 mean, and we certainly, once again, we certainly
11 appreciate that. To a certain extent when we write
12 legislation, we also try to create it to be somewhat
13 broad and flexible enough so that, you know, as an
14 agency you can have some ability for interpretation,
15 but we certainly appreciate your feedback and we'll
16 definitely incorporate into our final version of the
17 legislation. Thank you.

18 CAROLYN MILLER: Thank you.

19 CHAIRPERSON MAISEL: Okay. There are no
20 more questions. Thank you so much for your
21 testimony. Oh, I'm sorry. Councilman Kallos has a
22 question.

23 COUNCIL MEMBER KALLOS: Thank you. This
24 question is on behalf of Samir Khurshid from Gotham
25 Gazette. I have a long standing policy of being open

1
2 to questions from the public and asking on their
3 behalf. So, the question that was provided to me is:
4 If the COIB were to assess any penalties against a
5 sitting Council Member under this introduction, how
6 would those penalties be enforced. Currently, under
7 the interpretation, the question is currently the law
8 doesn't allow COIB to enforce a fine on a Council
9 Member. They can only recommend penalties to the
10 Speaker's Office and the Council which can take
11 action on their recommendation by referring it to the
12 Standards and Ethics Committee. Does Intro 1345 give
13 COIB enforcement powers?

14 CAROLYN MILLER: The 1345 suggests an
15 implementation that would model the penalty
16 implementation that already exists under the
17 Conflicts of Interest Law. So, you're-- the Council
18 Member is right that we don't have, the Board does
19 not have the authority under Chapter 68 to impose a
20 penalty on a Council Member or a member of the
21 council staff, but historically that hasn't been an
22 issue because any penalty that has been imposed on a
23 Council Member has been accepted by the Council
24 Member. It would be only in the first-ever
25 circumstance where a Council Member wasn't able to

1 reach an agreement with the Board on what the
2 appropriate penalty is. So, the legislation is as
3 limited as the enforcement mechanisms of the Chapter
4 68 are.

6 COUNCIL MEMBER KALLOS: And with regards
7 to the 20 different suggestions, if there perhaps a
8 21st suggesting broader enforcement powers without
9 having to go through the Council and moving it from a
10 judicial system to actually where can have
11 enforcement without having to go through a political
12 process?

13 CAROLYN MILLER: There isn't because we
14 haven't had any historical issue with it. That's not
15 a proposal that the Board has sought historically,
16 and the board has had pending proposed amendments to
17 the Conflicts of Interest Law for some time. That's
18 not one of the proposals. The structure hasn't been
19 ineffective in its current form.

20 COUNCIL MEMBER KALLOS: Thank you for--
21 Thank you to Gotham Gazette for their tremendous
22 reporting and knowledge of this area of law, a credit
23 to Citizen Union and Citizens Union Foundation. And
24 I just want to take one moment to say thank you to
25 the Conflicts of Interest Board for saying no to me

1
2 all the time, and ensuring that I don't engage in any
3 behaviors that would be conflicts, even if "everyone
4 else is doing it" which is rarely the case. You help
5 to keep myself as well as many of my colleagues on
6 the straight and narrow. I just wanted to say thank
7 you for saying no. And I guess the other question
8 which I think I haven't had a chance to ask you under
9 oath is just how many angels can fit on the head of a
10 pin?

11 WAYNE HAWLEY: I think you could Google
12 that.

13 COUNCIL MEMBER KALLOS: Thank you.

14 CHAIRPERSON MAISEL: Thanks very much.
15 The next person to testify, Amy Loprest, New York
16 City Campaign Finance Board. I'll be getting-- [off
17 mic]. Good afternoon. Please, Committee Counsel
18 will swear you in.

19 COMMITTEE COUNSEL: Can you please raise
20 your right hand? Do you affirm to tell the truth in
21 your testimony before this committee today and to
22 respond honestly to Council Member questions?

23 AMY LOPREST: I do.

24 COMMITTEE COUNSEL: Thank you.

25 CHAIRPERSON MAISEL: Good morning.

1
2 AMY LOPREST: Good morning.

3 CHAIRPERSON MAISEL: Or two minutes short
4 of afternoon.

5 AMY LOPREST: Good afternoon. Good
6 afternoon. Good morning Chair Maisel and Members of
7 the Committee on Standards and Ethics. My name is
8 Amy Loprest, and I am the Executive Director of the
9 New York City Campaign Finance Board. With me are
10 Sue Ellen Dodell, General Counsel, and Eric Friedman,
11 the Assistant Executive Director for Public Affairs.
12 Today is our first opportunity to appear before this
13 committee. As such, I hope you will permit me to use
14 part of my testimony to talk in some detail about our
15 work, which will provide context for the legislation
16 before you. Just so you know, I'm not intending to
17 read the entire testimony. I'll--

18 CHAIRPERSON MAISEL: [interposing] Thank
19 you for that.

20 AMY LOPREST: leave some of it in the
21 written testimony, although it is lengthy because of
22 the number of bills involved. First, we commend the
23 Council for addressing the clear danger of influence-
24 seeking raised by the activities of political non-
25 profits connected with elected officials. Under the

1 Campaign Finance Act, a businessman bidding on a city
2 contract can give no more than 400 dollars to a
3 candidate for mayor. As the Board noted in July when
4 it issued its final determination on the Campaign for
5 One New York, the law allows the same businessman to
6 give a six-figure contribution to a political non-
7 profit entity associated with the mayor. Int. No.
8 1345 seeks to close this loophole, and the Board is
9 pleased the Council is seeking to strengthen our
10 protections against the possibility and perception of
11 corruption associated with money in city
12 politics. We note the several concerns regarding the
13 bill's drafting and implementation raised by our
14 colleagues at the Conflicts of Interest Board. We
15 urge the Council to take these into account, and we
16 will be available to assist in any way they or the
17 Council deems appropriate. Our comments on this
18 legislation are based on our experience administering
19 the strict, low pay-to-play contribution limits in
20 the Campaign Finance Act for individuals doing
21 business with city government. Those limits apply to
22 individuals listed in the Doing Business Database,
23 while the limits proposed by 1345 would apply also to
24 spouses and children of those individuals. As you
25

1 know, at present, the database does not include the
2 names of covered individuals' family members. We
3 share the Council's expectation that the penalties
4 established in 1345 will deter most questionable
5 contributions. Nevertheless, any successful
6 implementation of the bill as drafted must ensure
7 sufficient information is available to allow the
8 covered non-profit entities to comply with the law,
9 and to provide the oversight body with a basis to
10 identify potential violations. Again, the Board
11 supports this measure and urges the Council to adopt
12 it once these issues can be resolved. However, this
13 important piece of legislation is accompanied by
14 several poison pill measures that would significantly
15 weaken the CFB's oversight of the matching funds
16 program. These measures should not be the cost of
17 implementing a commendable and necessary reform. We
18 are disappointed the Council is considering these
19 significant changes to the Campaign Finance Program
20 only ten months before many of its members will
21 appear on primary ballots in 2017. The Act requires
22 the Board to issue its recommendations for
23 legislative changes three years before the next
24 election. This timeline provides for the ample time
25

1 to assess the potential impact of changes, discuss
2 the policy, and ensure their smooth implementation.
3 These recommendations are informed and supported by
4 comprehensive analysis of the data from the previous
5 election and our experience administering the
6 program. Following the last election, we issued our
7 recommendations on September 1, 2014, and the Council
8 heard some of those proposals on May 2nd of this
9 year. If the proposals under consideration today had
10 been issued on the timeline that applies to the
11 Board's post-election report, there would have been
12 more than sufficient time to do the fact-finding and
13 analysis about the potential impact these bills may
14 have on our system. We urge the Council to delay
15 consideration of many of these proposals until after
16 the 2017 election. This would allow for a thoughtful
17 analysis of their impact, and deflect accusations
18 that members are seeking advantage for their own
19 campaigns. Enacting these proposals now will disrupt
20 the Board's preparations for the election year, and
21 require hasty decisions about implementation. Because
22 of its oversight role as administrator of the city's
23 public campaign finance system, the Board was created
24 to be nonpartisan and independent. Through seven
25

1 citywide election cycles, independence has been key
2 to the success of the program. This isn't just a
3 talking point; it is an important policy issue. The
4 Board's independence gives the public confidence that
5 enforcement decisions are made based on the facts and
6 the law, not on politics. Unlike other elections
7 enforcement entities at the state or federal level,
8 the Campaign Finance Board isn't beholden to
9 political parties or elected officials. The Board is
10 accountable to the public, with a primary
11 responsibility to protect city taxpayers' investment
12 in a fairer, cleaner campaign finance system.

14 Several of the proposals under consideration would
15 intrude on the Board's independence. Int. No. 1364,
16 which would interfere with the proper functioning of
17 the Board's enforcement process, is one of these.

18 State Open Meetings Law allows public bodies like the
19 Board to decide who is allowed into their executive
20 sessions. By preventing the Board from consulting
21 with its own staff during executive session, Intro.
22 1364 would deny the Board critical expertise and
23 counsel as it conducts its deliberations. Continued
24 public support for the matching funds program depends
25 on continued public confidence that those funds are

1
2 in good hands. To protect the public's investment in
3 cleaner politics, the Board audits campaigns for city
4 office. The requirements of the CFB's regular audit
5 and enforcement process are rigorous and complex,
6 with many steps between the campaign's first filing
7 and the issuance of its final audit report. Imposing
8 new discrete mandates or deadlines on a particular
9 step in that process can affect all of the others.
10 Several of these bills propose significant changes to
11 various steps of the audit process. The Board
12 believes these changes are likely to produce
13 unanticipated and unwelcome consequences. Regular
14 audit reviews start as soon as a campaign begins
15 filing disclosures with the CFB. Before the election,
16 auditors review documentation provided by campaigns
17 along with each disclosure statement. These reviews
18 confirm that contributions are consistent with the
19 limits in the Act, and ensure that contributions to
20 be matched with public funds meet the requirements of
21 the law. The results of these statement reviews are
22 sent to campaigns. If information for a particular
23 contribution is missing or incomplete, campaigns have
24 the opportunity to provide documentation that makes
25 the contribution valid for matching funds. Int. No.

1
2 1354 would impose strict, unreasonable deadlines on
3 those reviews. Early in the four-year election
4 cycle, work on the statement reviews coincides with
5 work on the audits from the previous election; the
6 tight deadlines on statement reviews would draw staff
7 resources away from those audits. During the
8 election year, those reviews are performed on a
9 shorter timeline. In the last few months before the
10 election, as the Board prepares to issue payments of
11 public matching funds, the reviews are performed
12 within four business days as required by the Act. In
13 our experience, most candidates make an honest effort
14 to comply with the Program's requirements, which can
15 be strict. In rare cases, candidates seek to defraud
16 the city by submitting forged or altered documents in
17 an attempt to obtain public matching funds. A
18 Council candidate in last year's special election in
19 Queens was indicted in just such a scheme. Intro.
20 1355 would make it more difficult for CFB auditors to
21 detect these rare instances of fraud and prevent
22 payment of public funds by lowering our documentation
23 standards and requiring that CFB staff accept altered
24 or "corrected" documentation from campaigns. Instead
25 of lowering our standards, the better way to help

1 candidates to document their contributions is through
2 the smart use of technology. We created NYC Votes
3 Contribute, an online fundraising platform for
4 candidates that connects directly to C-SMART, to
5 simplify the requirements for credit card
6 contributions. The Contribute platform collects all
7 the information necessary to ensure eligible
8 contributions are valid for matching funds.
9 Contribute also creates and submits the documentation
10 for each credit card contribution directly to CFB.
11 The platform was launched in February and, to date,
12 50 candidates have used it to raise over 1,600
13 contributions totaling more than 320,000 dollars.
14 Shortly after the election, CFB auditors send
15 campaigns an initial request for documents related to
16 the campaign's spending. Those documents are
17 reviewed to ensure that the campaign's reporting was
18 complete and accurate and that spending was related
19 to the campaign. For campaigns that received public
20 funds, the documents can show whether the public
21 funds they received were spent on qualified purposes.
22 Campaigns usually have 30 days to respond to the
23 Initial Document Request. After the staff reviews
24 those documents, we prepare and send most campaigns a
25

1 draft audit report that outlines any preliminary
2 findings. The Act requires those reports to be sent
3 to campaigns within eight to 10 months of the last
4 disclosure filing for the election cycle. Campaigns
5 can address each finding with an explanation or
6 further documentation. They are required to respond
7 within 30 days, though extensions are often granted
8 to campaigns that request them. The campaign's
9 response to the Draft Audit Report is reviewed by CFB
10 staff. Afterwards, if evidence of a violation
11 remains, the staff prepares and sends a notice of
12 alleged violations with recommended penalties, the
13 amounts of which are based on fixed guidelines that
14 are published and available for review on the CFB's
15 website. Deviations from the penalty guidelines
16 generally are left to the Board's discretion.
17 Assuming the campaign's responses have been provided
18 timely, the Act requires the NAV to be sent within 14
19 to 18 months of the last filing of the election
20 cycle. If the campaign has requested extensions or
21 missed deadlines to respond, the NAV may be delayed.
22 The NAV concludes the CFB's investigation, and the
23 adjudicatory process follows. The Charter requires a
24 strict separation of the Board's investigative and
25

1 adjudicatory powers, and forbids staff members from
2 performing both functions. As there is at many law
3 enforcement agencies, there is a strict separation of
4 these functions within the CFB. As Executive
5 Director, I do not review or participate in the
6 investigative work of the Audit staff, and neither
7 does the General Counsel. Prior to a hearing,
8 campaigns are given another chance to provide
9 additional materials in response to the NAV.

10 Candidates who wish to contest the staff's findings
11 have two choices: they can appear at an informal
12 hearing before the Board, or participate in a formal
13 adjudication before the Office of Administrative
14 Trials and Hearings. Candidates or campaign
15 representatives often appear before the Board without
16 legal counsel, and often request leniency based on
17 the circumstances of their election. A review of
18 Board determinations issued since the start of the
19 2013 calendar year shows that many of those requests
20 are honored. Of the candidates who appeared before
21 the Board during that time, 65 percent had their
22 penalties reduced. In practically all the other
23 cases, the Board accepted the penalties recommended
24 by staff under the published guidelines. Intro. 1364
25

1 seeks to correct a problem that doesn't exist.
2
3 Moreover, by interfering in the Board's
4 deliberations, this legislation would deprive the
5 Board of the expertise of its own staff in those
6 cases where it seeks to reduce penalties without
7 disrupting precedent. An OATH trial is a more formal
8 proceeding, with stricter rules of evidence and
9 procedure. To initiate a case, the enforcement
10 agency must serve the respondent with a petition.
11 Board practice is to provide campaigns the
12 opportunity to respond before we docket the case with
13 OATH. By placing a new, unrealistic deadline for the
14 Board to docket an OATH proceeding upon request,
15 Intro. 1350 would effectively deprive candidates of
16 their pre-hearing opportunity to mitigate the
17 penalties recommended by staff. After the Board
18 hears the candidate's arguments, receives a
19 recommendation from an administrative law judge
20 following an OATH trial, or reviews a set of
21 uncontested findings from staff, it issues its
22 determination. The staff takes the Board's
23 determination and issues the final audit report,
24 which is sent to the campaign and published on the
25 CFB website. In a citywide election, there can be

1 between 250 and 300 candidates who receive an audit
2 review. The majority of those candidates receive
3 final audits that reflect substantial compliance with
4 the rules. During a review of the 2009 election
5 cycle, we found that 59 percent of all candidates for
6 City Council were assessed no penalties. As we've
7 explained, the audit and enforcement cycle is a
8 complex process with many steps, and we understand
9 these complexities pose challenges for the
10 candidates. It is necessarily rigorous. We oversee
11 a system that paid more than 38 million dollars in
12 taxpayer funds to candidates in the last four-year
13 election cycle. The candidates who receive those
14 public funds should be accountable for their use.
15 Still, the matching funds program fulfills its
16 objective of maximizing small-donor engagement only
17 if candidates choose to participate, and our
18 oversight should not impose a barrier to
19 participation. We meet the deadlines by the act--
20 mandated by the Act, but we know we must go beyond
21 that. We need to do the audits smarter and more
22 efficiently by doing a better job of prioritizing our
23 staff time and resources by better assessing
24 risk. This is a goal during every election cycle,

1
2 across the entire agency. To help candidates better
3 handle compliance, we are improving our trainings to
4 provide more detailed and focused information in more
5 convenient formats, including e-learning and one-on-
6 one consultations. We are improving our software
7 resources for campaigns, including C-SMART. And we
8 are closely reviewing our audit standards to ensure
9 the next round of post-election audit reviews will be
10 done smarter and better. We recently created a
11 Quality Assurance team in our Audit Unit to help us
12 find ways to meet those goals. Any significant
13 changes to the audits must take a broad view of the
14 entire audit process, and focus on the essential
15 objective of protecting the public fisc [sic]. To
16 audit smarter and better we must simplify, rather
17 than add complexity. We welcome the Council's
18 thoughtful participation in this conversation, but it
19 is important the Council consider that hastily
20 imposing new mandates on the audit process will
21 likely give rise to unintended consequences. We
22 address each of the proposals before the committee
23 below. I want to acknowledge that Council staff has
24 consulted with CFB staff on many of these proposals.
25 Many of the introduced bills reflect feedback

1 provided by CFB staff, though many of the objections
2 we've raised remain in the introductions under
3 consideration today. We appreciate the opportunity
4 to provide our feedback on these bills, and will
5 continue to do so in any forum we are provided.
6 After that, in my written testimony is our sum
7 objections and concerns about each individual
8 introduced bill, which I won't read.

9
10 CHAIRPERSON MAISEL: Thank you very much.
11 How many audits are still ongoing?

12 AMY LOPREST: There are-- check my notes.
13 There are about 50 audits that needed to be
14 completed. Twenty-five are scheduled to be heard
15 before the Board in the month of December.

16 CHAIRPERSON MAISEL: So, the point had
17 been made that that's an extended period of time.
18 It's almost three years since this Council took
19 office. Why is it taking you so long?

20 AMY LOPREST: Sorry. The-- obviously,
21 there are the limits provided, the deadlines provided
22 in the law, and we meet all of those deadlines.
23 Often there is need for additional investigation, and
24 often candidates ask for extensions which are granted

1
2 to them in order-- and they need the extensions to
3 collect or provide whatever information is requested.

4 CHAIRPERSON MAISEL: So, how long do you
5 think it will take before everting is finished?

6 AMY LOPREST: Of the remaining ones, about
7 half of them are proceeding to OATH.

8 CHAIRPERSON MAISEL: You said 25 were--

9 AMY LOPREST: [interposing] Yeah, yeah.

10 CHAIRPERSON MAISEL: going to go before
11 the Board.

12 AMY LOPREST: Yeah, so there's about 25
13 after December. About half of those are-- have opted
14 to go to a formal hearing before OATH, and the Board
15 has little control over how long those OATH
16 proceedings take.

17 CHAIRPERSON MAISEL: Well, granted, of
18 course that's true. Why do you think they chose to go
19 to OATH?

20 AMY LOPREST: It's an individual choice.
21 I mean, in our notice of alleged violations we give
22 every candidate-- as required, we instruct them that
23 they are eligible to use that proceeding if they want
24 to, and candidates elected I assume for a variety of
25 reasons.

1
2 CHAIRPERSON MAISEL: So, but in your
3 testimony you said that people are not availing
4 themselves of their rights by going through your
5 process, and they're doing injury to themselves if
6 they go directly to OATH--

7 AMY LOPREST: [interposing] Actually, no,
8 I guess that-- I wouldn't character that. I think
9 that the way the legislation is written it would
10 encourage more people to go to OATH. I do think that
11 OATH is a much more formal process that often, you
12 know, you get something that looks like a litigation
13 complaint, and I would imagine that, you know,
14 candidates feel the need to hire attorneys to deal
15 with that. The process the before the Board is a
16 much more informal process where candidates can come
17 and just sit before the Board and give their
18 particular circumstances with their campaign, ask for
19 the Board for to mitigate the circumstances, the
20 penalties based on their individual circumstances.
21 So, it's a much more informal process where
22 candidates often appear by themselves or with maybe
23 their treasurer or, you know, some family member or
24 not-- occasionally with an attorney, but most often
25 by themselves.

1
2 CHAIRPERSON MAISEL: I mean, do you think
3 it's the candidates themselves think they'll get a
4 better deal from OATH as opposed from CFB?

5 AMY LOPREST: I don't know. I mean, and as
6 I said, 65 percent of the candidates who appear
7 before the Board have their penalties reduced, and
8 most of the other ones have-- are just the penalties
9 that are posted in our published penalty guidelines
10 that are recommended by the staff. So, again, I
11 can't judge what candidates think. OATH, I would
12 have a formal hearing and make determinations. I
13 don't know what they-- whether they think they're
14 going to get a better deal. I think that 65 percent
15 of people appear before the Board, I can tell you
16 right now, have had their penalties reduced.

17 CHAIRPERSON MAISEL: I'm not sure about
18 the le-- I'm not a lawyer and I'm not sure about the
19 legal aspects. So when there's a hearing before
20 OATH, then the Campaign Finance Board presents
21 testimony to them?

22 AMY LOPREST: Yeah.

23 CHAIRPERSON MAISEL: And it's basically
24 it's a trial situation.

25 AMY LOPREST: It's like a trial, yes.

1
2 CHAIRPERSON MAISEL: And this would take
3 much more out of your agency's time, effort and
4 energy to do that.

5 AMY LOPREST: Yes. Obviously, the OATH
6 hearings take more time for the staff and also I
7 assume, you know, candidates, when you're faced with
8 that kind of formal proceeding would likely want to
9 hire an attorney to represent them in front of that
10 formal proceeding. Also, the 30-day deadline to
11 docket the petition between OATH, which is one of the
12 bills before you today, would necessarily deprive the
13 staff of the time. Now, people respond to their
14 notice of violation. The staff reviews it. Often
15 penalties or potential violations are resolved at
16 that stage with only 30 days to issue, to docket a
17 case and prepare that complaint. It's called a
18 petition, sorry, not complaint. Petition before OATH,
19 we would not really have the time to review that
20 response and notice of violations, and many of the
21 petitions before OATH would be exactly the same as
22 the notice of violation which is-- would require
23 another formal response, like an answer to a civil
24 complaint, and then proceed to trial.

1
2 CHAIRPERSON MAISEL: Do you agree with the
3 general approach of requiring donor disclosure for
4 elected affiliated groups and contribution limits for
5 elected affiliated groups that engage in political
6 activity?

7 AMY LOPREST: Yes, in general we agree
8 with that, yes.

9 CHAIRPERSON MAISEL: And is there any
10 other jurisdiction in this country that regulates
11 these kinds of elected affiliated groups in this way?

12 AMY LOPREST: It's-- I'm not an expert on
13 this, but it's my understanding that New York City
14 would be the first.

15 CHAIRPERSON MAISEL: Do you see any
16 potential for circumvention of the donation limits in
17 the Introduction of 1345 as it is drafted?

18 AMY LOPREST: As I said in my testimony,
19 I think there's some issues because the database at
20 it currently exists does not include the family
21 members of people doing business with the City. While
22 I agree and understand Council Member Lander's
23 concerns about including them, they-- there is some
24 question about having provision in the law that an
25 enforcement body would not be-- or the people taking

1
2 those contributions wouldn't be able to readily check
3 to see if a contribution is coming from a spouse or a
4 family member of someone who has business dealings
5 with the City.

6 CHAIRPERSON MAISEL: Do you see any
7 potential for circumvention of being an organization
8 that is subject to contribution limits in
9 Introduction 1345 as it is drafted?

10 AMY LOPREST: I think the high penalties
11 are intended to prevent that. I think, you know, I
12 defer to the very comprehensive testimony by my
13 colleagues at the Conflicts of Interest Board of
14 issues relating to the specific drafting issues and
15 the ideas of what is covered and what's not, and I
16 think they did a very thorough job of providing that.

17 CHAIRPERSON MAISEL: Okay. And lastly,
18 for me, the chief aim of Intro 1345 is to
19 significantly reduce the potential for conflicts of
20 interest for elected affiliated groups and their
21 donors. Have you identified any other reasons that
22 this bill might not accomplish this goal?

23 AMY LOPREST: No, I don't think so. I
24 mean, as we said when the Board issued its final
25 determination in the complaint about the Campaign for

1
2 One New York, it was a loop-- it is a loophole in the
3 current legislative framework and this is a fix to
4 that loophole.

5 CHAIRPERSON MAISEL: Okay, thank you. We
6 are now joined by Councilwoman Rosenthal who has a
7 question.

8 COUNCIL MEMBER ROSENTHAL: All over the
9 place, alright. Hi.

10 AMY LOPREST: Hi.

11 COUNCIL MEMBER ROSENTHAL: Thank you so
12 much for coming here today, and I just have to start
13 by saying that we've had a great experience over the
14 last three years, my office, working with you on
15 Student Voter Registration Day, and I want to thank
16 you for that. It's-- you've been a great partner,
17 and I bring it up not only to start by thanking you,
18 but also to say that Student Voter Registration Day
19 is very much a reflection of who I am as an elected
20 official and who I was as a candidate. That is, I
21 really believe every vote counts. More people need to
22 register to vote. For those of you who are watching
23 on TV and you're not registered to vote, please
24 register to vote. So, what I did as a candidate was--
25 - my goal was to have as many small dollar donations

1
2 in the spirit of Campaign Finance Board have the as
3 many small dollar donations as possible. And in
4 fact, I can remember in my mind's eye thinking how do
5 I get to the total matchable amount, and how can I
6 get there with only 20-dollar donations, and I think
7 it was something like eight-- I would have to get 800
8 twenty-dollar donations in order to--

9 AMY LOPREST: [interposing] Yeah, I think
10 that's right.

11 COUNCIL MEMBER ROSENTHAL: But it was
12 that I was fully committed to that. I asked people
13 for 20 dollars so they would have skin in the game,
14 right? So that it would be an obvious statement to
15 the public that I will serve the public if I get
16 elected, and as it turned out I think I did get the
17 most donations of 175 dollars or less of any City
18 Council candidate running for office and the most 20-
19 dollar ones. I only know this because I tracked it
20 internally so that on the campaign trail I could say
21 these things out loud, and I was very proud to say
22 them, and I'm trying to do it again. You can
23 imagine, however, what a nightmare that was for my
24 treasurer and for the volunteers who were helping me
25 and my campaign. We had massive amounts of

1 paperwork. I still remember the name of the person
2 who gave me four dollars, and we had to track them
3 down because I insisted we do it. I don't even know
4 if in the rules you have to do this, to get a
5 properly filled out donation form. I think she had
6 forgotten to put in something or sign her form or
7 something. We tracked her down, because I wanted
8 every, you know, four dollars. It was a really great
9 thing. She lived in the district. But it was chaos.
10 It was really hard, and we really tried hard to keep
11 all our papers. We really tried hard to keep our
12 bank statements in order. I switched mid-stream with
13 a different treasurer who started a whole new system
14 of how we document stuff. Anyway, at the end of the
15 day, I actually had money left over, because I ended
16 up raising more money than I would have needed for
17 the campaign because there are limits on how much you
18 can spend. And I remember talking with my election
19 lawyer about, you know, those people who make those
20 really big poster board checks, and that I was
21 looking forward to having a ceremony with you to give
22 you the check, and then actually give you a check,
23 and he was like, "What are you talking about? You
24 are not going to do that. You don't know that you
25

1 can give that money back." And I really naively
2 thought that of course I was going to give that money
3 back, and I was so dead wrong because when my audit
4 came around, and I forget how many discrepancies or
5 issues were on there, I ended up paying back, giving
6 all that money left over to pay for audit-related
7 expenses, lawyers, lawyer and also my treasurer had
8 to come back and spend some time and she wasn't going
9 to do that for free. And you know, people have told
10 me that I-- and I forgot to mention this, but people
11 have told me that before I spoke up today I should
12 make it clear that I really hope that I'm not going
13 to be penalized for speaking up, and that, you know,
14 as bad as this audit has been, 2017 is going to be
15 worse. And I got to say, I'm planning on getting the
16 most low-dollar donations I can for 2017. It's going
17 to be a massive amount of paperwork. There's so many
18 things that have made it easier. We can upload so
19 many more things on C-SMART, and the donation link is
20 terrific. I used to not want to do credit cards
21 because of the fee, and I didn't want public dollars
22 to have to pay for the fee, so whatever, but now I've
23 given in and it's just easier to do that way, so oh
24 well about the fee. Three years have gone by. I know
25

1
2 I've been challenging the audit, and that definitely
3 is some of the reasons it's still not been settled,
4 but also because I think some of the things on there
5 are unfair, and so I'm continuing to challenge my
6 audit. The myriad of rules that change it feels like
7 seemingly to me so frequently, and my treasurer-- the
8 current treasurer is someone different who I'm paying
9 now-- has said to me that new rules came down last
10 week, and then we got our audit, which last night
11 just by chance I remembered to look at, and
12 apparently I got a whole bunch of-- made a whole
13 bunch of mistakes or oversights, my treasurer did,
14 because deposit slips were not uploaded, and they
15 need deposit slips. You know, I haven't verified it
16 because I haven't looked at it myself, but she and I
17 have talked about deposit slips over the last four
18 months, and do we keep them, do we not keep them, and
19 I remember my treasurer saying, "But they have the
20 bank statement and they have the checks and they know
21 that the difference between the checks and the bank
22 statement is the cash which is on the bank statement
23 as well as the check numbers." So we may have thrown
24 away the deposit slips. I'm really sorry, I just want
25 you to know that in advance of 2017. From going

1 forward we will keep all the deposit slips. The-- I
2 know. I know. And then last time around there was a
3 donor who yes, started a charter school, and I didn't
4 know that she was there for doing business. She very
5 graciously gave me 500 dollars. I ended up saying,
6 you know, if we have to give back the money because
7 now she's doing. She's a-- she's somebody whose
8 child went to school with my child. She gave me 500
9 dollars. We ended up giving her back, I can't
10 remember, either 250 or the whole 500. Initially, we
11 wrote a check, but then we were told you can't write
12 a check. It has to be a money order. So then I
13 remember getting the money order and then leaving it
14 with her doorman, and the doorman lost it. And so,
15 I'm too embarrassed to even call her, because-- so if
16 you're out there, you know who you are. I'm really
17 sorry that that happened, but she lost her money
18 order. So that money is just gone. After the
19 campaign I was told that personal checks from me
20 years prior to my campaign or in the out years to my
21 campaign to other campaigns even pack groups would
22 have to go against my donating to my own campaign.
23 And at the end-- so at the end, because I maxed out
24 to my campaign, of course, as any candidate does, I
25

1 had to write myself a check from public funds to pay
2 me back for a donation I made three years ago, four
3 years ago, five years ago to Liz Kruger's No Bad
4 Apples Pack. I, you know, I'm sorry I donated to Liz
5 Kruger's donation, Liz Kruger's No Bad Apples Pack.
6 I'm not doing it anymore, because I need-- I'm going
7 to need that money for myself. And so I've had to
8 tell her no. And last time around I donated to an
9 upstate democrat who was running who won, who didn't
10 win this year, and I had to pay myself back for that
11 one. So, all of which to say, you know, it's too
12 complicated for candidates who want to do the right
13 thing. As Chair of the Contracts Committee in the
14 City Council now, I really get it, and in my first
15 year I was always writing these laws to that thank
16 goodness the General Counsel here stopped me from
17 getting through to make things tighter for those
18 people who contract with the City. And over the last
19 three years I've learned that, you know what, the bad
20 guys are always going to find a way to cheat the
21 system. They just are, and you know, at the same
22 time that we have made contracting with the City so
23 tough in order to keep people from stealing money
24 from the City, nonprofits who get contracts with the
25

1 City now have to wait, you know, 18 months before the
2 City pays them back for an invoice for a myriad of
3 reasons I'm not going into here. But it's made it so
4 that now the Human Service Council is saying to their
5 nonprofit providers, "Don't contract with the City if
6 it's too risky for you to do that." And I'm
7 supporting that effort, because procurement is a
8 mess.
9

10 CHAIRPERSON MAISEL: [interposing] Excuse
11 me, Councilwoman, do you have a question?

12 COUNCIL MEMBER ROSENTHAL: No, I really
13 just wanted to make a statement. So, I guess all of
14 which to say is I would ask you to go back and think
15 harder about how to make it easier for candidates
16 like me, and yeah, thank you. Do you want to-- could
17 you respond?

18 AMY LOPREST: [cross-talk] Thank you. We
19 really enjoy doing Student Voter Registration Day
20 with you. I also just want to make it perfectly
21 clear that obviously, you know, we do not retaliate
22 from people talking about policy. We want to make
23 the system better. It's, as I said in my testimony,
24 it's one of the goals that we reassess after every
25 single election to try and make the program easier

1 and simpler, give better guidance to all the
2 candidates who are running in the program. So,
3 that's-- your comments are very much appreciated. As
4 I said, we have created a Quality Assurance Unit to
5 try and streamline some of the audit processes to
6 understand, to look at risks, to make sure that we
7 are focusing on the right things. On the other hand,
8 I want to make sure that we don't lose sight of our
9 shared concern that we make sure that people who are
10 trying to cheat the system aren't able to cheat the
11 system and we don't make it easier for them. And
12 also, that the public can retain their confidence
13 that the 38 million dollars that we paid out in
14 public funds in the 2013 election was paid out
15 appropriately and spent appropriately, and not saying
16 that anyone in this room is guilty of that. It's
17 just saying that that's why we take our audit
18 responsibility seriously. On the other hand, we do
19 always try and make things simpler. You've mentioned
20 two things that we've done: creating the NYC Votes
21 Contribute Tool, and also allowing the upload of
22 documentation into C-SMART, the collection of bank
23 statements earlier in the process so that we can
24 review them earlier in the process so that people
25

1 don't have to hold that, those documentation to the
2 end, are all things that we're trying to do to
3 streamline. The rules that were adopted on Thursday
4 also attempted streamline the contribution card
5 requirements and make them clearer, you know, and
6 that there's one single affirmation statement
7 required on the cards so candidates don't have to
8 worry about that, make it very clear when a
9 contribution card is required and when it's not
10 required. All of those things are our attempt which
11 is part of why I'm saying is that these piecemeal
12 changes to our process can have unintended
13 consequences, because some of the things that have
14 happened are from piecemeal legislation. I think it's
15 much more appropriate to do an overview of where the
16 issues that candidates have problems, and really try
17 and work and make sure our audit standards are
18 reflecting the appropriate issues.

19
20 COUNCIL MEMBER ROSENTHAL: Can I just
21 follow up with two points? One is, you know, one of
22 these pieces of legislation, 1354 has to do with
23 timing of getting back audits, and I have to tell you
24 as a candidate, I need those back really fast so my
25 treasurer can cure, can fix the mistake for

1 oversight. And the faster you can get that to us,
2 the better, and if it means somebody else-- I don't
3 know. I would urge you to think, maybe even just
4 start doing it. You don't need a law for us to tell
5 you, you know, about getting audits back faster.

6
7 AMY LOPREST: That's true. I mean, we
8 always try and do them faster. Right now in the
9 years where they're-- the out years of the election
10 cycle we're just [inaudible] every six months.

11 COUNCIL MEMBER ROSENTHAL: No, we-- go
12 ahead, sorry.

13 AMY LOPREST: We give them-- we send them
14 out about 60 days after the filing. So, that's 60
15 days before the next filing so you have them two
16 months ahead of time. But of course again,--

17 COUNCIL MEMBER ROSENTHAL: [interposing]
18 But that's not going to be possible in the in-year.

19 AMY LOPREST: Well, no, in the in-- on
20 the election year we do them quicker so they get--
21 the statements become more frequent, and the refuse
22 becomes quicker down to the fact that we do reviews
23 in the four days. We have to make payments within
24 four business days of certain disclosure statements.

25 COUNCIL MEMBER ROSENTHAL: Right.

1
2 AMY LOPREST: And we do the reviews
3 within those four days.

4 COUNCIL MEMBER ROSENTHAL: You know, I
5 don't know if you made any mistakes in giving out
6 those four-day review times, but I got to tell you, I
7 made a mistake in one of those. I had to submit bills
8 every single day, and they couldn't be over a certain
9 amount, and my treasurer who was not experienced
10 submitted bills that were too high. You know, that--
11 it's not easy to be a candidate, and you give out 38
12 million dollars, and I really appreciate your trying
13 to be careful about the public purse. You know, in
14 my first year in office an activist identified that
15 the Department of Education was about to spend 1.1
16 billion dollars on a contract for a computer system.
17 We asked the DOE to pull the contract, and a year
18 later the accurate contract was 550 million dollars.
19 So, and I'll tell you, every month that activist
20 sends me a list of things that are suspicious in DOE
21 contracts. I don't go after every one. I can't. I
22 don't have the staff. I don't have the resources,
23 and I would bet you a portion of them are terrible
24 contracts, but I went after the big one, and that was
25 the one that counted, and I feel great about giving

1
2 back 500 million dollars to students and the school
3 system, 500 million dollars. You know, that's going
4 to be part of my campaign theme when I run again in
5 2017, because it was the big nut. I would ask that
6 you really think harder about not making life
7 difficult in a common sense way for candidates who
8 are desperately trying to do the right thing and are
9 caught in the web of rules that are meant for
10 somebody who broke the law another time in another
11 place in another campaign, and then get stuck in the
12 weeds of it. It takes away from my time to be a
13 Council Member and govern. So, I'm done with my
14 statements, and thank you again for SVRD.

15 CHAIRPERSON MAISEL: With regard to 1355
16 where you specifically talk about altered or
17 "corrected documentation," it seems to me that the
18 campaign should have the opportunity to not alter--
19 altered and corrected are two different things. So,
20 if a campaign discovers that they have made a
21 mistake, what are your rules about sending in
22 corrected information?

23 AMY LOPREST: Well, candidates can-- I
24 guess it depends. One of the-- the reason I say this
25 about the altered or corrected contributions is it's

1 impossible when a contribution card is received by us
2 to know for sure whether a contribution has been
3 corrected or altered. It's, you know, the-- a lot of
4 the ways we investigate, and it's unfortunate that
5 there are cases of this, but a contribution card
6 that, you know, a number is changed from-- you know,
7 say it's in cash-- changed, the numbers change from
8 50 to 70. Is that a correction? Is that an
9 alteration? Is that really is what-- did that person
10 really intend to give 50 dollars or did they really
11 intend to give 70 dollars? It's hard to know the
12 intent of that contributor. If the candidate got a
13 new contribution card from that person signed by the
14 contributor, then that would suffice [sic], or a
15 letter or an affidavit from that contributor saying,
16 no, I intended to give-- I can't remember an example
17 now, but I think it was 70. I really intended to
18 give the 70 dollars, that would be sufficient.

20 CHAIRPERSON MAISEL: But it wouldn't be
21 matching, a matching catch that would determine that
22 it was actually 70 as opposed to 15?

23 AMY LOPREST: Well, if it's in cash, it's
24 impossible to know, and in some of the-- you know,
25 obviously, we don't require-- to answer a question

1
2 that came up a while ago. We require contribution
3 cards for cash and money order contributions, and in
4 our new rules to make, to deal with some issues that
5 have come up repeatedly for checks, only for checks
6 that have no address, that don't have-- that have a
7 professional designation and the address is not a
8 residential address, and if it's a bank-issued or
9 electronic check, which often don't have the
10 addresses on them and don't have a real signature on
11 them. That's the only way when we require--

12 CHAIRPERSON MAISEL: [interposing] So,
13 how--

14 AMY LOPREST: [interposing] contribution
15 cards for a check.

16 CHAIRPERSON MAISEL: So, if a campaign
17 discovers that there was a mistake, you're assuming
18 that the corrected or "corrected and altered" are
19 somehow suspicious?

20 AMY LOPREST: you know, I think there are
21 some cases where it's clear that they're not. I
22 think-- I mean, it depends, and I think that putting
23 in the law that you can correct or alter the
24 contribution card, that gives the person--

25

1
2 CHAIRPERSON MAISEL: [interposing] Well,
3 again, you're saying altered. Altered is suspicious.
4 It depends on how you-- what words you use.

5 AMY LOPREST: I mean, I think it-- yeah,
6 I think the question is, you know, what is changed on
7 it. I think that allowing auditors to have some--
8 being able to look at the documents and make
9 judgements is important. Once you put in the law
10 that it's okay to correct, it gives the candidate who
11 is not just correcting a defense for when if the
12 audit wants to question it. So, we question, you
13 know, this person who really did not in my example.
14 Your contributor really didn't-- only gave you 10
15 dollars, and now you added an extra zero, and it
16 looks corrected. The question is, when we question
17 that person, the candidate about that, and they say,
18 "Well, the law allows me to correct it." Then what--
19 they we're kind of--

20 CHAIRPERSON MAISEL: [interposing] Well,
21 but that's as a result of an audit. But let's say a
22 week later in going over the papers they realized
23 that they made a mistake, would it be okay to correct
24 it then?

1
2 AMY LOPREST: I'm not sure if we're
3 talking about the same thing, so maybe I'm maybe I
4 don't-- I'm not understanding your question.

5 CHAIRPERSON MAISEL: Yeah. No, I mean,
6 how fast does someone have to correct a mistake? I'm
7 talking about--

8 AMY LOPREST: [interposing] Well, right
9 now what would happen in the case that I just gave
10 you-- so we-- you send in that contribution card. Our
11 audit staff asks you a question. Like, we would
12 maybe-- we would invalidate that contribution from
13 matching if you claimed for match, and say it's
14 invalid because the contribution card seems to be
15 changed, and then the candidate has an opportunity to
16 respond to that and say no, this is really the
17 contribution, provide-- here's a letter from the
18 contributor. Here's another contribution card signed
19 by that contributor, and then that contribution would
20 move forward to being validated for matching funds.

21 CHAIRPERSON MAISEL: Okay, thank you.
22 Councilman Cohen?

23 COUNCIL MEMBER COHEN: Thank you, Chair.
24 First let me just say, you know, in your testimony,
25 like, I don't think that the Board is political in

1
2 any sense of favoring any candidate over another
3 candidate, and I certainly am not afraid that you're
4 going to somehow punish me for whatever takes place
5 here today. So, I'll just get that out of the way.
6 I have great confidence in both of those statements.
7 You testified in 2009 that 59 percent of all
8 candidates for City Council were assessed no
9 penalties. First, do you know how many candidates
10 there were? Does that mean people who-- were all
11 those candidates participating in some way with the
12 Campaign Finance Board? How many and were they all
13 participating?

14 AMY LOPREST: I'd have to get-- break
15 down that statistic exactly. I would have to get back
16 to you. I think it is all candidates were City
17 Council, but again, 90 percent-- about 90 percent of
18 candidates for City Council participate in the
19 program. So, but I will get you the actual numbers.

20 COUNCIL MEMBER COHEN: Of the 59 percent,
21 how many got matching funds?

22 AMY LOPREST: Again, I'd have to-- I
23 mean, I don't have the exact numbers, but I think
24 that, again, as most people are participating, most
25 candidates get matching funds, unless--

1
2 COUNCIL MEMBER COHEN: [interposing] Is
3 that true most candidates get--

4 AMY LOPREST: [interposing] Yes.

5 COUNCIL MEMBER COHEN: Most of the people
6 who run for City Council get matching funds?

7 AMY LOPREST: That's correct. I mean,
8 that number I could probably get you. We have our
9 post-lecture report and I could tell you the exact
10 number from 2013, but I can get you all the numbers
11 in a comprehensive way.

12 COUNCIL MEMBER COHEN: I think I'm mostly
13 interested in 1350 and sort of the role of OATH. You
14 know, not to belabor-- you know, Council Member
15 Rosenthal went into detail about her own experience,
16 and I will say, you know, my experience as a
17 candidate and it's obvious, everybody knows, like I
18 had a relatively easy time with the Campaign Finance
19 Board. I have a great candidate liaison here who was
20 very helpful, but I have to say for somebody who gave
21 me a lot of money, I don't feel really good about the
22 Campaign Finance Board, and I found the experience of
23 dealing with them, with the Board, very frustrating,
24 I guess. And I think one of the reasons why I had
25 such a relatively clean experience is one, I'm

1
2 knowledged-- I was a treasurer at one point way back
3 in the day, and I'm an attorney, and Jack can tell
4 you, I spend an inordinate amount of my own personal
5 time making sure that every "I" is dotted and every
6 "T" is crossed to make sure that we-- that I don't
7 have a problem, but I don't think a layperson,
8 somebody who's interested in running for City Council
9 can say, "Hey, I'm going to run for City Council. I'm
10 going to register with CFB. I'm going to get these
11 matching funds." I think it is grossly naïve, and I
12 think that the current regime has essentially
13 enforced, you know, a whole professional class of
14 people who are required to manage your CFB work,
15 which I find very disheartening, and I don't think it
16 was the-- I think it was-- that's in sort of
17 contradiction of the point of the program, I think,
18 and I wonder if we're just sort of moving deck chairs
19 on the Titanic, if we totally have to professionalize
20 getting the matching funds. And one of the things
21 that I think that might be helpful is if the Campaign
22 Finance Board was limited to identifying violations
23 but was not-- maybe was separated from the roll of
24 enforcement, which I think 1350 is sort of a step in
25 that direction. I'm curious if you think that maybe

1
2 it might ease the burden on the Board and also might
3 improve your relationship with the user if you didn't
4 have-- if you weren't actually involved in, you know,
5 the accusation and then assessing the penalty.

6 AMY LOPREST: The-- I guess, I mean, we--
7 candidates now have absolutely the-- as I was just
8 discussing with Chair Maisel-- absolutely have the
9 right to bring their violations to be heard by the
10 Office of Administrative Trial and Hearings and have
11 a formal proceeding. I think that contrary to your
12 idea of creating a professional class of people to
13 help, I think that actually would make those layers
14 much more happy because I don't see-- I think while
15 many candidates appear before the Board, as I said,
16 by themselves or with their treasurer who are not
17 professionals, if you are served with an official-
18 looking what looks like a civil complaints, that's
19 you know, filed in court, I imagine then that would
20 mean that you would feel very much constrained to
21 appear by yourself, that you would need to get a
22 lawyer to file a formal answer whereas the responses
23 that we get from candidates are often very informal,
24 and that they would-- you know, have to take
25 testimony and have a formal trial. I mean, I'm a

1 lawyer, and I would not appear before an
2 administrative trial hearing without another attorney
3 present, and I just think that that, you know,
4 pushing people that is probably antithetical to your
5 concerns about creating a professional class of
6 consultants. On the other hand, you are correct. We
7 should do better to make the communications clearer.
8 Every time we try to make the communications both, we
9 have candidate services that help the candidates, but
10 also trying to make the audit communications clear,
11 more focused on real issues. As I said, we undergo
12 and are undergoing an entire review of our audit
13 standards to make sure that we're focusing on things
14 that are riskier and making those communications
15 clearer. I think that if in your-- many people--
16 many candidates only have the opportunity to see one
17 set of communications. Now, no one likes to be
18 audited, obviously. I mean, the word "audit" is a
19 kind of scary word, and I think though if you
20 compared the communications that we sent in past
21 election cycles to the ones we sent in 2013, I do
22 think that they're clear. They have better guidance
23 of how to respond. That's not saying that they're
24 perfect. There's always room for improvement, but I
25

1 do think that we are getting better. Again, most
2 people don't have the opportunity to see, you know,
3 multiple election cycles, but I do think that even in
4 valid matching claims report which is kind of the
5 first, you know, interaction many candidates have
6 with the board is much clearer. We re-named all of
7 the vio-- the potential invalid reasons to make them
8 clearer. Which ones are documentation issues?
9 Which ones are reporting issues so that candidates
10 can really have a better sense of what they need to
11 do to fix the problems?
12

13 COUNCIL MEMBER COHEN: Well, I'm-- I
14 mean, people will go fight tickets all the time
15 without an attorney. there are methods of
16 adjudication I think that don't have to be as formal
17 maybe as-- and I have to be perfectly honest, I don't
18 think I've ever appeared before-- I'm not sure if
19 I've ever appeared before OATH or not, and I don't
20 know exactly how formal the proceedings are, but I
21 wonder if there isn't another way that we could
22 adjudicate campaign finance violations, but putting
23 it under a-- in a separate house, which I think would
24 give candidates and users of the program ultimately,
25 and again, I-- you know, I think that the program's

1 goal is to encourage people to run, and I'm in favor
2 of that, but I found that, you know, dealing with the
3 Campaign Finance Board with under sort of the
4 constant threat of financial violation to be not a
5 good way to proceed, and it didn't make me, you know,
6 feel like it was collaborative. Like, the Campaign
7 Finance Board wants people to participate. They want
8 people to get the matching funds. They want everyone
9 to, you know, have a good experience with it, and I
10 didn't feel that way, and I'm wondering if there
11 couldn't be some kind of-- like, again, by separating
12 that leg of it or that arm of it from the Campaign
13 Finance Board if there isn't a better way to sort of
14 make the experience more positive.

16 AMY LOPREST: Again, I mean, that is one
17 of the reasons why the adjudicative and the
18 investigative functions of the Board are separate,
19 and it's one of the reasons why the Board is an
20 independent, non-partisan body. So, but it is
21 something to think about. I don't think that this
22 legislation necessarily accomplishes the goal that
23 you're working towards, though. I do have the answer
24 to your question. So, actually, so in 2009 we
25 audited 179 council campaigns, and 105 had no

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2 penalties, and 93 percent of the candidates in City
3 Council in the primary participated in the 2009
4 election.

5 COUNCIL MEMBER COHEN: Could I just-- if
6 you know, if you have it there. Of the 59 percent do
7 you know how many that were-- got matching funds?

8 AMY LOPREST: That we don't know. That I
9 have to look.

10 COUNCIL MEMBER COHEN: Well, okay, you'll
11 get that to me?

12 AMY LOPREST: I will get that, yes.

13 COUNCIL MEMBER COHEN: I'm very
14 interested in that because I wonder if it's a little,
15 if it's somewhat-- in other words, if there's a much
16 lower chance of getting fined if you don't get the
17 matching funds. I'd like to know that.

18 AMY LOPREST: I mean, I would point out
19 that, you know, through the enforcement proceedings
20 that have gone through the Board through the 2013
21 election, you know, there are many campaigns that
22 are, you know, large campaigns, you know, for
23 borough-wide office or higher that have gone through
24 the program without any penalties assessed. So, it
25 is possible.

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2 COUNCIL MEMBER COHEN: Thank you for your
3 testimony.

4 CHAIRPERSON MAISEL: You know, there are
5 some city violations issued to parking violations,
6 for example, that the Department of Finance is the
7 enforcers and also the person, the group that decides
8 what the penalty is. The people who are the
9 administrative law judges who determine that
10 certainly have an interest in making sure that as
11 many of the violation are upheld because otherwise
12 they would be in jeopardy of not being called back as
13 administrative law judges, and I guess that's the
14 sense I get from Councilman Cohen's position. If you
15 are the ones who are assessing the violation, then
16 you institutionally have an interest in that the
17 violation is upheld, and even if you give a lesser
18 violation, which makes the candidate happy because
19 they get away with-- I won't say. That's a bad term.
20 They're able to escape with a lesser penalty but
21 nevertheless the Campaign Finance Board has an
22 institutional bias towards trying to make sure that
23 their work did not- was not done for nothing, that
24 there is a penalty. They felt that there should be a
25 penalty, but not necessarily in the best interest of

1 the justice or the candidate. There is that
2 institutional bias. Could you commend on that?

3
4 AMY LOPREST: As I said, I mean the--
5 that's part of the reason why we-- you know, we have
6 the operation of the adjudicative staff, you know,
7 people who are working on the investigative side so
8 that they don't have the investment in assessing that
9 penalty. Again, the penalties as published on our
10 website, a lot of them are akin to parking
11 violations, and I understand. Who among has not
12 parked illegal once or twice in their life.

13 CHAIRPERSON MAISEL: Not me.

14 AMY LOPREST: You know, and gotten, you
15 know, a fine and, you know, I know if I park
16 illegally, and I know that I'm wrong, I don't contest
17 it, and I think that, you know, many of the penalties
18 and the violations are akin to that. You know,
19 you've taken one over-the-limit contribution.
20 You've-- you know, that-- and the penalty is well-
21 established. You field your disclosure statement a
22 little bit late. You know, the penalty is well-
23 established, so you accept that. So, I think that a
24 lot of the penalties that go forward are of that
25 nature so that there isn't much. And again, I can't

1
2 help but reiterate that of course we want to try and
3 do it better, make sure that we are only focusing on
4 things that are important. And but again, in that
5 the communications are clear and easy to understand,
6 but I do think that we do have a very fair process
7 now.

8 CHAIRPERSON MAISEL: Does the public have
9 a right to know which audits have not been completed?

10 AMY LOPREST: Well, because the candidate
11 has--

12 CHAIRPERSON MAISEL: [interposing] is that
13 part of the public record?

14 AMY LOPREST: We publish the audits on
15 the website, but I guess the candidates are still
16 responding and for sometimes personal, sometimes for
17 significant issues, and so we don't say who's audits
18 are not do because the candidates still have the
19 opportunity to be responsive to the issues of that
20 aid

21 CHAIRPERSON MAISEL: Okay, thank you.
22 Council Member Kallos?

23 COUNCIL MEMBER KALLOS: Good morning.
24 Afternoon, sorry.

25 CHAIRPERSON MAISEL: You passed morning.

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2 COUNCIL MEMBER KALLOS: So, want to thank
3 you for 184,800 dollars in public funds, and I would
4 just say that that allowed me to be Council Member
5 Rosenthal, one of the top 10 folks for small dollar
6 contributions in 2014, and I think that is a sort of
7 competition. We want to promote against Council
8 Members where we are seeing who can get the most
9 small dollar contributions, and in fact I've
10 introduce legislation that'll allow people to run for
11 office solely on small dollar contributions of less
12 than 175 dollars. So, I wanted to focus on similar
13 questions to previous. Specifically I have questions
14 about Introduction number 1358, not-- yeah, 1358.
15 The Administration's testimony by Henry Berger
16 indicates that he does not believe that the Campaign
17 Finance Board would have the same challenges as we
18 see on the state. So, I guess if we pass Introduction
19 1358, how likely will members be able to use these
20 funds for expenditures to facilitate, support or
21 otherwise assist in the execution or performance of
22 their duties in public office, and would that allow
23 some of the same abuses we've seen on the state level
24 who are using it for leases, who are using it for
25 country clubs, for using it for other items that

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2 people might use in the natural course of doing their
3 business if we drive our car to work every day.

4 AMY LOPREST: Well, this bill is one that
5 we had some communication with the staff about. It
6 is their-- the bill would allow these kind of money
7 to be spent, not public money because they wouldn't
8 be qualified campaign expenditures to be spent on
9 those. It is in a section of the law that has a list
10 of similar things that you can spend campaign money
11 on that is-- that says that they're presumptively.
12 So there is some room for the board to question
13 things that appear not to be for their campaign or
14 for these purposes. There is also a separate list in
15 the law of things that are presumptively not campaign
16 expenditures that include similar things that are
17 personal expenses. So, I think the Board, I mean,
18 again it's impossible to know in, you know, looking
19 into the future what would happen or what people
20 would spend the money on, but you know, I think that
21 there is some ability in the language of the law for
22 the Board to work on enforcing those, that provision
23 to prevent some abuses. One thing that would be
24 certainly happen is that there would be less public
25 money to return. You know, Council candidates often

1
2 have money left over after the end of the election,
3 and that money according to the law is presumptively
4 public money that needs to be returned to the public
5 fisc. We have very rigid rules on what that money
6 can spend post-election, primarily the biggest one is
7 to respond to post-election audit but also to wind
8 down your campaign which sometimes takes some time.
9 And presumptively if this money is spent, it's not
10 spent on your campaign, but it's spent legitimately
11 under this law, there would be less money left over
12 at the end of the election.

13 COUNCIL MEMBER KALLOS: You also in this,
14 in your comment, which I'm not sure that it got read
15 into the record, you said, "Allowing incumbents to
16 spend campaign funds on functions related to the
17 elected office would exacerbate inequality between
18 office holders and wealthy districts and those from
19 poor neighborhoods allowing good fundraiser to both
20 [sic] enhance services to their constituents, though
21 expenditures support the duties of public office
22 would not be qualified uses of public funds. The
23 bill would mean that participating campaigns who make
24 these would have fewer funds." So, yeah, you said

25

1
2 that piece, but if you could explain why you believe
3 this would further inequities between districts.

4 AMY LOPREST: Well, and from districts
5 it's easier to raise money, so those campaigns are--
6 I mean, right now not all the public funds are 55--
7 paid out at 55 percent of the spending limit.

8 There's no limit on the amount that you can raise.
9 However, there is a limit on the total amount that
10 you can spend. So, candidates who are better
11 fundraisers have more money, and often those are from
12 districts where it is easier to raise money, and
13 that's what I meant by that.

14 COUNCIL MEMBER KALLOS: With regard to
15 Introduction 1356, tell me if you can explain the
16 difference between how transfers between campaigns
17 happen, between participants and non-participants.

18 AMY LOPREST: Well, the requirement
19 currently is that non-participants are transferring
20 into a participating account are required to get a--
21 they can transfer money. Again, it has-- it's not
22 matchable. It has to be-- meet all the requirements
23 under the law, the contribution limits, the
24 contribution prohibitions, and also non-participants
25 need to get a state permission or a statement from

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2 the contributors that comprise that transfer allowing
3 them to transfer that money from them to the new
4 election, acknowledging that they know that money
5 that they gave for a previous election is now going
6 to be used for a different election.

7 COUNCIL MEMBER KALLOS: Would non-
8 participants have more money left over after an
9 election than participants, and why is that?

10 AMY LOPREST: Well, I haven't done-- I
11 mean, again, this is part of the reason we haven't
12 done a whole-- a lot of study. We haven't had a lot
13 of time. I guess some non-participants have more
14 money. Some non-participants have less money. It's
15 hard to know, but--

16 COUNCIL MEMBER KALLOS: [interposing] But
17 participants have to make the public funds--

18 AMY LOPREST: [interposing] But
19 participants have to repay their public funds. So
20 they would, you know-- so to the extent that they
21 have money left over, they again, as I said before,
22 would have to repay the public funds. So, they-- up
23 to the amount of public funds they received. So,
24 yes, I mean, just seemed likely and I just don't want
25

1
2 to say for sure that public-- that they would have
3 less money.

4 COUNCIL MEMBER KALLOS: And does the
5 Campaign Finance Board support war chests or oppose
6 war chests?

7 AMY LOPREST: We think that war chests
8 are not a good public policy. I think that, you
9 know, again, the purpose of the program is to ensure
10 small donors devoid the perception and appearance,
11 the actual perceived corruption that large
12 contributions give. So, the purpose of the public
13 matching funds program is to encourage small donors
14 to give contributions.

15 COUNCIL MEMBER KALLOS: And so, do war
16 chests make it harder for folks to challenge
17 incumbents?

18 AMY LOPREST: I mean, that's a political
19 calculus that I, you know, not being a politician am
20 not-- don't feel completely qualified to make an
21 assessment of that. I do think that, you know, it's
22 certainly touted, you know, that people have a lot of
23 money left over to spend on their campaign. That
24 could be viewed by potential opponents as a
25 deterrent.

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COUNCIL MEMBER KALLOS: And for-- if folks who are running for the Office of Mayor, they would need to raise-- they would receive a public funds maximum of about 3.8 million dollars for a race that was capped at 6.97 million dollars. So, is there a benefit to having 2.4 or 2.5 million dollars that you can roll over from one campaign into another?

AMY LOPREST: I mean, I guess that's a rhetorical question. I mean, obviously you don't have to raise that money. That's, you know, I assume that is the point you're getting at.

COUNCIL MEMBER KALLOS: Just that I think in response to the Administration, there's a significant amount of money that is not matchable that is required to fill the difference between the 55 percent public match and the 15 percent raise in contributions of under 175 that campaigns need to have. So, there is that, and has I guess-- in so doing, is there inequity here between City accounts and State? So this allows folks who are currently in City offices to still be able to roll without permission, but state accounts can't do that.

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2 AMY LOPREST: That's correct. I mean,
3 the law only deals with cabinets who are rolling from
4 a City account to a City account.

5 COUNCIL MEMBER KALLOS: So, this still
6 pro-- so, this doesn't provide-- this doesn't make it
7 easier for somebody fronting from Assembly or Senate
8 for City Council or from Congress or Mayor.

9 AMY LOPREST: That's correct.

10 COUNCIL MEMBER KALLOS: Okay. And I guess
11 one other question just on the Doing Business
12 Database, how does the current Doing Business
13 Database work? So, if a candidate accepts a
14 contribution from somebody, in January of 2016, and
15 the person is not doing business with the City, and
16 they give a max check of 2,750, and then a couple
17 months later that person begins doing business with
18 the City before the 2017 election, so they end up
19 doing business in March. Does the candidate
20 currently have to return the overage over 250? So
21 they would have to re-- do they currently have to
22 return 2,500 dollars?

23 AMY LOPREST: No, it's based on the date
24 that you appear in the Doing Business Database.
25 Although the definitions in the law provide for

1 certain kinds of-- look back is the wrong way. But
2 it's like if you're bidding on a contract. So, you
3 know, if you put in the bid in January, you would be
4 in the Doing Business Database even if you only got
5 that contract in March or April. But only-- the date
6 of the contribution, if you're not in the Doing
7 Business Database on that date, your contribution is
8 only limited by the regular contribution limit.

9
10 COUNCIL MEMBER KALLOS: Thank you.

11 CHAIRPERSON MAISEL: Once a candidate is
12 re-elected for a second term and now is term limited,
13 can they raise funds for the various functions they
14 may have in their district?

15 AMY LOPREST: I'm not-- if you're not
16 running again--

17 CHAIRPERSON MAISEL: [interposing] Well,
18 you're term limited and now you decide to set up your
19 own fund for your district to do the kinds of things
20 that Councilwoman Rosenthal would like to do and
21 others would like to do on behalf of their
22 constituents, is that legal?

23 AMY LOPREST: Again, I think that that's--
24 - that would be more of conflicts issue. If you're
25 not running for office, we regulate candidates who

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2 are running for office. So if you're-- if you create
3 another political committee, say you're going to run
4 for a state office, then that wouldn't be under our
5 jurisdiction. I don't know if you could create a
6 whole separate fund. I guess that's part of what--

7 CHAIRPERSON MAISEL: [interposing] Well,
8 you could run--

9 AMY LOPREST: [interposing] I think that's
10 part of--

11 CHAIRPERSON MAISEL: [interposing] If
12 you're running for--

13 AMY LOPREST: what this law is-- Like,
14 1354 is attending-- 1345 is attending-- intending to
15 deal with.

16 CHAIRPERSON MAISEL: I mean, you couldn't
17 decide to run for the Assembly after you've been term
18 limited in the Council, set up a campaign fund and
19 then use that money for your City Council to enhance
20 your City Council position even though it may, you
21 know, accrue to your future political ambitions.
22 That's legal, right?

23 AMY LOPREST: I mean, that would be, yes,
24 because I mean that would be regulated by the State
25 Board of Elections, and while I'm no expert in that,

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2 and I mean, understanding is that it's, you know, you
3 can spend your money on anything but a personal
4 purpose.

5 CHAIRPERSON MAISEL: Could you explain to
6 me what the evil is if there is not complete equity
7 between wealthy districts and those members who
8 represent poorer neighborhoods so that you can't use--
9 - your position is that you don't want the members
10 from a wealthy district to be able to use funds to
11 enhance their district because it makes things
12 unequal. Could you explain what the evil is in
13 there?

14 AMY LOPREST: I'm just pointing out that
15 it could lead to that inequity. I mean, I--

16 CHAIRPERSON MAISEL: [interposing] So,
17 what is the evil?

18 AMY LOPREST: That if you are able to
19 spend-- you know, a candidate in a wealthier district
20 can spend on services that another district couldn't.
21 You know, their constituents get different quality of
22 services at different times--

23 CHAIRPERSON MAISEL: [interposing] So,
24 where is the evil in that? So, what I'm trying-- I'm
25 having difficulty understanding. So, if you can

1
2 better the constituents in your district and other
3 dis-- I mean, life is not fair, but if you have that
4 ability to enhance your own constituents, I don't
5 know where the evil is in that.

6 AMY LOPREST: I mean, I'm just pointing
7 out that it could lead to that disparity. I mean, if
8 you don't believe that that's a problem, then--

9 CHAIRPERSON MAISEL: [interposing] Okay,
10 alright. Councilman Lander?

11 COUNCIL MEMBER LANDER: Thank you, Mr.
12 Chair. Thank you, Amy. It's good to have you here,
13 and I said it before at the beginning, but I'll
14 reiterate it here. You know, I'm a big fan of the
15 CFB. I appreciate the work that you do, and I say
16 that as someone who has stood by and fought to
17 strengthen the law, but also as someone who
18 challenged my 2009 audit and you know, was pleased
19 that I was able to get the board to overturn the
20 staff recommendation for a violation. So, I felt
21 fairly treated in that regard, and I've never felt
22 any retaliation. We've been able to work well
23 together. You know, I do think in a funny way that
24 just the tenor of the back and forth in the testimony
25 and the questions actually reflects the challenges

1 that we face. I mean, I think a lot of what you are
2 saying about the need for the agency to be able to
3 uphold the law in strong manner is true, but I got to
4 tell you that like Council Member Rosenthal and
5 Council Member Cohen are the kinds of elected
6 officials who work hard to follow the rules and do
7 the right thing, and they are not, you know. So, I
8 hope you hear and the public hears that like earnest
9 elected officials, and I know maybe the public
10 doesn't anymore believe there are such a thing,
11 trying hard to follow the law and comply, find it
12 challenging, and so I don't think it's surprising
13 that as we prepared internally to strengthen the law,
14 and I think we should just be straightforward here,
15 like some of us have been pushing internally to get
16 the package of bills that you guys recommending
17 coming out of the 2013 election cycle moved forward,
18 and those strengthen the CFB and provide some
19 additional restrictions on what candidates can do.
20 And then in addition to that whole package that I
21 still hope will move forward, we want to go even
22 further on the conflicts side that is obviously is
23 not at the CFB under 1345. You know, it's just not
24 that surprising that a very substantial number of the
25

1 members of the City Council raised this set of issues
2 that we're taking about today, and again, those are
3 people who overwhelmingly are trying hard to do the
4 right thing and follow the law and believe in the
5 rules and guidance of the Board. So, we got to find
6 our way through the details of it. I think it's
7 really appropriate on both sides. Like, I want you
8 guys to be hawks, good gov-- and watchdogs, and I
9 think it is important to pay attention to the
10 candidates who ae using the system and trying to help
11 make it work in a way that candidates can function
12 within. So, that's broad. I'm going to just focus on
13 two bills. First on, obviously, on-- I've lost the
14 numbers-- on 1358, which is the bill that we've
15 talking about here. So, I just want to start by
16 this. If a candidate-- let's just use me, I guess.
17 If I wanted outside of a public event that I was
18 sponsoring, to set up a campaign table and give away
19 delicious food so long as I structured it with my
20 campaign banner and put campaign stickers on all the
21 food, would that be a permissible use of my CFB
22 funds?
23

24 AMY LOPREST: Yes, if it's a campaign
25 event, yes.

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2 COUNCIL MEMBER LANDER: Well, it's a
3 campaign event because I set up a table up on the
4 sidewalk outside of a public event that I also happen
5 to be sponsoring. So, I'm campaigning.

6 AMY LOPREST: Yeah.

7 COUNCIL MEMBER LANDER: I have to have my
8 campaign staff at the campaign table and my public
9 staff inside, and I could give them like TV dinners,
10 deli-- that they could bring inside to the event, but
11 it's not a permissible use of my campaign funds to
12 pay for pizzas inside that same public event
13 currently?

14 AMY LOPREST: I mean, again, this bill is
15 not one of the ones that we have the most issue with,
16 and so I mean, and I do think that there's been
17 improvements of it. I mean, I think the two
18 outstanding comments that we have, you know, again
19 about the disparity and also the reduction--

20 COUNCIL MEMBER LANDER: [interposing] I
21 just-- my point in the illustrating--

22 AMY LOPREST: [interposing] Yes, yes.

23 COUNCIL MEMBER LANDER: I was going to do
24 the same with the website. Like, I can set up a
25 campaign website and email my constituents every

1
2 single day with all the great things I did, but under
3 the current law, I can't pay for a public serving
4 website that helps them get better public service.

5 So, I just, I question whether this law, the change
6 in the law exacerbates the inequity. The inequity

7 exists. A campaign that can raise more money, a

8 candidate that can raise more money can use their

9 campaign funds in all kinds of ways that you could

10 say are not fair right now, and that is the power of

11 incumbency to be able to fund raise and use your

12 campaign funds if you're not, you know, and you could

13 do that in unlimited ways if you're not participating

14 in the system. So, I grant that inequity exists.

15 That is an inequity between incumbents and

16 challengers to be short and between rich districts

17 and poor districts, but changing the law so that you

18 could offer the food on the inside or the public

19 meeting instead of the outside of the public meeting

20 I don't think expands inequity. I just think it is a

21 common sense thing that will actually help some of

22 us, you know, serve our constituents.

23 AMY LOPREST: I mean, again, you know, we

24 are-- you know, this is part of the issue with the

25 Committee for One New York. I mean, we're the

1
2 Campaign Finance Board. We regulate campaigns, and
3 so that's how we've been regulating the law.

4 COUNCIL MEMBER LANDER: I hear that. And
5 you know, I read the common cause testimony which
6 suggests setting up some sort of office holder
7 account into which people could raise funds that they
8 could use for ancillary purposes, not unlike-- we
9 don't have, none of us have-- none of the Council
10 Members that I'm aware of have accounts like some of
11 the Borough Presidents and the Mayors have that allow
12 them to do exactly this sort of thing, but I don't
13 think it's a great idea that we start doing more of
14 that. So, I don't want to propose the creation of
15 office holder accounts. I just want to be able to pay
16 for the food at the participatory budgeting meetings
17 that my public-facing website with a few of my
18 campaign. So, anyway, and then the other-- the bill
19 that I will just ask a little more about is 1364,
20 this executive session issue, because I guess I want
21 to understand better. To me, you guys do a good job
22 of making your case. I mean, you prepare the staff
23 recommendation. They're very thoughtful. Lots and
24 lots of work go into them. There's an enormous
25 amount of back and forth with the candidates, lots of

1 opportunities to provide all the information. Then
2 you have the public hearing and there's more
3 questions and answers, and you have smart people on
4 your-- on the Board. I mean, you don't appoint them,
5 so but in my ex-- so, I'm not sure I understand the
6 harm. Like, I guess I don't think-- it's hard for me
7 to really see where there would be a problem if they
8 took all of that information. You've obviously
9 communicated with them extensively, given them the
10 investigation, for them to go into executive session,
11 and I don't think you'd do anything in that session
12 that is inappropriate, but I see why someone could
13 feel it's like a little bit like having the
14 prosecutor and the jury get together in the room
15 while you're still sitting out at the table, and so
16 it's-- I think that's appearance. It did not happen
17 in my case. I have no reason to believe it has ever
18 happened and that you would do anything other than
19 provide fair and honest feedback. But help me just
20 understand the harm better, because it feels there's
21 a fair-- it does feel fair to let them, having heard
22 from you and having heard from the candidate, go make
23 their decision.
24

1
2 AMY LOPREST: Well, I guess the whole
3 purpose of having a separation of adjudicative and
4 investigative is to avoid that. So, I'm on the
5 adjudicative side. The people who go-- the only
6 people who are in that-- in the executive session
7 invited by the Board as pursuant to the open meetings
8 law, are people who are on the adjudicative side.
9 So, we have not been involved in the preparation. I
10 mean, we get-- I get the notice of violation. I can
11 see the notice of violation when it's sent to the
12 candidates. You know, that is-- that's the point.
13 You know, I'm on that side to make sure that there is
14 no-- I'm not-- I don't know exactly what was done in
15 the investigation, you know, except for what the
16 Board has, what was-- you know, or what, you know, a
17 candidate said in open session. The Board should be
18 able to consult, like the Open Meetings Law allows
19 them, anyone they need in their deliberations, and so
20 I think that the board themselves would say that they
21 would feel constrained from, you know, as I said
22 before. Many of the candidates who come are talking
23 about the particular circumstances of their campaign,
24 what happened, what-- you know, oh, you know, this
25 unfortunate event happened, you know, to my treasurer

1 or whatever asking for leniency. The Board would
2 feel constrained to-- they probably-- to go against
3 and be worried that they would be doing something
4 that was arbitrary if they didn't have the advice of
5 knowledgeable staff to ask questions about whether or
6 not what they-- you know, the mercy that they were
7 trying to give to the candidate was, you know,
8 commensurate with the rest of the process.

10 COUNCIL MEMBER LANDER: But couldn't they
11 just do that in public? Like, I mean, I totally
12 agree the Board needs the ability to ask you for your
13 professional legal guidance 100 percent, I just-- it
14 seems to me any question they would have-- I mean,
15 you've made the case. Any question they would have
16 about the interpretation of the law, those all seem
17 to me like things that should be able to be done in
18 public. It's just hard for me to imagine what it is
19 that they could seek in private that it wouldn't be
20 appropriate to have done in public, and again, while
21 I really-- I mean, I'm not just saying this, I have
22 genuine admiration and respect for you and your
23 fairness, even if you're on the adjudicative side. I
24 mean, you're the Executive Director. You supervise
25 the investigative staff. Of course, any normal human

1
2 being would be on the side of their staff's
3 recommendation. That's just how it works. So, any--
4 help me understand one thing, something that the
5 Board needs in private that you couldn't give them in
6 public.

7 AMY LOPREST: Well, I want to deliberate
8 about the-- what the candidates have said, and I'm--
9 you know, again, I don't want to violate what they've
10 said in private. I mean, it is I think that they
11 need to be able to talk about what the candidate has
12 said and whether there's--

13 COUNCIL MEMBER LANDER: [interposing] I
14 understand why they need to deliberate in private,
15 but I don't understand what they-- what information
16 they need from the staff in private.

17 AMY LOPREST: I guess, you know, to know
18 whether or not this is-- if they-- you know, so say
19 the recommended penalty is 100 dollars for whatever,
20 and they want to-- you know, the candidate asks for
21 mercy. You know, that happens. Just, you know,
22 please, you know, be merciful and give me a reduction
23 in penalty, and that happens. And I guess they, you
24 know, to know-- what you wouldn't want to discuss in
25 public all the other cases that, you know, maybe they

1
2 have-- you know, had mercy on or whether this is
3 deserving of mercy, or you know, whether this is like
4 another case. I mean, those kinds of deliberations
5 that would happen.

6 COUNCIL MEMBER LANDER: Okay. That seems
7 to be like something that you could indeed. I mean, I
8 agree you might not use the names in public, but you
9 could certainly go through the kinds of decisions
10 that have been made in the past to reduce penalties
11 in comparable cases. Anyway, I don't want to belabor
12 this point. I appreciate your answers here and the
13 dialogue with us as we work our way through this this
14 package. Thank you. Thank you, Mr. Chair.

15 CHAIRPERSON MAISEL: With regards to C-
16 SMART, can you describe what the level of cooperation
17 you would need from New York State Board of Elections
18 in order to make the C-SMART disclosure software
19 compatible?

20 AMY LOPREST: Well, we worked very hard.
21 You know, the C-SMART, when we developed it, when we
22 first developed it which has been a number of years,
23 has-- we've always attempted to have it be
24 compatible. Actually C-SMART existed as an
25 electronic system before the state had an electronic

1 system. But the-- we are-- the state is in the
2 process of revamping their entire electronic
3 disclosure state software, and we check in with them.
4 I pay, you know, once or-- every other month or even
5 once a month to see how that's going. We have not
6 gotten a whole lot of feedback. In order to make sure
7 that our software complies, we have that legal
8 requirement. They have no such similar legal
9 requirement to make sure that their software meets,
10 you know, matches with what we are requiring. There
11 are differences in the disclosure requirements that
12 are in the law, both in the Campaign Finance Act and
13 in the State Election Law that what's required to be
14 disclosed. So, we need to have a lot of cooperation
15 with them to make sure that the version of C-SMART
16 when they issued that we have an existence when they
17 issue their electronic disclosure software which had
18 at one point been told to us that would be completed
19 in the middle of August 2017, which is right in the
20 middle of the 2017 election to make sure that our
21 software is compliant with that so that candidates
22 won't have any gap in their disclosure.

24 CHAIRPERSON MAISEL: So when we talked
25 about trying to make the system easier, particularly

1
2 for those people who have never run for office or how
3 are not "political" but their average person who
4 thinks that they would like to get into this, and the
5 fact that CFB and the state is not compatible
6 provides another burden. Am I correct about that?

7 AMY LOPREST: well, they are currently
8 compatible in all but one technical issue, and that's
9 in the reporting of advances, and that's one of the
10 places where the way the state requires advances to
11 be reported is in conflict with the way that the CFB
12 requires advances to be reported. But in every other
13 respect right now, they are complied. You can take
14 C-SMART and file your state Board of Elections
15 required filings. What we're concerned about in this
16 law is that the state has said that they are
17 endeavoring to revise their disclosure software, and
18 we have--

19 CHAIRPERSON MAISEL: [interposing] Have
20 they told you how?

21 AMY LOPREST: What?

22 CHAIRPERSON MAISEL: Have they told you
23 how they're going to do it?

24 AMY LOPREST: No, I mean, we've spent-- we
25 had a long meeting with them when they started the

1
2 idea of revamping their software to give them some
3 feedback on best practices and how to do it, and we
4 have been in contact with them, and they're, you
5 know, their-- the answer is maybe not exactly, but
6 basically they're working on it. We don't have any
7 idea exactly when it's going to be completed. As was
8 said, at one point the announced anticipated release
9 was August 2017, but anybody who's been involved in
10 the development of software knows that those
11 deadlines are often not--

12 CHAIRPERSON MAISEL: [interposing] So more
13 than likely we would not see a compatibility in that
14 area with the state until perhaps a following
15 election.

16 AMY LOPREST: Yeah, or problem with
17 compatibility. Right now, I think that there should
18 be no problem with compatibility, except in this one
19 area.

20 CHAIRPERSON MAISEL: Except for that one
21 area, right?

22 AMY LOPREST: Yes.

23 CHAIRPERSON MAISEL: Okay. Councilman
24 Greenfield you have been patient.

25

1
2 COUNCIL MEMBER GREENFIELD: Well, thank
3 you. I appreciate it. It's going to take me a
4 moment actually to remember my questions, because
5 it's been a while. I-- let me just take a step back.
6 I think sort of we're hearing two different things
7 today, both of which are equally important and I
8 think need to be recognized. The first is that
9 overall, CFB does a very good job. We believe that
10 you're the gold standard for the country and wherever
11 we go and wherever I certainly go and people ask me
12 about campaign finance, I compliment the work that
13 you do and that we appreciate that. That's the
14 forest, right? That shouldn't get lost with the
15 tress, which is you're hearing personal testimony
16 from Council Members, good Council Members who have
17 run who are telling you the system has flaws, and
18 the CFB shouldn't take the attitude that the CFB's
19 perfect, right? I think it's fair to say that none
20 of us are perfect. I mean, I imagine that's not the
21 perspective that you're taking, yes?

22 AMY LOPREST: No, I don't think I have
23 said that at all.

24 COUNCIL MEMBER GREENFIELD: Okay. No, but
25 I--

1
2 AMY LOPREST: [interposing] I completely--

3 COUNCIL MEMBER GREENFIELD: think in your
4 testimony-- what I'll point to in your testimony, for
5 example, you said the Board is accountable to the
6 public. The Board being accountable to the public is
7 what we're doing here today, right? I mean, there's
8 not an imaginary public who gets to sit there and ask
9 you questions, right? Unless I'm mistaken. It's not
10 like people can come to your hearings and they can
11 point fingers and say, "Hey, we have a question for
12 you." It doesn't really work that way, right? I
13 mean, so this is the public process where we who are
14 elected by the people of the City of New York are
15 able to engage in both oversight and change to the
16 law. And so I just feel like it's a fair point, and
17 I certainly respect the fact that the CFB does a good
18 job and the CFB is structured to be independent, but
19 every agency needs to have oversight. We're simply
20 doing what we're supposed to be doing, and to be
21 fair, we took your recommendations, right? You guys
22 came to us and said after the election we have
23 certain things we'd like to see you do. We said
24 great. You were upset after things were handled with
25 some of the Mayor's funds, and you said, "Well, we'd

1
2 such thing as an agency that can just do whatever
3 they want, and that's a good thing, and there's
4 oversight, and I think it's fair, just as there's no
5 such thing as a candidate who can do whatever they
6 want, and that's what you do, and so I just think we
7 should just respect different sides of what we're
8 trying to here today and what you're trying to do,
9 and we value your role, and I just hope you would
10 appreciate and value our role.

11 AMY LOPREST: Oh, no, of course I do.

12 COUNCIL MEMBER GREENFIELD: I just think
13 that's an important point.

14 AMY LOPREST: I mean, we've worked very
15 long for many years. I mean, the program has not
16 existed for the past 30 years without the changes and
17 improvements that the City Council has made to the
18 program over the years. I think we just disagree in
19 the actual, the timing of this because it's right
20 before the election, and in--

21 COUNCIL MEMBER GREENFIELD: [interposing]
22 Excellent.

23 AMY LOPREST: actual particulars.

24 COUNCIL MEMBER GREENFIELD: So, let me
25 talk about that. You say-- I'm reading your

1 testimony. You're disappointed that we're
2 considering these changes 10 months before folks will
3 be on the primary ballots, but you guys yourself just
4 made changes on Thursday to the rules, and that's the
5 same timeframe that we're talking about, alright.
6 So, literally this past Thursday you guys made
7 changes. You consistently make changes to the rules.
8 So why is it okay for you to make changes to the
9 rules, but not okay for the Council to make changes
10 to the rules?
11

12 AMY LOPREST: Well, again, we-- the
13 changes to the law, I mean, the way the charter reads
14 is we are to give a report after the election. We
15 made within a year of the election which we did on
16 September 1st, 2014. We made recommendations for
17 legislative changes to the law. A hearing was held
18 on those, most of those bills, on May 2nd of this
19 year. The rules that we changed are going into
20 effect, you know, according to CAPA [sic] in the next
21 few months. These laws--

22 COUNCIL MEMBER GREENFIELD: [interposing]
23 In January, I think one your rules actually is going
24 into effect in January. The rule with the
25 requirement in terms of the form, right? I mean,

1 that's a pretty quick turnaround. My point is what's
2 good for the goose should be good for the gander,
3 right? I mean, you guys are making changes right
4 now, which is fair. We're not complaining about
5 that, and so I just don't see why it's unreasonable
6 for us to make changes as well in that timeframe.
7 That's my only point. I mean, we can agree to
8 disagree. I'm just sort of-- I just want to
9 generally review the testimony. The one thing I also
10 don't understand, and I honestly don't understand why
11 there's no recognition of this is is you've heard
12 consistently from Council Members that we believe it
13 takes too long to do the audits, and in fact, what's
14 happening is that the deadlines that we set up in the
15 Council that we passed was supposed to be the minimum,
16 right? That wasn't supposed to be the maximum,
17 right? That sort of like, you know, the speed limit.
18 You can certainly drive below the speed limit, that's
19 okay, but we are saying should not go past that
20 limit. What ends up happening is that the CFB ends
21 up getting us these documents on the different steps
22 of the process at the last available time. I mean,
23 would you agree that's not really fair to the members
24 or the process and also to the fact that the Mayor's
25

1
2 Counsel pointed out today in some cases-- I'm not
3 saying you're doing this intentionally, but
4 inadvertently you're politicizing the CFB process,
5 because as the Mayor's Counsel pointed out today,
6 opponents, political opponents are able to use it as
7 an election year issue, and I think by your own
8 testimony there are 50 cases that are still
9 outstanding three years after the election.

10 AMY LOPREST: As I said before, let me go
11 back to your initial comment about the timing issue,
12 and then I'll talk about the timing of the audits,
13 about the timing of the legislation. You know, one
14 of the other concerns about the timing is, you know,
15 when we issued our rules it was part of a long
16 deliberative process within the staff, gotten public
17 comment from public, made changes based on that
18 public comment, and then issued the rules. Part of
19 the reason to the post-election report is to do
20 analysis and underrating what could be changed, how
21 it would implicate the operations of the Board and
22 make recommendations. This legislation is done on a--
23 - it's not-- it doesn't have the same level allowed
24 for time of the deliberative process to do a thorough
25 analysis of the effect of the implications of all

1
2 these bills. Getting back to the timing of the
3 audit--

4 COUNCIL MEMBER GREENFIELD: [interposing]
5 I mean, just to be fair, I would disagree with that
6 point. We passed legislation over here on the same
7 fashion consistently which is we spend literally
8 hundreds of hours researching it. Then we spend a
9 lot of hours, I think you acknowledged, talking to
10 your agency before we even dropped the legislation,
11 just to be fair, right?

12 AMY LOPREST: Yeah.

13 COUNCIL MEMBER GREENFIELD: Did our
14 counsel not speak with your counsel?

15 AMY LOPREST: Yes.

16 COUNCIL MEMBER GREENFIELD: We did that.
17 We went through the entire process. We're now
18 holding a hearing. We're going to take your
19 feedback. We're going to make changes and hopefully
20 we're going to pass legislation, and to be perfectly
21 frank, we passed legislation that's a lot more
22 complicated and I would say impactful than this
23 legislation, and so we're following a consistent
24 process. So while I think it's great that you folks
25 have a process that you've set in place that, you

1 know, allows you to do it in years, you know, we're
2 pretty good at what we do, and we do this across the
3 board, and we make major changes in the City of New
4 York following the same process, and I don't think
5 there should be a different process, honestly, for
6 the CFB. I don't think CFB's special in some sort of
7 way where, you know, we can change wholesale New York
8 City law on major issues but somehow the CFB needs
9 more time. So, we're just going to agree to disagree
10 on that, and just give you my perspective which is
11 that we're following the same deliberative process
12 that the council follows, which we think is a good
13 process, honestly.

14
15 AMY LOPREST: Okay. As far as the timing
16 of the audits, of course we would like to try and do
17 them faster. Again, you know, there is human nature,
18 once you put a deadline in people work to those
19 deadlines. We are trying to get them faster. I
20 think what the Counsel to the Mayor was referring to
21 is doing some of the work earlier, and as I indicated
22 earlier, we are trying to do that by getting
23 documentation earlier, but getting-- by doing some
24 kind of-- some of the reconciliations earlier.
25 Again, you know, once you put in a deadline, you

1
2 know, if you put it-- It will throw off work because
3 we have limited resources. We have to allow for
4 those changes, and once there's a deadline, we have
5 to redirect resources to meet those new deadlines
6 which might impact the other deadlines.

7 COUNCIL MEMBER GREENFIELD: Just to be
8 clear, because I think it's an important point that
9 you made, your annual budget is around 16 million
10 dollars a year. Is that correct, roughly, give or
11 take?

12 AMY LOPREST: Yes.

13 COUNCIL MEMBER GREENFIELD: Okay. I think
14 you're only city agency that actually has unlimited
15 resources where in a sense that you're allowed to
16 pretty much request whatever you want like you did
17 this year when you asked for 10 percent more and you
18 just get it as of right, is that correct?

19 AMY LOPREST: Well, I mean the-- the
20 Charter allows the-- requires the Mayor to conclude
21 it in his Executive Budget.

22 COUNCIL MEMBER GREENFIELD: Okay, great,
23 and we approved it, and so just to be fair, I mean,
24 just let's just be fair, there are some agencies that
25 can come in with legitimate complaint and say we

1 don't have enough resources. Your agency genuinely
2 gets every resource you need, and if you need more
3 resources we'll give it to you, right? I mean, I've
4 never-- no one's ever told me that the reason that
5 these audits are taking so long is because there's
6 not enough resources. When you guys need to do it in
7 four days, as you indicated, you do it. You do it in
8 four days, right? And so what we're saying is you
9 could do it in 30 days. I don't think that's
10 unreasonable. I think we can agree to disagree, but
11 once again, there's even a process question. When an
12 order drags on for three years, it's very difficult
13 for people to recall what actually happened, to have
14 the proof. It's not really good government,
15 honestly. It's really not, and I know that, you
16 know, we try to gloss over this issue, but we have to
17 be frank about that. This is an imperfection of the
18 agency. It shouldn't take three years to resolve an
19 audit. The fact that there are 50 audits that are
20 still outstanding, it's just unacceptable, and so it
21 doesn't take away from the fact that you're a great
22 agency, and the point is that just as how you give us
23 suggestions about how we can be better, which we take
24 all the time, and we can improve and how we take
25

1
2 feedback, I think the CFB has to be open to
3 suggestions where you can be better as well, and this
4 is honestly one of the great failings of the CFB,
5 that it takes you three years to complete an audit. I
6 mean, I'm sorry, I think we're just going to have to
7 agree to disagree on that.

8 AMY LOPREST: No, I actually do agree
9 with you on that. I mean, I do think that the audits
10 should be done faster. I completely agree with you.
11 I guess my point of not that we wouldn't be able to
12 do that. It's just that once you set a deadline here
13 for a different thing that it just means that
14 resources-- these things are going on at the same
15 time.

16 COUNCIL MEMBER GREENFIELD: We'll give you
17 more resources. We will.

18 AMY LOPREST: No, but I mean, it's-- but
19 you can't. The idea that once you are working on the
20 statement reviews, at the same time you're working on
21 the audits. There just, you know, has to be-- it
22 just may affect the timing. I'm not saying that we
23 couldn't do it. I'm just saying that you obviously
24 have the legal authority to do it. It's just that,
25

1
2 you know, there might be unintended consequences in
3 shifting of priorities.

4 COUNCIL MEMBER GREENFIELD: You mentioned
5 that as Executive Director you don't review or
6 participate in the investigative work of the audit
7 staff, neither does the General Counsel. Is that
8 perhaps a problem? Is that maybe why it's taking so
9 long for these audits to actually take place? I
10 certainly respect the fact that you're following New
11 York City law, which says that there should be a
12 separation in terms of the adjudication, and that
13 makes sense, but who's overseeing the audits, then?
14 I mean, if you're not overseeing them and you're not
15 familiar with what the audits look like, so who
16 oversees the audit process?

17 AMY LOPREST: I mean, I guess what we-- I
18 mean, obviously when we set the standards for the
19 audits I'm involved in that process, but not in any
20 individual single audit, and so we do-- I mean, I do
21 get a report on the process of the audits, the
22 progress not individual candidate's audits, but
23 because that would be intruding in the investigation,
24 but knowing how the audits are proceeding. So I am
25 regularly updated on that.

1
2 COUNCIL MEMBER GREENFIELD: Is it my
3 understanding, I just want to be clear, because it
4 was a little unclear about this, that you're saying
5 at the very minimum 41 percent of people who are part
6 of the CFB process get fined? Is that what you're
7 saying? Was that the number? Just so I understand
8 that.

9 AMY LOPREST: I think I said it in the
10 opposite way, so I'm like I'm trying to--

11 COUNCIL MEMBER GREENFIELD: [interposing]
12 Yeah, I know, I just I-- I went to law school because
13 math is not my strong suit. Just wanted to make sure
14 that was correct.

15 AMY LOPREST: I think--

16 COUNCIL MEMBER GREENFIELD: [interposing]
17 They had the math on the GMATs, but not on the LAST,
18 so.

19 AMY LOPREST: Yes, yes, yes.

20 COUNCIL MEMBER GREENFIELD: Okay, Amy,
21 don't you think it's an extraordinary number? I
22 mean, let's just be frank about that, alright? I
23 mean, and by the way to my colleague Council Member
24 Cohen's point, we certainly believe a lot of those
25 people are people who are just perfunctory, right?

1
2 You know, some yokel was thrown up on the
3 conservative line to provide a challenge and didn't
4 even, you know, spend more than like 50 bucks, and
5 obviously that guy is not going to get fined, and
6 we'd love to see the stats on how many people are
7 actually participating in the system are getting
8 fined. But I mean, doesn't that tell you something
9 about the process, right? You know, there's actually
10 a Talmudic saying that, you know, the Rabbi should
11 not actually create laws that they know that the
12 people will not be able to follow, right? I mean,
13 doesn't it sort of fall into that category of, you
14 know, you're making rules that most people, good
15 people, as you can hear by the testimony of Council
16 Members themselves, can't even follow? I mean, isn't
17 that really part of the issue and I guess the bigger
18 question over here which is what we believe the CFB
19 should be doing is encouraging people to run for
20 office. We hear from people all the time, they're
21 like, "I don't know. I can't do this. This is too
22 difficult. I need a lawyer. I need a consultant."
23 You want to talk about the advantages to be perfectly
24 frank, you know what the advantage of being an
25 incumbent is? It's that we can raise money to pay

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2 campaign finance experts and lawyers to help guide us
3 through the process so that we don't get fined as
4 opposed to first-time candidates who don't know the
5 rules and don't know the regulations and do get
6 fined, and to be perfectly frank, as you just pointed
7 out, the rules keep on changing. So, just last week
8 you changed the rules, and someone who finally
9 figured out the rules, now they don't even know what
10 the rules are. Doesn't that seem excessive to you?
11 Forty-one percent of people who participate in the
12 system get fined, isn't that a huge number?

13 AMY LOPREST: Well--

14 COUNCIL MEMBER GREENFIELD: [interposing]
15 I mean, that would be like 41 percent of New Yorkers
16 get arrested within the course of a year. That's
17 crazy. I mean, it's a lot of people getting fined.

18 AMY LOPREST: I mean, I'd say I would be
19 more inclined to analogize it to 41 percent of the
20 people get parking tickets, but--

21 COUNCIL MEMBER GREENFIELD: [interposing]
22 I don't think that's true either, by the way. I
23 don't think 41 percent of drivers get parking
24 tickets. I don't think that's the case. I really
25 don't.

1
2 AMY LOPREST: But the-- I mean, some of
3 the most common violations are for things that are in
4 the law, not that they're-- you know, you accepted a
5 corporate contribution. You accepted a contribution
6 over the limit. You didn't file your disclosure
7 statement on time. So, those are actual violations
8 of the law as codified by the City Council. So, you
9 know, so that-- I mean, yes, there are minor and
10 there's a whole provision for infractions. If you
11 only have a few minor violations there's an
12 infraction policy. The penalties for-- we do, if you
13 refund contributions,-- to say take a corporate
14 contribution, you enter it into our software as a
15 corporation. The software will flag it, say it's a
16 corporate contribution that's prohibited. If you
17 refunded that contribution right at that time you
18 would have no penalty at all. Again, you have a much
19 smaller penalty. It's in the statement reviews we
20 send you and say you took a corporate contribution;
21 you need to refund it. The penalty is much reduced
22 than if you don't refund it. So, I mean, if we do--
23 and we do have a whole staff of candidate service
24 liaisons who help candidates navigate the process,
25 both first time and experienced candidates.

1
2 COUNCIL MEMBER GREENFIELD: I hear you,
3 and once again, I think you guys do great work. I
4 genuinely admire the work that the CFB does, and in
5 fact when I've spoken recently in D.C. and people ask
6 me about the Campaign Finance System and how we can
7 improve it, and I said you have to look at the New
8 York CFB model. It doesn't mean that you're perfect,
9 and what we're doing is we're trying to repair the
10 flaws because quite frankly you didn't repair them on
11 your own. And so when there's a system where a first
12 time candidate knows they have a 41 percent
13 likelihood, and I would actually argue higher because
14 hopefully we're going to get those numbers about the
15 matching funds, and I think we'll see that those with
16 participated matching funds probably get-- have a
17 higher incidence of getting fined. That's pretty
18 scary honestly, and I think that dissuades people
19 from actually participating, and that's really what
20 we're looking to do. I think a lot of these rules
21 that we're looking at improving, many of them are
22 your suggestions and we've taken them, but part of
23 them is also we're looking at it from the experience
24 of folks who have actually run for office and have
25 complaint do us and have told us, "Hey, you know, I

1 see in the newspapers saying, "Oh, my God, you're
2 going to be able to buy a pool," you can't buy a pool
3 right? I mean, that's just absurd. I want to just--
4 because it always frustrates me when we have
5 misinformation out there. There is no way, I just
6 want to be clear, under the Lander bill that you can
7 buy a pool for your backyard, is that correct?
8

9 AMY LOPREST: I mean, that's-- when I
10 gave my answer to Council Member Kallos, I mean, that
11 is definitely-- I mean, the law gives us the tools to
12 prevent someone from doing that, yes. That you're
13 not allowed to that.

14 COUNCIL MEMBER GREENFIELD: You can't buy
15 a pool. If we changed Lander's law and we implement
16 that, you will not be allowed to buy a pool under the
17 law, and it will be illegal. Is that correct?

18 AMY LOPREST: Yes.

19 COUNCIL MEMBER GREENFIELD: that's what
20 you said in your testimony.

21 AMY LOPREST: Because you wouldn't be
22 able to say that it's for the execution of your
23 duties of your public office.

24 COUNCIL MEMBER GREENFIELD: Okay, so you
25 agree with that.

1
2 AMY LOPREST: Yes, yes.

3 COUNCIL MEMBER GREENFIELD: I'll give you
4 an example, buying a pool you would agree which is an
5 example that was cited in the newspapers, would not
6 be allowed under the Lander law.

7 AMY LOPREST: That is correct.

8 COUNCIL MEMBER GREENFIELD: Okay, I just
9 think that's-- that's an important point. And in
10 fact, it's my recollection that there was a time when
11 the CFB, I think it went back to the 90's, actually
12 exempted expenditures related to holding public
13 office from the spending cap. It was only more
14 recently that the CFB has decided that that should
15 not be part of it. I mean, is that your recollection
16 as well?

17 AMY LOPREST: I mean, very, very long
18 time ago like in the, I think--

19 COUNCIL MEMBER GREENFIELD: [interposing]
20 The 90's is what I referred to.

21 AMY LOPREST: I mean, in the early 90's.
22 I think that--

23 COUNCIL MEMBER GREENFIELD: [interposing]
24 I understand that.

25

1
2 AMY LOPREST: provision has been very,
3 very long--

4 COUNCIL MEMBER GREENFIELD: [interposing]
5 So, my point is a different interpretation. There's
6 a reasonable different interpretation of what is
7 allowed and what's not allowed. And so from our
8 perspective, we think this is allowed based on state
9 law, and we believe-- and this is a critical part,
10 that there are city laws that would prevent the kind
11 of shenanigans that we've seen in the state from
12 happening for actually happening over here. Is that
13 fair interpretation from where we're sitting? And
14 once again, it's a policy distinction. We can
15 disagree on policy.

16 AMY LOPREST: No, no, I mean, I think-- I
17 guess just to be clear, I do know that there was a
18 provision that allowed you spend the money. I'm not
19 sure if it was exempt from the spending limit. I
20 just--

21 COUNCIL MEMBER GREENFIELD: [interposing]
22 It was.

23 AMY LOPREST: I just don't remember. And
24 yes, I mean, again, this is--

1
2 COUNCIL MEMBER GREENFIELD: [interposing]
3 I have it in front of me. I'm happy to give you a
4 copy later.

5 AMY LOPREST: Oh, okay. I mean, I have
6 it at the office. I just didn't review that. The--
7 again, I think that, yes, there are provision in the
8 law that would prevent those kind of shenanigans. I
9 like that word.

10 COUNCIL MEMBER GREENFIELD: Okay. I just
11 think that's an important point, because I think that
12 folks have sort of confused the two, and I think it's
13 grossly unfair both to candidates and quite frankly
14 to the CFB to compare you to the state, to somehow
15 imply that, you know, oh, what's going to happen in
16 the state is happening over here. It's not going to
17 happen as Henry Berger pointed out for two reasons.
18 One is you guys are very good at what you do. And
19 like I said, when you even smell a whiff of anything
20 that's wrong, you jump on top of it. God bless you,
21 and that's the right thing to do, and we applaud you
22 for that. And the second is that New York City law
23 very clearly does not allow you to engage in those
24 shenanigans, and so I think that's an important
25 point. The final thing I would just say, and I think

1
2 this is just important to remember is, once again,
3 nothing that we're saying over here takes away from
4 the pact that we really admire and respect the CFB,
5 and we think that you do great work, but when folks
6 are complaining and when you hear people talking
7 about the fact that they had a bad experience and
8 they don't want to participate in the future or that
9 they feel like a disproportionately high percentage
10 of people are getting fined, it's not unreasonable
11 for us to step in and say, okay, let's try to handle
12 these issues, and I think that's really what we're
13 looking at. I do want to just get one final item on
14 the record, because I do think several folks have
15 mentioned it. We actually have heard from folks
16 privately. I've actually had members who told me
17 they don't want to come here today, because they've
18 heard, and you've heard from some members as well,
19 that in the past when members-- I've heard this from
20 members. I've heard this from campaigns. I've heard
21 this from campaign finance lawyers, that when they
22 have objected to certain issues or spoken out
23 publicly that they have been retaliated against. To
24 be clear, what that retaliation is, they say that
25 after that the audits are more difficult or they get

1
2 fined more, higher amounts of money. I think it's an
3 important-- I think it's just an important item to
4 clear the air on. It never happened to me, to be
5 fair, but I just want to make sure that's something
6 that we're all on the record, and of course, you're
7 all under oath, so I just want to make sure that
8 we're all on record on this. Can you say with
9 absolute certainty that that does not happen and will
10 not happen, and certainly folks are entitled to
11 exercise their free speech rights when it comes to
12 complaints or feedback about the Campaign Finance
13 Board?

14 AMY LOPREST: Absolutely. I mean, I, you
15 know, I-- absolutely. You know, this is not the
16 first time I've heard this statement before.

17 COUNCIL MEMBER GREENFIELD: But that's a
18 problem.

19 AMY LOPREST: And I do--

20 COUNCIL MEMBER GREENFIELD: [interposing]
21 I might just be fair, if it's not the first time
22 you've heard the statement before--

23 AMY LOPREST: [interposing] No, I do
24 understand.

25 COUNCIL MEMBER GREENFIELD: Yeah.

1
2 AMY LOPREST: I mean, and I've said in
3 the past whenever I've heard this statement that
4 that's absolutely not true. We do absolutely benefit
5 from the feedback we get from the colleagues on the
6 City Council, from the candidates who have run and
7 give feedback to the Board. Absolutely there is no
8 chance that your audit is more difficult, that your
9 fines would be higher. I mean, again, that would be
10 kind of impossible since we publish all the penalties
11 by guidelines, and absolutely would not happen, and I
12 would encourage anyone who has feedback. I mean,
13 again, I don't want to leave you with the impression
14 that we are not want to listen to the feedback of the
15 Council or candidates from office. We absolutely--
16 we need that. I mean, and I-- you may not believe
17 this, but I am the one person if you ask any of my
18 staff, nothing would make me happier if everyone went
19 through the process with no violations, no penalties.
20 One, it would be easier, and two, it just would show
21 that the work that we're doing to help educate the
22 candidates and assist the candidates is really paying
23 off. And so--

24 COUNCIL MEMBER GREENFIELD: [interposing]

25 I believe you.

1
2 AMY LOPREST: I just want you to know
3 that, that that is really our goal, to always improve
4 the process, always make it simpler, and always to
5 make the audit process clearer and the letters we
6 send and every single communication that we make
7 clearer for the candidates.

8 COUNCIL MEMBER GREENFIELD: I believe you
9 as well, but let me ask you this question. Because
10 you pointed out you've heard it, and I've heard, and
11 we've heard it several times that, you know, this
12 idea that there is some sort of retaliation, would
13 you be willing to make it clear to your staff and
14 send them a note perhaps and say this is the policy
15 of the CFB that we want to make it crystal clear that
16 nobody, regardless of what feedback or what you hear
17 extraneously, that should not impact you any way,
18 shape or form. After all, they are humans, and
19 people could get sensitive sometimes to the fact that
20 they're criticizing their agencies. Is that
21 something that you might be willing to do, perhaps?

22 AMY LOPREST: Absolutely. I mean, I--
23 you know, I think that the staff understands that
24 already, but I--

COUNCIL MEMBER GREENFIELD: [interposing]

Well, you have a much larger staff than the ones who are here today, right?

AMY LOPREST: Yes.

COUNCIL MEMBER GREENFIELD: I think you have around 100 or so people. Okay.

AMY LOPREST: Yeah, yeah. And absolutely I would. I mean, but I, again, I would reiterate that I don't believe that that's ever happened, and you're right, people-- if people yell at you, you might get frustrated, but I think that, you know,-- because people-- our staff is still human, but I mean will-- no problem reiterating that I testified here at whatever it is, 1:45, before the City Council under oath that we wouldn't retaliate against anyone, and that they should take that to heart.

COUNCIL MEMBER GREENFIELD: Once again, I no reason to believe it is or isn't happening. I'm simply expressing to you feedback that we've gotten, and I've actually heard this from elected officials and from campaign managers and from lawyers, and you've heard it today from Council Members, and so I just think it's important. I think we all need to be on the record and make sure that even that kind of

1 conversation is unacceptable. No one should ever
2 think-- and certainly we in the Council will keep an
3 eye on this. We trust you, but we're going to keep
4 track of this as well. We're going to make sure that
5 is in fact the case. We don't want anyone to ever
6 think that because they're engaging in a democratic
7 process that somehow that's going to impact them.
8 Not that it may even happen, but the fact that that's
9 even rumored, as you can understand, it's bad for the
10 CFB. It's bad for good government, and it's bad for
11 the City, and that's why I just want to stamp it out
12 and make sure that it's clear that that's not even a
13 possibility.

14
15 AMY LOPREST: And I know that you're--
16 I'm here to be over sought, by you, but I would ask
17 for a commensurate that I mean I will definitely
18 undertake that for the staff, but you know, obviously
19 I don't have the ability to tell your colleagues and
20 the people you're talking about when you hear that
21 kind of statement that you reiterate to them the
22 commitment that I've just made and that I've said,
23 and because I think that that-- it is a perception,
24 and I don't-- I seek your assistance in helping to
25 say--

COUNCIL MEMBER GREENFIELD: [interposing]

We will, and we'll do both, honestly. We will trust but we will also verify down the road and make sure in fact that the perception changes, and we're going to work with you on that. Once again, we appreciate the professionalism. We think that overall CFB does excellent work. I think we just can agree to disagree on how we can improve that and how we can make it easier, especially for first time candidates, and if you look at the list of these proposed reforms, most of them honestly help first-time candidates, and a lot of these rules, to be perfectly frank, those of us who are incumbents, we already have the lawyers and the experts to advise us and the money and the resources to deal with that. It's really the folks who are running for the first time who we think are disadvantaged, and we're really just trying to what we think is even the playing field, but we understand that reasonable people can disagree and we certainly appreciate that, and we appreciate your professionalism, and we thank you for your testimony here today.

AMY LOPREST: Thank you.

1
2 CHAIRPERSON MAISEL: Councilman
3 Rosenthal? Councilwoman Rosenthal, you have a
4 question?

5 COUNCIL MEMBER ROSENTHAL: Yeah, quick
6 question, not a statement.

7 CHAIRPERSON MAISEL: Okay.

8 COUNCIL MEMBER ROSENTHAL: I promise.
9 Two questions, actually. I appreciate the
10 confirmation that you just made to my colleague, and
11 I will say that despite having a great relationship
12 with your public-- your intergovernmental person,
13 several times I've wanted to say something to him and
14 I've held back because I thought it was just unwise.
15 So, I would actually suggest putting it on the
16 website to say, you know, we-- just a suggestion
17 that, you know, we appreciate comments from everyone
18 who interacts, and it will absolutely have no impact
19 on the audit, so I could talk to Eric. And I know
20 other-- I mean, I'm more of a first-timer than David,
21 so I'm still going through first-timer jitters. And
22 then my second question has to do with the out year
23 audit statement responses to a campaign filing. It
24 would be very helpful that just as quickly as
25 possible with or without the law, just as quickly as

1 possible those come back to the candidate. And, you
2 know, I would-- I've been trying to figure out why
3 you might want to hold them all back and put them out
4 at the same time in order to give candidates an equal
5 playing field for responses, and so but I have to say
6 the only-- I get that, but I don't think it's the
7 right guiding philosophy. I think the guiding
8 philosophy on this one should be, look, either first
9 in, first out, you know, because I-- I mean, I know I
10 always try to do it very early now, where before I
11 waited and tried to strategize. Like, there
12 shouldn't-- you should just as soon as they're done
13 they should be given back because there's no benefit
14 to getting it back sooner rather than later, except
15 that you can start responding and get it done with.
16 And you know, if for some reason, I don't know, the
17 last one, you know, would go out I guess November.
18 That's for this filing. You know, it's still within
19 the timeframe, but I just have to tell you as a
20 candidate, getting it late doesn't help, and it would
21 really be helpful not only to be able to respond very
22 quickly before the next filing comes up when your
23 mind's eye is really on the filing coming up, but
24 also to know that the response we've given is
25

1
2 satisfactory. Like, you know, we've responded and
3 said, yes, it was an oversight. The contribution
4 form was missing. You only had to check it had no
5 address. Here's the contribution form, or here are
6 the deposit slips, but right away again for someone
7 for the-- for someone from CFB to say, "Yes, done.
8 Move on to the next thing." Because all of that then
9 carries over to the next statement and you have the
10 burden of thinking about did I actually create those
11 or not. Does that make sense?

12 AMY LOPREST: Yeah, I mean, I think that,
13 you know, again we will try and do them quicker. I
14 guess there are a couple things in there, so I mean,
15 I'll think about them and how to, you know, work on
16 that.

17 COUNCIL MEMBER ROSENTHAL: Okay. Thank
18 you very much.

19 CHAIRPERSON MAISEL: Before I let you go,
20 I just have a question. Since we've intruded in
21 lunch, I was trying to figure out how I could buy
22 pizza for everybody, whether I could use my 2013
23 dollars left over or whether or not I have some money
24 for 2017, or if I use my own money will I get into
25 trouble?

1
2 AMY LOPREST: You have to ask the
3 Conflicts of Interest Board about your own money.

4 CHAIRPERSON MAISEL: Oh, okay. Alright.
5 Thank you very much. I appreciate the--

6 AMY LOPREST: [interposing] Oh, wait, oh.

7 COUNCIL MEMBER GREENFIELD: Just one
8 quick follow-up on Council Member Rosenthal's
9 question. So, is there anything that would stop you
10 right now from doing what the Council Member
11 suggested which is first in, first out, right? So
12 whoever gets to you first, get it back as opposed to
13 what appears to be the current practice where you
14 just send them all out at the same time? Is there
15 any reason why you wouldn't do that?

16 AMY LOPREST: Well, statement reviews
17 are-- because most statement-- the statements are due
18 on a date, and all the statements come on that same
19 date. So, that's why I told you I had to think about
20 how to do that, because it's not really-- it's not
21 like the audits where they go out one at a time.
22 It's all the statements come within a four-day
23 period. So, it's not-- there's not really much first
24 in, first out there, but that's why I said I wanted
25 to think about it.

CHAIRPERSON MAISEL: Thank you again.

Next panel would be Gene Russianoff from NYPIRG, Dominic Mauro from Reinvent Albany, and Dick Dadey from Citizen Union. Thank you very much for holding out. Appreciate your being here. Who wants to go first?

GENE RUSSIANOFF: I'll go first. I'm Gene-- [off mic]. Gene Russianoff with the New York Public Interest Research Group, and we've had a long history with this campaign finance law through several of the groups here. We were present at its creation. We lobbied for provision we thought would be good, and we stuck with the program over the last quarter century so that there would be some knowledge and memory of what was a concern to the civic community. And you know, here I might take exception with Council Member Greenfield. I do think there's something special about this law. I do think the Council has devoted extra resources and deliberation, and I think this is probably one of the greatest achievements of this Council in the post-modern, post-World War year. The law is clearly considered a gold standard around America, and it is to track a diverse and talented City Council. It's really made

1
2 it possible for people of modest means to run for
3 office, and I think it's something to be proud of,
4 and to continue to improve. I agree with Council
5 Member Greenfield that there's room for improvement,
6 and that in fact there has been. So, just as an
7 example, David Dinkins and Rudolph Giuliani did not
8 debate in the 1993 Mayoral race, and the City Council
9 said, we'll, we're not going to give money if you
10 don't debate. I mean, what are we giving you this
11 money for if the public doesn't get a chance to see
12 you? So, and those changes have been made and
13 they've been the subject of deliberation and a lot of
14 directed focus. The heart of my concern, why we're
15 here today, is you know, there-- we're worried that
16 there's going to be a rush to judgement about what to
17 do, and you know, there's sort of a saying, "Pass the
18 bill today and repent tomorrow." And we would rather
19 see the process produce good stuff that we all feel
20 is advancing the law. So, one or two other points.
21 The early gen-- you know, Amy Loprest said there are
22 only 10 months between now and the primary, and we're
23 getting to a point where, you know, the clock has to
24 stop, you know? And you know, reasonable people can
25 debate about when that is, but amending a law like in

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2 April, for example, of an election year, you know, is
3 just not fair to the candidates, to the public. It
4 changes the rules of the game at that late a date.
5 You know, we offered some suggestions about things to
6 do. I think there is some reforms here that are-- I
7 think it's in general it's a very positive group of
8 reforms. There isn't anything that's got us up in
9 arms about, you know, if this happens it'll be bad
10 for the law, but you know, I think it's worth-- in
11 the spirit which Councilman Lander talked, the spirit
12 of, you know, maybe we should move faster on this
13 because it's more important or we should focus our
14 resources on that, and you know, at the very end of
15 his testimony, Henry Berger from the Mayor's Office
16 said what really needs to change here is the post-
17 audit process. Now, that isn't even-- that wasn't
18 even on the bills that you have before you today.
19 That wasn't-- we weren't invited or suggested to come
20 up with ideas for it. If you move in that direction,
21 you could spend the next four years just coming up
22 with a better post-audit process. And so I think you
23 should be reasonable in your goals with the Campaign
24 Finance Board and the city system, and I think we
25 could get a law that's even better, and that's been

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2 this history of this law for 25, 30 years. Thank you
3 very much.

4 DOMINIC MAURO: My testimony starts "good
5 morning," but good afternoon. My name is Dominic
6 Mauro, Staff Attorney for Reinvent Albany, an
7 advocacy group that advocates for open and
8 accountable New York State governments, and co-chairs
9 the New York City Transparency Working Group with
10 NYPIRG. Reinvent Albany does not usually testify
11 before Council about campaign finance issues. We are
12 today because the package of bills being proposed add
13 up to a huge step backwards, and would greatly weaken
14 what is considered the best campaign finance system
15 in New York and the United States, and is a model we
16 turn to for New York State. Many of these bills seem
17 like petty retaliation and an expression of
18 irritation by Councilmembers who are annoyed with CFB
19 nitpicking. CFB is imperfect and there are many
20 improvements that could be legislated, but overall,
21 this package is terrible. Briefly, here is our view
22 on the various bills, beginning with bills that we
23 have the strongest opinion on. We support the intent
24 of Intro. 1345, concerning Conflicts of Interest and
25 organizations affiliated with elected officials.

1
2 However, we do not fully understand how it would work
3 and whether it is too narrow to be meaningful. We
4 strongly oppose Intro. 1352, ending the requirement
5 that campaigns ask if a person or entity is doing
6 business with the city. That is a key disclosure
7 requirement, and its removal places all
8 responsibility for disclosure on the Mayor's Office
9 of Contracts Doing Business database. We are
10 familiar with the Doing Business database, and that
11 database has giant holes in it and cannot be relied
12 on to be the only source of information for whether a
13 person is doing business with the city. A robust
14 disclosure system should rely on both the Doing
15 Business database and campaigns. We strongly oppose
16 Intro. 1349, Compatibility of campaign finance board
17 disclosure software. Our group has looked closely at
18 C-SMART and State BOE software systems. This bill
19 amounts to intrusive micromanagement and harassment
20 of CFB and does not solve the underlying issue with
21 their disclosure software, which is currently being
22 addressed through collaboration with the New York
23 State Board of Elections. We strongly oppose Intro.
24 1350: Adjudication of campaign finance violations.
25 The 30-day cutoff imposes an unrealistic deadline on

1 events that are outside the control of the CFB.

2 Also, according to CFB, the deadline does not give

3 campaigns time to provide a response to their Notice

4 of Alleged Violations, and would give an advantage to

5 campaigns with the resources to hire a lawyer. We

6 strongly oppose Intro. 1364: Executive sessions of

7 the Campaign Finance Board. This bill is a clear

8 intrusion by the City Council into the functioning of

9 the CFB's operation and directly undermines its

10 independence. We oppose Intro. 1355, which changes

11 documentation requirements for contributions, as

12 drafted, but support its intent and suggest the

13 Council work with CFB and issue experts. Thank you

14 for this opportunity to testify today.

15
16 DICK DADEY: [off mic]

17 COUNCIL MEMBER GREENFIELD: Just so you

18 know, you're running against the clock. I have a

19 meeting that I'm late for across the street, but I'm

20 going to wait for the end of your testimony before I

21 leave. Yes?

22 DICK DADEY: Oops, sorry. We applaud the

23 introduction of the Speaker Mark-Viverito bill. I

24 see that the numbers that we use here are the pre-

25 introduction numbers, and not the actual bill

1 numbers, so I apologize for that, and her bill is
2 designed to regulate organizations so closely
3 affiliated with an elected city official that they
4 are perceived as extensions of the official and serve
5 to boost the position and profile of that official.
6 Though the efforts of these organizations may well
7 serve the public good, they generally also promote
8 the elected official in ways similar to a political
9 campaign. Yet, these organizations operate without
10 any oversight or regulation and with no limits on
11 contributions. Yet, these-- the officials who have
12 received the maximum allowable contribution from an
13 individuals under the city's campaign financing
14 program, often someone who is doing or seeks to do
15 business for the city, can route limitless additional
16 contributions from this individuals through these
17 affiliated organizations. We believe that the
18 proposed bill can effectively bring needed oversight
19 to these organizations and prevent any possible
20 corruption from taking place. Under the bill, the
21 organizations affiliated with an elected official
22 that spends or expect to spend at least 10 percent of
23 their expenditures in a given a year on elected
24 official communications shall not accept donations of
25

1 over 400 dollars in a year from any person, and the
2 organization knows or should know has business
3 dealing with the city. Also, and shall not accept
4 donations from a corporation or labor organization.
5 Donors of over 400 dollars to an organization
6 affiliated with elected official must make written
7 submissions on a form prepared by the COIB. We have
8 proposed that this activity be under the jurisdiction
9 of the Campaign Finance Board, but upon reading this
10 bill and talking with members of the City Council, we
11 are fine with seeing that the responsibility be
12 transferred to the Conflicts of Interest Board. In
13 addition, all organizations affiliated with an
14 elected official regardless of whether they spend at
15 least 10 percent on elected official communication
16 must submit a report annually to the COIB, including
17 information about the organization, all contributors
18 over a thousand and an accounting of expenditures as
19 determined by the COIB. The contribution limitations
20 provision would take effect in 2018, and disclosure
21 requirements were to take place in 2019. Civil and
22 criminal penalties would apply to violations, and
23 COIB must prepare regulations to implement the law.
24 We have several comments and suggestions to improve
25

1
2 this legislation. First, with regard to definition
3 of use of an elected official communication in the
4 bill. We believe a key to the effectiveness of this
5 bill is whether the contribution limitations would
6 apply to all organizations that are closely tied to
7 and help a city elected official. The standards to
8 be applied is that 10 percent of the organization's
9 expenditures must be made on elected official
10 communications. The definition of elected official
11 communication appears to be relatively broad,
12 covering with certain exemptions, a broadcast, and
13 [inaudible] as we articulate there. We believe that
14 the organization's expenditures on designing and
15 maintaining a website that features the name or
16 likeness of the official should also be included.
17 So, we would add the website to the list of the ways
18 in which communication is made here in this bill.
19 Two, we note that this is not uncommon for these
20 organizations to spend most of their funds on
21 consultants and public relations firms, which in turn
22 generate the very communications that feature the
23 elected official and which this bill is proposed to
24 govern. We believe that any expenditure which
25 ultimately results in elected official communications

1 should be included in determining whether that 10
2 percent threshold was reached. So, I think it's very
3 important to include that cost of these consultants
4 in that preparation of that communication. It should
5 also be made clear in the legislation as number three
6 points out, that elected official communication
7 includes the preparation, publication and
8 dissemination of any such communication. And with
9 the 10 percent threshold seems reasonable, we have
10 not seen information as to whether the Campaign for
11 One New York, for example, devoted at least 10
12 percent of its funds directly or indirectly to our
13 elected official communications. We ask that the
14 Council assure itself that the 10 percent threshold
15 is low enough to encompass the Campaign for One New
16 York or One Brooklyn and any similar organization.
17 With regard to the definition of an organization
18 affiliated with an elected official, we note that the
19 definition is framed in general terms. Under the
20 legislation, such an organization is defined as an
21 entity for which a city elected office or the officer
22 or holder's agent is a principal owner or officer
23 otherwise exercises control, or which was created by
24 the office holder agent within the previous two
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2 calendar years. There are no additional criteria as
3 to what it means to exercise control over such an
4 organization. We assume this will be flushed out in
5 regulations and opinions by the Conflicts of Interest
6 Board, and we are comfortable with that approach, but
7 as the COIB considers this topic, we suggest
8 consideration of the criteria set forth in the
9 legislation enacted in Albany this June with regard
10 to independent expenditures, specifically what
11 constitutes a relationship between a candidate and an
12 organization such that these expenditures by the
13 organizations are not truly independent. We also
14 believe that the reporting should occur more
15 frequently than annually as is proposed under this
16 bill and would suggest a minimum every six months or
17 preferably on a quarterly basis. Finally, as we read
18 the legislation, it does nothing to change the
19 Conflicts of Interest Board opinion, barring
20 officials from soliciting contributions to an
21 organizations from people with whom the official
22 deals in her and his city position. We suggest that
23 this be made clear in the legislative history [sic]
24 of this legislation so that there is no ambiguity
25 about that. We look forward to working with the City

1 Council on this bill in finalizing it. Now,
2 regarding the other bills, we have not finalized our
3 analysis. We must say that we applaud the Council's
4 intent in taking a look at these issues that are of
5 concern to them. We are very pleased to see that a
6 number of the other bills that were the subject of an
7 earlier council hearing back in may are moving
8 forward with some improvements and with some input
9 from the various stakeholders in this legislation.
10 But we're a little bit concerned over not knowing
11 fully what problems exist that these bills are
12 designed to solve. These bills were presented two
13 weeks ago, and we've never heard some of these
14 problems articulated before by the Council, and I
15 think in the interest of the public, it would have
16 been nice to have had the Council consult or at least
17 inform any good government groups and other
18 stakeholders in this process a little bit more about
19 the problems that they're trying to solve. It's been
20 illustrative to hear some of the individual Council
21 Members talk about some of their matters that they
22 have had difficulty with in addressing with the
23 Conflicts of Interest-- excuse me, the Campaign
24 Finance Board, but to have as my colleague Gene
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2 Russianoff mentioned, have these changes added so
3 late in the cycle, and without-- while this is a very
4 good public hearing, without the time to kind of
5 digest and to understanding the problems that the
6 Council seeks to solve puts us in the uncomfortable
7 position of having to offer an opinion that we're not
8 really prepared to offer because we still are trying
9 to understand the problems that these bills are
10 trying to solve. Having said that, and we will
11 provide hopefully by tomorrow morning, more detailed
12 responses now that we understand because this really
13 was the first time we've heard from the Council as to
14 the problems that this legislation is trying to
15 solve, and we don't think that's the way that good
16 government should operate or the way that the Council
17 generally operates. So, I just want to quickly go
18 through some of these. You know, the Lander bill
19 that deals with the permissible expenditures, we
20 think that that is okay, but what we're concerned
21 about and it happens on the state level, and Council
22 Member Maisel, I'm sure you're familiar with this, is
23 that it can be so vague in terms of anything that is
24 done and that the elected official may believe is
25 necessary to conduct his public duties, his or her

1 public duties, that if you don't have a list-- and
2 what we find is you don't have a specific list of
3 permissible activities and expenses, and it's open to
4 interpretation. Whose interpretation? And it's
5 subject to abuse and possible fraud. And so while
6 it's clear that-- and actually, it wasn't a swimming
7 pool that was built. It was a swimming pool covered
8 that was allowed to be placed over the swimming pool--
9 -
10 -

11 COUNCIL MEMBER GREENFIELD: [interposing]

12 Same difference.

13 DICK DADEY: placed over the swimming
14 pool so that there could be people who can walk on
15 water or stand on water shall we say. So, being more
16 specific--

17 COUNCIL MEMBER GREENFIELD: [interposing]

18 I would argue that's even worse than a swimming pool.

19 DICK DADEY: So, it would be in the
20 public interest and the Council interest to be more
21 specific about it, what that list is of permissible
22 activities, because when it's open to interpretation,
23 it's front for opportunities for abuse. You know,
24 some of these, you know, like Council Member
25 Greenfield, your bill about requiring the

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2 contributions be deposited within 20 days as opposed
3 10 days seems perfectly reasonable to us. The-- we do
4 have some concerns about-- I guess the bill that
5 we're most concerned about is preventing the Council
6 and the Executive Director from participating in
7 those meetings. Since the open meetings law does
8 provide for that option and I think making it even
9 more clear that Council and the candidates can go
10 through OATH to have their cases adjudicated is fine.
11 But I just think that it's-- again, I'm not quite
12 understanding what the problem-- problem exists that
13 this law is trying to suggest, and maybe a certain
14 number of disgruntled Council Members felt like they
15 were not being treated fairly.

16 COUNCIL MEMBER GREENFIELD: Are you
17 referring to the OATH law?

18 DICK DADEY: No, actually I'm talking
19 about allowing the Executive Director and the Council
20 in the executive session. What I'm saying I think it
21 is mitigated somewhat by allowing or making it more
22 clear that the OATH process is something that they
23 could pursue, but we are concerned that a practice
24 that has worked well from our perspective for the
25 City and the public's interest in having these two

1 very seasoned and well-informed people at the
2 Campaign Finance Board in these important
3 discussions. Again, what's the problem that we're
4 trying to solve here? And it wasn't articulated
5 until we heard it today, and I just don't think
6 that's how responsible public policy should be
7 adopted. And on some of these others, we will get
8 back to you more specifically, but as Gene said, we
9 think that they are for the most part okay. We just
10 wish that the process had included a more public
11 discussion before--

13 CHAIRPERSON MAISEL: [interposing] You
14 know, to answer the point you're making, I think the
15 problem with having the investigators in with the
16 executive session is there's a fear that the
17 investigators will because of their own interest in
18 timers of making sure what their work has done has
19 been successful, that they'll influence inordinately
20 the deliberations of the Board.

21 DICK DADEY: Right, and I mean-- listen,
22 I think that's an important discussion to have but as
23 we heard before, the two people allowed in that room
24 are not allowed in any of the investigations at all
25 except that they're part of the agency that does the

1 investigation and that there's a wall, a sufficient
2 wall we believe that prevents them from participating
3 in those investigations sufficiently enough to allow
4 their participation to take place in this executive
5 session.
6

7 CHAIRPERSON MAISEL: Okay. I have a few
8 questions. I know it's late. But do you agree with
9 the general approach of requiring donor disclosure
10 for elected affiliated groups and contribution limits
11 for elected affiliated groups that engage in
12 political activity? Should I say it again? Yes?

13 GENE RUSSIANOFF: [off mic] They should
14 be subject to disclosure about the-- I'm sorry. You
15 know, I'd say yes, I think that this is the kind of
16 information that serves the public well, and sheds a
17 light on how or politics are being conducted.

18 CHAIRPERSON MAISEL: I'm going to do a U-
19 turn. Councilman Greenfield, you have another
20 question?

21 COUNCIL MEMBER GREENFIELD: I appreciate
22 your indulgence. I have some folks from my district
23 actually waiting for me across the street patiently,
24 and I just wanted to get to them. Just on the two
25 points that you made, I think both Gene and Dick made

1
2 this. So, Gene, you said you disagree with me at one
3 point. I'm not exactly sure what you disagreed with
4 me on. I acknowledge-- no, I just want to clarify.
5 I acknowledge the CFB is an important agency and is
6 in fact of gold standard, and I said that, and in
7 fact, I said that publicly outside of New York City
8 as well. So, are you saying there need to be a
9 different process for amending the CFB laws? Because
10 from our perspective, we're following--

11 GENE RUSSIANOFF: [interposing] No, I
12 think that it--

13 COUNCIL MEMBER GREENFIELD: [interposing]
14 the process.

15 GENE RUSSIANOFF: I, you know, it's a
16 fair all [sic]. It's-- this is a law that deserves
17 the sustained attention of the Council and its
18 support for doing things that make the city's
19 political system better. So, I don't think it should
20 have like a weeks' more attention or deliberation,
21 but I've been around and I've watched the process.
22 Some bills get short shrift here, and some bills get
23 serious attention, and I think this is one that
24 merits very serious attention.

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2 COUNCIL MEMBER GREENFIELD: and that's
3 why I've been here all day and we're listening to you
4 and we're hearing you guys out.

5 GENE RUSSIANOFF: Much appreciated.

6 COUNCIL MEMBER GREENFIELD: No, but my
7 point is serious. I do think that we are following
8 the standard process. I understand and certainly
9 respect and admire what the good government groups
10 do. You guys should be the gold standard, right? We
11 should aspire to do everything that you do. If we
12 did everything that you wanted us to do, you'd be out
13 of business, so that wouldn't be good either. I mean,
14 I say that tongue-in-cheek, right, because you are
15 the gold standards. So, certainly it would be better
16 if we had more process and more discussion, but my
17 point is that we are following a very traditional
18 process over here. We spent a lot of time internally
19 deliberating, discussing hundreds of hours, outreach,
20 discussions. We're having a hearing now, we're
21 having back and forth. We're looking forward to your
22 follow-up testimony. We're going to take it all into
23 account. I just don't-- I mean, I think my point to
24 the CFB was that when they said, "Oh, this is
25 happening rather quickly," not really by our

1 standards, right? I mean, maybe by their standards,
2 but we have to act on different clock than they do.
3 We're the legislature, right? We can't always-- we
4 can't wait three years to make a change. That's my
5 only point.
6

7 DICK DADEY: [off mic] You know, we've
8 heard for many years-- thank you. Thank you,
9 Dominic. We've heard for many years the process with
10 the audit process. We've made recommendations in
11 support of the legislation to change to the audit
12 process that has not actually passed, but I think,
13 you know, what troubles us is that this is the first
14 time we've heard about some of these problems, and if
15 you do in fact respect us as being the gold standard,
16 we should have been brought in earlier to kind of
17 like, "Hey, here's our problem. We want your support
18 for us. Bring your good thinking and your years and
19 decades of experience in being supporters of this law
20 to the table so that we can hear you out before this
21 hearing." I just don't--

22 GENE RUSSIANOFF: [interposing] I just
23 would add, and I say this very politely, I've seen
24 what I would call a gold standard of City Council
25

1
2 deliberation and consideration and review, and this
3 is not it.

4 COUNCIL MEMBER GREENFIELD: My point was,
5 just to be clear--

6 GENE RUSSIANOFF: [cross-talk]

7 COUNCIL MEMBER GREENFIELD: My point was
8 that you're the gold standard.

9 GENE RUSSIANOFF: Alright.

10 COUNCIL MEMBER GREENFIELD: We aspire to
11 your standard. No, that was my point. I wasn't
12 saying that we're the gold standard, because if we
13 were the gold standard, then there'd be no need for
14 good government groups, right? So, the point is that
15 we aspire to your standard, and no process is
16 perfect, but I do think-- and I certainly think we
17 can always do the process better, and I'll
18 acknowledge that, and I certainly push that
19 internally, but I do think that if we looked at the
20 process, it's a pretty standard process of review and
21 trying to get the feedback, and you know, I don't
22 even sit on this committee and I've been here since
23 the morning until after your testimony. It just
24 shows you how--

1
2 UNIDENTIFIED: And you always are,
3 Councilman.

4 COUNCIL MEMBER GREENFIELD: concern that I
5 have about your feedback and we take it seriously.

6 DICK DADEY: But I just point compare
7 with a nonprofit bill that the Speaker has sponsored.
8 You know, we saw the problem as you all did. We came
9 forward with a proposal. We've engaged, you know,
10 for months with the council staff and individual
11 members of the council on this, and you have produced
12 a very good bill. We just weren't engaged on the
13 other bills we think are just as important.

14 COUNCIL MEMBER GREENFIELD: We hear you,
15 and while I have to run, I look forward to the
16 follow-up and certainly any other feedback you have,
17 and we certainly will take all that feedback very
18 seriously. So thank you very much.

19 CHAIRPERSON MAISEL: Thank you,
20 Councilman Greenfield. Well, I have no other
21 questions. I want to thank you gentleman for your
22 determination and participation, and we will get back
23 to you. Thank you.

24 GENE RUSSIANOFF: Thank you.
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COMMITTEE ON STANDARDS AND ETHICS

CHAIRPERSON MAISEL: [gavel] It is done.

Thank you. Anybody who wants to go out for pizza
now?

[off mic comments]

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COMMITTEE ON STANDARDS AND ETHICS

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date December 20, 2016