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MEMORANDUM

October 5, 2010

To: Members of the City Ethics Commission

From: Heather Holt, Director of Policy and Legislation

Re: AGENDA ITEM 7
Possible Ballot Measures for March 2011 Regular Election

A. INTRODUCTION

The City Council is currently considering a number of possible measures to place on the ballot for the City's regular election in March 2011. The City Attorney's office must draft all ballot measures, and the last day the City Council can ask the City Attorney to do so for the March 2011 election is November 3, 2010. Los Angeles City Elections Code §§ 601, 602(a).

Recently, two motions and a report from the City Attorney's office have requested ballot measures that would affect the City's campaign finance laws. All three matters were initially heard by the Rules & Elections Committee on September 29, 2010. The committee will consider them again on October 20 and has asked for additional input from affected departments.

This memo identifies the proposed ballot measures, as well as the staff recommendations regarding the Commission's input for the City Council.

B. SUMMARY

The City Attorney has requested a ballot measure that would repeal Los Angeles City Charter (Charter) sections 470(c)(5), 470(c)(10), and 803(b)(4). We recommend concurring with the City Attorney.

Councilmembers Huizar, Garcetti, and Koretz have requested a ballot measure that would, among other things, eliminate the cap on the Public Matching Funds Trust Fund. We recommend concurring with that request.

Councilmembers Garcetti, Krekorian, Koretz, Reyes, and Rosendahl have requested a ballot measure that would prohibit campaign contributions from entities that bid on City

contracts. We recommend concurring with that request, and we make the following additional policy recommendations to promote its effectiveness:

1. For bidders who are selected as contractors, impose the ban from the date the bid is submitted until 12 months after the date the bidder signs the contract.
2. For bidders who are not selected as contractors, impose the ban from the date the bid is submitted until the date the contract is signed by the bidder who is selected.
3. Apply the ban to bidders, their agents, their subcontractors, and their subcontractors' agents. Require bidders to identify those persons in their bid documents.
4. Apply the ban to recipients who know or have reason to know that the contributor is subject to the ban. Require departments to notify elected officials of bidders, agents, and subcontractors that are subject to the ban.
5. Apply the ban to bidders on contracts that are required by law to be approved by an elected City official. Include leases, franchises, permits, licenses, and grants, as well as amendments, change orders, renewals, and extensions. Exclude contracts that require only technical oversight approval by an elected City official.
6. Ban contributions to any City committee controlled by an elected City official or candidate for elected City office.
7. Ban both personal contributions and fundraising. Apply to lobbying entities the same restrictions that apply to bidders.
8. Require each invitation for bids or other responses regarding a contract to include notice of the ban.
9. Require bidders to submit an Ethics Commission form certifying that they understand and will comply with the ban and that they will notify their agents and subcontractors of the ban. Require that the form be maintained by the awarding authority with the bid documents.
10. Exclude persons found to have violated the ban from entering into City contracts for four years from the date of the violation. Require the Ethics Commission to notify all departments when a person is found to have violated the ban.
11. Make technical amendments to the Charter and the Campaign Finance Ordinance.

C. REPEAL OF CERTAIN CHARTER SECTIONS

On September 27, 2010, the City Attorney's office issued a report recommending that the City Council place on the March 2011 ballot a measure that would repeal Charter §§ 470(c)(5), 470(c)(10), and 803(b)(4). *See* City Attorney Report No. R10-0334, provided in Attachment A. Sections 470(c)(5) and 803(b)(4) currently impose limits on contributions to committees that make independent expenditures in City and Los Angeles Unified School District Board of Education (LAUSD) elections. Contributions are limited to $500 per person per calendar year in City elections and to $1,000 per person per calendar year in LAUSD elections.

Section 470(c)(10) prohibits candidates for City office from spending more than $30,000 in personal funds on their own campaigns unless they notify the Ethics Commission of their intent to do so and deposit all such funds into their campaign contribution checking accounts at least 30 days before the election. The section also authorizes an opponent of these so-called

"wealthy candidates" to solicit and receive contributions that exceed the otherwise applicable contribution limits until the opponent has raised contributions that equal the amount of personal funds deposited into the wealthy candidate's campaign account.

We recommend concurring with the City Attorney's request for a ballot measure to repeal these sections. The Commission has already adopted resolutions stating that it will not enforce them, because of decisions by the United States Supreme Court that have struck down similar provisions in federal law as violations of the First Amendment. *Davis v. Federal Election Commission*, 554 U.S. ___, 128 S. Ct. 2659 (2008); *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S. Ct. 876 (2010). In addition, Los Angeles Municipal Code (LAMC) § 49.7.24, a provision in the Campaign Finance Ordinance that echoed the committee contribution limits in Charter § 470(c)(5), was repealed effective August 18, 2010. *See* Ordinance No. 181213, pp. 8-9 of Attachment A.

The City Attorney's office has advised that sections 470(c)(5), 470(c)(10), and 803(b)(4) should be removed from the Charter, even though the Ethics Commission will not enforce them. As long as the laws remain on the books, City law in this area is unclear. As a result, the City could face potential litigation that might be brought by persons who believe their First Amendment rights are being violated, as well as by persons who want to require the City to enforce the unconstitutional provisions. We believe that it is appropriate to support the repeal of these sections, to ensure that the public has accurate notice of which campaign finance laws apply in City and LAUSD elections.

D. CAP ON MATCHING FUNDS TRUST FUND

On September 28, 2010, a motion (Huizar-Garcetti-Koretz) was introduced to request three separate ballot measures. *See* Council File No. 10-2500, provided in Attachment B. One requested measure would permit the use of ranked choice voting (RCV) in City elections. A copy of the report to the City Council by the Ranked Choice Voting Working Group, of which we were a part, is provided in Attachment C. The report highlights issues that would need to be addressed if an RCV system were adopted, including the structure of the matching funds program. *See, e.g.*, Attachment C, p. 27. The second ballot measure would permit automatic voting by mail and the use of neighborhood vote centers in special City elections to fill vacancies in City office.

The third ballot measure requested by the motion is the one that directly affects the City's campaign finance laws, because it would eliminate the cap on the Public Matching Funds Trust Fund (the Trust Fund). The Charter currently requires the City Council to appropriate $2,000,000 per fiscal year to the Trust Fund, up to a maximum of $8,000,000. Charter § 471(c). Both amounts must be adjusted annually based on the Consumer Price Index. *Id.* The current appropriation amount is $3,073,160, and the Trust Fund is currently capped at $12,292,640. The Trust Fund is now at its maximum funding level. To date this fiscal year, we have been required to return $110,000 in Trust Fund dollars to the City's general fund, because the Trust Fund balance exceeded the cap. This happened once before, at the end of Fiscal Year 2007-08, when we were required to return approximately $1.2 million.

We recommend supporting a ballot measure that would eliminate the Trust Fund cap. To be successful, a public financing system must have a consistent and guaranteed source of funding. If candidates cannot rely on funding to be available for their campaigns, they are less likely to see the public financing program as an attractive option. Permitting the Trust Fund to accrue a larger pool of money that is used exclusively to assist City candidates who qualify for public funds is a critical first step toward a successful full public financing system, which could cost many millions of dollars more per election than the current matching funds program does. This is particularly true in an era of ever-increasing independent expenditures. Additionally, the amount of money required to meet the needs of publicly financed candidates in a RCV system could be significantly different from the amount required in the current voting system. *See* Attachment C, pp. 19-24.

We note that, while funding is critical, it is just one component of a successful public financing program. Other changes to the current system should be considered in the future, particularly if RCV is implemented in City elections. Councilmember Huizar, who introduced the motion, acknowledged at the Rules & Elections Committee meeting on September 29 that other aspects of the public financing system will need to be addressed to move toward full public financing and identified the elimination of the Trust Fund cap as an important first step.

E. BAN ON BIDDER CONTRIBUTIONS

1. Background

Contributions and fundraising by bidders and contractors has long been an issue of interest for the Ethics Commission. Prompted by concerns about possible "pay to play" actions by City decision makers, the Commission first began discussing these issues in 1998. In August 2001, the Commission recommended that elected officials be required to recuse themselves from acting on matters involving a lobbyist or contractor who made significant political contributions, engaged in significant fundraising on the official's behalf, or acted as a paid consultant to the official's campaign. The City Council declined to adopt a recusal requirement. Instead, in August 2003, the Council adopted a requirement that bidders and contractors disclose their contributions and fundraising, as well as a requirement that elected officials disclose when they participate in matters involving lobbying entities, bidders, or contractors who have significantly contributed to or engaged in fundraising for the official. *See* LAMC §§ 49.5.15, 49.5.16.

In February 2004, then-Mayor James Hahn proposed a number of changes to the City's ethics laws, including a proposal that bidders, contractors, land use applicants, and their agents be prohibited from contributing to or fundraising on behalf of elected City officials. In January 2005, the Commission recommended a ban on contributions and fundraising by bidders, contractors, and their agents, to reinforce that decisions about City contracts are made on the merits of the bids, rather than on any money that bidders may infuse into the political system. The City Council declined to pursue the recommendation, and the ban was not instituted.

On September 24, 2010, a motion (Garcetti-Krekorian-Koretz-Reyes-Rosendahl) was introduced to request a ballot measure that would prohibit campaign contributions from entities bidding on City contracts. *See* Council File No. 10-2481, provided in Attachment D. We recommend that the Commission again support a ban on bidder contributions. We also make policy recommendations regarding the details surrounding such a ban.

2. Application

Some of the issues regarding the application of a bidder contribution ban were mentioned briefly at the Rules & Elections Committee meeting, and the Committee requested additional input from the Ethics Commission regarding those issues.

a. ***When*** *should the ban apply?*

We recommend that the ban begin when a bid or other response to a City invitation regarding a contract is formally submitted. A person is not a bidder with a vested interest in the awarding of a contract until the person submits a bid, even if the person has requested or picked up a bid packet. In terms of when the ban would end, we recommend two different dates, depending on whether the bidder is selected as the contractor. For bidders who are not selected, we recommend that the ban end on the date the contract is signed by the bidder who is selected. For the bidder who is selected, we recommend that the ban end 12 months after that bidder signs the contract.

We believe it is appropriate to maintain the ban for 12 months for bidders who receive City contracts, to avoid the perception that post-award contributions are given to thank elected officials for having been selected as a City contractor. The cooling-off period in the Governmental Ethics Ordinance (GEO) during which former City officials cannot attempt to influence City decisions is 12 months for most officials, and we believe that is an adequate period of time in which to break perceived ties between contracting and improper financial influence.

We note that the duration of the ban is not foolproof. A determined bidder could give a contribution the day before submitting a bid and the day after the ban ends. However, the ban should not last indefinitely or apply to persons who *might* submit bids. In addition, the City Attorney's office has raised concerns about applying the ban for the entire duration of a lengthy contract. We believe the recommended approach is the most effective way to balance the rights of bidders and contractors with the mandate to safeguard the public trust.

b. *To* ***whom*** *should the ban apply?*

As noted in the previous section, the ban would apply to actual bidders. We recommend that the ban also apply to the following agents of bidders:

- Board chair;
- President;
- Chief executive officer;

- Chief financial officer;
- Chief operating officer;
- Individual who holds an ownership interest of 20 percent or more;
- Individual authorized in the bid to represent the bidder before the City.

Because these individuals can take significant action on behalf of a bidder, we believe it is appropriate to extend the ban to them, as well. Protecting the public's confidence in the City's contracting processes would be hindered if a bidder could get around the contribution ban simply by having its president give a contribution. For owners, the 20-percent threshold was selected because the financial world presumes that a party who holds an interest of 20 percent wields "significant influence" and must report the interest. *See, e.g.,* Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, Financial Accounting Standards Board Interpretation No. 35 (May 1981).

In addition to a bidder's agents, we recommend that the ban also apply to subcontractors and their agents. Just as the ban would be ineffective if a bidder's agent could contribute to an elected official, it would also be ineffective if a bidder's subcontractor or its agents could contribute. We believe it is appropriate to limit the ban to the first level of subcontractors, to ensure a strong nexus between the contract and the persons whose participation in the electoral process is being limited. In addition, it would be extremely challenging, if not impossible, to notify all subcontractors of subcontractors about the ban, which would make compliance difficult for everyone involved.

To facilitate these recommendations, we believe that bidders should be required to identify their agents, their subcontractors, and their subcontractors' agents in their bid documents. If an agent or subcontractor changes or is added after the bid is submitted, bidders should be required to amend their bid documents accordingly within a short period of time, such as five business days.

Finally, we believe it is appropriate to apply the ban to both the bidder who would offer or make the contribution and the official who would solicit or receive it. The current ban on contributions by certain lobbyists and lobbying firms applies not just to the giver but also to the recipient. Charter § 470(c)(11). There is a distinction there, however. The Ethics Commission maintains a real-time database of all of the City's registered lobbying entities, which is accessible online. At any time of day or night, a person can check to see who is registered as a lobbying entity. But there is no comparable data regarding City bidders and contractors—the City does not maintain centralized information about its contracts. As a result, we make two recommendations. The first is to prohibit would-be recipients from soliciting or accepting a contribution when they know or have reason to know that the donor is prohibited from making the contribution. The second is to require all departments to notify all elected officials within a short period of time (say one business day) whenever a new bidder enters the selection process. To facilitate an elected official's ability to comply with the ban, the notice should identify the bidder, the bidder's agents, the bidder's subcontractors, and the subcontractors' agents.

*c. To which **contracts** should it apply?*

The City is a party to a vast number of contracts. The General Services Department, alone, handles over 500 goods contracts worth $1,000 or more—and as many as 30,000 purchase orders for less than $1,000—every year. They also process 12,000 bidders each year. There are more than 50 other City agencies, and the contracting figures only increase when the service and construction contracts in those agencies are added to the mix.

In general, the City Council must approve contracts that will last at least three years and cost at least $100,000. Los Angeles Administrative Code (LAAC) § 10.5(b). Some contracts are exempt from the City Council approval requirement, including contracts with other governmental agencies and contracts for the purchase of materials, supplies, or equipment. LAAC § 10.5(a). Other contracts must last five years or more to trigger City Council approval, such as construction contracts awarded by the Board of Public Works for capital improvement projects; contracts for investment management services related to the City's deferred compensation plan; and franchises, licenses, and leases entered into by Los Angeles World Airports, the Port of Los Angeles, or the Department of Water and Power. *Id.*, LAAC § 10.5(d).

Some contracts require City Council approval, regardless of duration or amount, such as historical property contracts; deeds, leases, and contracts in redevelopment projects; and contracts for community development projects. LAAC §§ 8.96, 19.144, and 22.468. In addition, some contracts must be approved by the Mayor, the City Attorney, or the Controller. *See, e.g.*, LAAC § 22.468, Charter § 275.

We recommend that a ban on bidder contributions be triggered by any contract (including a lease, franchise, permit, license, or grant) that is required by law to be approved by an elected City official. Such a requirement will help ensure that there is a direct link between the prohibited campaign monies and the contracting actions taken by elected officials. We believe that the recommendation should also apply to amendments, change orders, renewals, and extensions that must be approved by an elected City official.

We do not believe that the ban should apply to contracts that the Mayor, the City Attorney, or the Controller are required to approve from a purely technical or oversight perspective. For example, the City Attorney's office must approve the form of all City contracts. Charter § 271(d). In addition, the Controller must approve all payments from the City treasury by inspecting the quality, quantity, and condition of the services, labor, materials, supplies, or equipment received in exchange for the payment. Charter § 262(a). These approvals are required to help safeguard the process of contracting—to ensure that the City's contracts are legally defensible and that the City is getting what it pays for. These approvals do not go to the heart of selecting a contractor. As a result, we do not believe that the potential for actual or perceived corruption is as great.

*d. To which **committees** should it apply?*

The motion refers to a ban on campaign contributions, but we recommend that the ban apply to contributions to any City committee controlled by an elected City official or candidate

for elected City office. In addition to committees established to campaign for election to City office, candidates and elected officials may also establish officeholder funds and legal defense funds. LAMC § 49.7.12. They may also control committees that support or oppose City ballot measures. *See, e.g.,* Cal. Gov't Code § 82016, LAMC § 49.7.8(C)(1).

For the same reasons that we believe the ban should apply to agents and subcontractors, we also believe the ban should apply to contributions made to any City committee that an elected official or candidate controls. If the ban were narrowly applied to campaign committees, bidders could easily avoid the ban and curry (or appear to curry) inappropriate favor by contributing to the officeholder account, legal defense fund, or ballot measure committee of an elected official or candidate. We note, though, that even this approach does not entirely eliminate a bidder's ability to make political contributions to an elected official, because the bidder could still contribute to committees the official controls in jurisdictions that are not regulated by the City's campaign finance laws.

*e. To which **activities** should it apply?*

While the motion specifies a ban on contributing to elected officials, we recommend that the ban also apply to fundraising for elected officials and candidates. A contribution ban would prevent a bidder from making a $500 contribution to a City Council member or a $1,000 contribution to the Mayor, the City Attorney, or the Controller; but it would not prevent the bidder from raising multiple thousands of dollars for those same individuals. If the goal is to protect the City from actual or perceived corruption related to the dollars that bidders infuse into the political system, then we believe fundraising by bidders should also be banned. Fundraising has the potential to far surpass personal contributions in terms of the amount of dollars in political play. For that reason, the Ethics Commission's 2005 recommendation to the City Council was to ban both personal contributions and fundraising.

In the past, the City Attorney's office has raised questions about the legality of prohibiting both personal contributions and fundraising, because of a concern that a bidder's right to participate in the political process might be unduly abridged if the bidder cannot engage in either type of activity.

More recently, the City Attorney's office has indicated that, in light of a decision by the Second Circuit Court of Appeals, it would not currently support a ban on fundraising. In that decision, the Second Circuit upheld part of a Connecticut law that banned state contractors from making campaign contributions but struck down a part of the law that prohibited them from soliciting contributions on behalf of candidates for state office. The court stated, "Unlike laws limiting contributions, which present 'marginal speech restrictions' that 'lie closer to the edges than to the core of political expression,' … a limit on the solicitation of otherwise permissible contributions prohibits exactly the kind of expressive activity that lies at the First Amendment's 'core'." *Green Party of Connecticut v. Garfield*, 2010 U. S. App. LEXIS 14248, *46 (2nd Cir. Conn. July 13, 2010), provided in Attachment E. As a result, the court applied strict scrutiny to the fundraising ban, which meant that, to be constitutional, the ban had to further a compelling government interest and be narrowly tailored to achieve that interest. *Id.* at *47-48.

The court struck down the fundraising ban because it found that the ban was not narrowly tailored. The court determined that avoiding actual and perceived corruption associated with "bundling" (delivering coordinated contributions to a candidate or official) did not require a complete ban on all fundraising—a ban on large-scale fundraising or on soliciting contributions from contractor employees and subcontractors might be sufficient. *Id.* at *52-53. The court did not decide whether the threat of bundling constitutes a compelling government interest. It hinted that it might not, "especially with regard to lobbyists" (which were also subject to the Connecticut law at issue). *Id.* at *52.

From a policy perspective, we continue to believe that a ban on fundraising is an important aspect of preventing corruption and the appearance of corruption in the City's contracting processes. The level of improper influence that a person may wield is directly proportional to the amount of money that person generates. The bigger the sum of money, the greater its potential to both corrupt and create the appearance of corruption. Therefore, we recommend a ban on contributions and fundraising.

Some jurisdictions do prohibit both contributions and fundraising in certain circumstances. For example, Pennsylvania prohibits contractors in municipal pension systems from contributing and soliciting contributions to candidates for municipal office. 53 Pa. Cons. Stat. §§ 703-A(a)-(b). Vermont prohibits contractors with the state treasurer from making or soliciting contributions to a candidate for the office of the state treasurer. 32 Vt. Stat. Ann. § 109(b). Kentucky prohibits elected officials from awarding no-bid contracts to persons who have contributed more than $5,000 or raised more than $30,000 for their campaigns. Ky. Rev. Stat. § 121.330. And New Jersey prohibits the state from entering into a contract worth over $17,500 to a person who has made or solicited contributions to a gubernatorial candidate or any state or county party committee. N. J. Stat. Ann. § 19:44A-20.4.

We also recommend that lobbying entities be treated the same way that bidders are. Currently, lobbyists and lobbying firms are prohibited from making contributions to an elected City official or candidate if the lobbyist or firm must register to lobby the office that the official or candidate seeks or holds. Charter § 470(c)(11). If fundraising is banned for bidders, our policy perspective is that it should be banned for lobbying entities, as well. Just as we believe lobbying entities and bidders should be treated the same way in terms of their ability to give gifts to City officials, we believe it is important to treat them the same way in terms of their financial involvement in the City's political processes. However, in light of *Green Party of Connecticut v. Garfield*, the City Attorney's office may have concerns about applying a ban on fundraising to lobbying entities, even if one is applied to bidders.

3. Logistics

In addition to issues regarding the application of a possible ban, there are also issues regarding the logistics of implementing a ban. Some of those issues are discussed here.

a. Data

As has been mentioned in our review of the GEO, there is no centralized source of information regarding City contracts. When the Ethics Commission previously recommended a ban on contributions and fundraising by bidders, then-Mayor Hahn's office was in the process of creating a centralized contract database. However, Mayor Hahn left office shortly thereafter, and the database project was never completed. As part of our comprehensive review of the GEO, we will be recommending improvements to the provision that requires the creation of semi-annual lists of City contracts, but those lists will never provide real-time data about who is a bidder.

The continuing lack of central information regarding City contracts means that our ability to enforce compliance with the ban will be limited. We would certainly respond to whistleblower complaints, but we would not be able to comprehensively audit every City bidder on a proactive basis. In addition to the lack of central information, we also lack the staff resources that would be necessary for such a monumental undertaking.

As mentioned above in section E.2.b, the lack of central contracting information can also result in a disadvantage to an elected City official or candidate who might benefit from a bidder's contribution or fundraising efforts. While the bidder certainly knows whether he has bid on a contract, the elected official or candidate might not. As a result, we recommend above that the ban apply only to elected officials and candidates who solicit or receive contributions or fundraising assistance from a person they know or have reason to know is subject to the ban. We also recommend that departments notify elected officials when there are new bidders on affected contracts.

b. Notice

Educating the public about a newly adopted ban on contributions and fundraising will be essential to the law's success. However, the world of potential bidders is limitless, and the Ethics Commission does not have the capacity to identify and adequately inform every possible bidder. Therefore, we recommend a requirement that notice of the ban be included in each invitation for bids or other responses regarding City contracts that trigger the ban.

City law currently requires bidders on certain contracts to submit a form (CEC Form 50) with their bids certifying that they agree to comply with the City's lobbying laws if those laws apply to them. LAMC § 48.09(H). We believe that it is appropriate to require a similar certification regarding the ban on contributions or fundraising. We also believe that bidders should be required to certify that they will notify all of their agents and subcontractors of the ban. As with CEC Form 50, we believe the form should be created by the Ethics Commission and maintained, along with the other bid documents, by the awarding authority.

c. Penalties

As with other violations of the City's campaign finance laws, a bidder who might give a contribution or engage in fundraising in violation of a ban would be subject to administrative

penalties for that violation. Charter § 706. We recommend that the violator also be subject to exclusion from City contracts for a period of four years.

City law currently states that a person who is convicted of a misdemeanor violation of any provision of the Campaign Finance Ordinance (CFO) may not act as a lobbyist or contractor for four years following the date of the conviction, unless the court specifically determines at sentencing that the prohibition should not apply. LAMC § 49.7.28(A)(3). In addition, persons who are found to have laundered political funds in violation of Charter § 470(k) are prohibited from entering into certain contracts with non-proprietary departments, receiving certain fee waivers, and acting as a lobbyist or lobbying firm for four years. LAMC §§ 49.5.21, 48.09(G).

Protecting the public's confidence in City government is a vital duty incumbent upon the Ethics Commission. *See, e.g.*, LAMC § 49.5.1(7). We believe that violating a law that bans bidders from infusing money into the political system—a ban designed specifically to eliminate even the perception of improper influence in the City's contracting processes—is a serious violation that warrants exclusion from City contracts (including contracts with the proprietary departments) for a period of time. This is a practice followed in other jurisdictions. *See, e.g.*, Conn. Gen. Stat. §§ 9-612(g)(2)(C)-(D) (barring violators from contracting with the state for one year); 53 Pa. Cons. Stat. § 705-A(e)(2) (prohibiting contracts for three years if a person violates the ban twice in three years); 30 Ill. Comp. Stats. 500/50-37(d) (barring contracts for three years if a person violates the ban three times in three years); Ky. Rev. Stat. Ann. § 121.990(17) (prohibiting contracts for five years if the person is criminally convicted of violating the ban).

To facilitate this recommendation, we believe that the Ethics Commission should notify every department when a bidder is found to have violated the ban and remind them that the violator may not be selected as a contractor for four years following the violation. A similar notification requirement currently exists for money laundering violations. LAMC § 49.5.21(E).

d. Technical Issues

If a ban on bidder contributions or fundraising is adopted, some existing sections of City law will need to be amended. For example, the provision of the GEO that currently requires bidders and contractors to disclose their contributions and fundraising activity should be repealed. LAMC § 49.5.15. Similarly, the provision that requires elected City officials to disclose when they participate in City decisions involving bidders and contractors who significantly contributed to or engaged in fundraising on behalf of the official should also be repealed. LAMC § 49.5.16. As part of our comprehensive review of the GEO, the Commission has already reached consensus that these provisions should be eliminated, because they have not resulted in the level of disclosure that was anticipated at their adoption and because they require the reporting of largely redundant information.

In addition, Charter § 609(e) may need to be amended so that it is consistent with the ban on bidders. That section currently prohibits underwriting firms selected in a noncompetitive bidding process from making political contributions of $100 or more to an elected City official during the 12 months after being selected as a City underwriter. In addition, underwriting firms that have made political contributions of $100 or more may not be selected in a noncompetitive

bidding process as City underwriters for 12 months following the contribution. If a bidder ban is approved, it may be appropriate to change Charter § 609(e) to say that no political contributions are permitted by these firms for 12 months before or after selection as a City underwriter. It may also be appropriate to include in the bidder ban a prohibition against bidders being selected as City contractors (for contracts that trigger the ban) if they have made a contribution to or engaged in fundraising on behalf of an elected City official in the 12 months prior to the bid. At least two jurisdictions, Kentucky and New Jersey, impose such a restriction. *See* section E.2.e, above.

F. NEXT STEPS

Draft language for the Charter and the LAAC that would implement a ban on bidder contributions is provided in Attachments F and G. We recommend reaching consensus on the issues discussed above at next week's meeting, so that the Commission's recommendations can be transmitted to the City Council before the Rules & Elections Committee meets again on October 20.

I look forward to discussing this item with you at the meeting and would be happy to answer questions at any time.

Attachments:
A City Attorney Report No. R10-0334
B Council File No. 10-2500
C 2010 Ranked Choice Voting Working Group Report
D Council File No. 10-2481
E *Green Party of Connecticut v. Garfield*
F Draft Charter language to implement a bidder ban
G Draft LAAC language to implement a bidder ban

Attachment A

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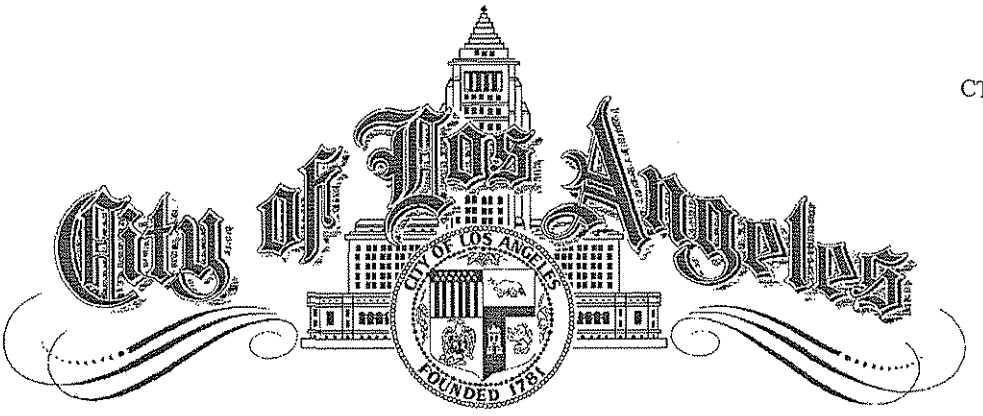

CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 10 - 0 3 3 4

SEP 2 7 2010

REPORT RE:

POSSIBLE BALLOT MEASURES TO REPEAL CITY CHARTER SECTIONS 470(c)(5), 470(c)(10), and 803(b)(4) DUE TO RECENT COURT RULINGS

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

In our June 9, 2010 report to Council (R 10-0181 in CF No. 10-1012) a copy of which is attached hereto), this Office recommended that the Council place on the ballot for repeal Charter sections 470(c)(5) and 803(b)(4) which limit contributions to committees making independent expenditures in City and LAUSD elections in light of recent U.S. Supreme Court rulings in *Citizens United* v. FEC, 558 U.S. __ , 130 S. Ct. 876 (2010) and the Ninth Circuit ruling in *Long Beach Chamber of Commerce,* 603 F.3d 684 (2010). This recommendation was in addition to repeal of a related ordinance provision which was adopted by Council.

We additionally recommend that you place on the ballot for repeal Charter Section 470 (c)(10), the City's "wealthy candidate" provision. In response to a U.S. Supreme Court ruling in *Davis v. FEC* 554 U.S.724 (2008), this Office advised the City Ethics Commission (CEC) not to enforce the provision. The supporting analysis is included in the attached City Attorney advice to the CEC and CEC Memoranda. The CEC adopted a related resolution and publicized its action. Consistent with that analysis, we recommend that the provision also be placed on the ballot for repeal.

If you have any questions regarding this matter, please contact Deputy City Attorney Renee Stadel at (213) 978-7100. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:RS:ac
Attachments

Report No. 10-0181
City Attorney Advice to CEC Dated August 26, 2008
CEC Memoranda Dated August 28, 2008
CEC Meeting Minutes
CEC Newsletter Article

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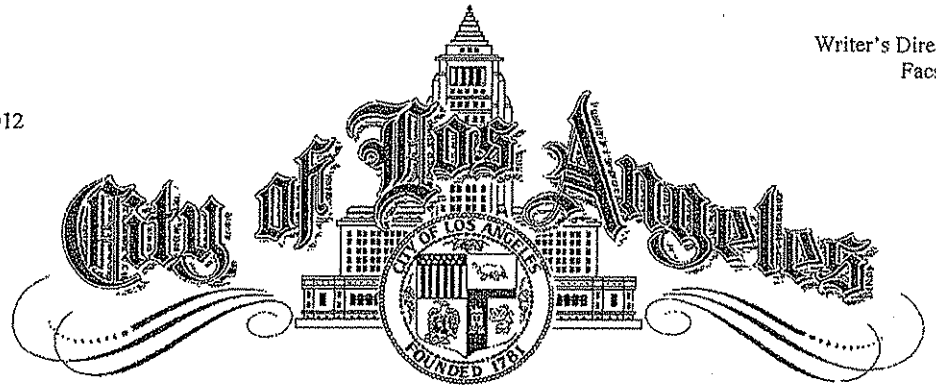

CARMEN A. TRUTANICH
City Attorney

REPORT NO. R10-0181

JUN 09 2010

REPORT RE:

RECOMMENDATION AND DRAFT ORDINANCE TO REPEAL SECTION 49.7.24 OF THE LOS ANGELES MUNICIPAL CODE AND RECOMMENDATION THAT CITY CHARTER SECTIONS 470(c)(5) and 803(b)(4) NOT BE ENFORCED DUE TO RECENT COURT RULINGS

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

We are writing to inform you of developments in the law regarding contribution limits to committees making independent expenditures and, in light of recent court opinions, to advise you that Los Angeles Municipal Code (LAMC) Section 49.7.24 should be repealed promptly and that City Charter Sections 470(c)(5) and 803(b)(4) should not be enforced and their repeal should be proposed to the voters as early as possible.

Background

Earlier this year, the United States Supreme Court struck down a federal ban on direct independent spending by corporations finding no corruption or appearance of corruption exists with regard to this type of independent spending. *Citizens United v. Federal Election Commission*, 558 U.S. __, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) *(Citizens United)*. The Supreme Court held that, with regard to spending limits, the

government entity seeking to impose the limits was required to demonstrate *quid pro quo* corruption, rather than demonstrating merely that the spending encouraged corrupting influence or access by a speaker to elected officials. *Citizens United*, 130 S. Ct. 876, 910. The Supreme Court also held that independent expenditures do not give rise to *quid pro quo* corruption. We have previously advised you regarding the repeal of a LAMC provision, specifically, LAMC Section 49.7.26.2, which is substantially similar to the provision struck down by the Supreme Court. The report and draft ordinance are pending Council approval. (See C.F. 10-0127.)

Subsequent to the *Citizens United* decision, the Ninth Circuit and two other courts have ruled on the validity of contribution restrictions similar to the type of restriction contained in Charter Sections 470(c)(5) and 803(b)(4) and LAMC Section 49.7.24. On April 30, 2010, the Ninth Circuit Court of Appeals ruled unconstitutional a Long Beach ordinance that limits contributions to persons making independent expenditures, as it applies to the Long Beach Chamber of Commerce political action committee and similarly situated parties. *Long Beach Chamber of Commerce v. City of Long Beach*, No. 07-55691 (9th Cir. 2010). The Ninth Circuit's ruling utilized the reasoning of the Supreme Court decision in *Citizens United* in relation to independent expenditures and other decisions regarding contribution limits to political action committees (PACs). The Ninth Circuit reached that conclusion, in part, because Long Beach could not demonstrate quid pro quo corruption or the appearance of corruption with regard to contributors to independent expenditure committees either at the time the provision was adopted or during the proceedings.

While the Supreme Court had previously upheld contribution limits to political parties and federal multicandidate committees, the Ninth Circuit in the *Long Beach* case distinguished political parties and federal multicandidate committees from independent committees because of the political parties' and multicandidate committees' demonstrated close relationship with candidates and officeholders. *See California Medical Association v. FEC*, 453 U.S. 182 (1981) and *McConnell v. FEC*, 540 U.S. 93, 154-155.[1] The Ninth Circuit stated that the "need for contribution limitations to combat corruption or the appearance of corruption thereof tends to decrease as the link between the candidate and the regulated entity becomes more attenuated." The Court found that the Chamber of Commerce political action committees were too remotely connected, if connected at all, to candidates, in that political action committees do not operate as "middlemen through which funds merely pass from donors to candidates...." particularly given the lack of coordination. *Long Beach*, Slip op. at 6425. The Court noted that coordination between independent committees and candidates would transform the expenditures into contributions under state law and potentially subject the parties to criminal prosecution. Moreover, the Court suggested a high standard to justify such limits, such as actual corruption involving contributions to independent

[1] A federal multicandidate committee is a type of independent political action committee that makes contributions to at least five federal candidates and has more than 50 contributors in a calendar year. 11 CFR 100.5(a) and 106.6(a).

expenditure committees. Finally, the Court stated its support for individuals expressing themselves collectively, including through committees. *Id.* at 6428.

The Ninth Circuit relied heavily on the reasoning and conclusions of prior decisions from other federal circuit courts that had ruled unconstitutional contribution limits and related restrictions to independent committees. See *Long Beach*, Slip at 6424-6425 citing *N.C. Right to Life, Inc. v. Leake*, 525 F. 3d 274 (4th Cir. 2008) (*Leake*) (striking down contribution limits as applied to committees making only independent expenditures). Also, the D.C. Circuit struck down regulations requiring independent PACs to use hard money accounts to pay for independent expenditures, where individual donations to hard money accounts were subject to contribution limits. *Emily's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009). This Office understands that Long Beach may seek a writ of certiorari from the Supreme Court, though in our view it is unlikely the Court would grant the writ, or even if granted, that the decision would be reversed.

Additionally, other courts have struck down similar provisions after the Supreme Court's ruling. In *Speechnow.com v. Federal Election Commission*, __F.3d __, No. 08-5223/09-5342 (D.C. Cir. 2010) (*SpeechNow*) following an *en banc* hearing, the D.C. Circuit Court ruled that contribution limits to committees making only independent expenditures are unconstitutional. The D.C. Circuit relied heavily on the reasoning of the Supreme Court's decision in *Citizens United* in relation to independent expenditures, concluding as a matter of law that there exists no valid governmental interest for limiting contributions to independent expenditure committees. This Office does not presently know whether the FEC will seek rehearing or whether the Solicitor General will file an appeal with the Supreme Court.

Also, a Southern District of California federal court recently granted a preliminary injunction to bar enforcement of, *inter alia*, San Diego's contribution limits to committees only making independent expenditures. *Thalheimer et al v. San Diego*, No. 09-CV-2862 (S.D. Cal. 2010) (*Thalheimer*). The District Court concluded that no legitimate purpose could be achieved by regulating contribution limits to independent expenditure committees, given that a single person can spend an unlimited amount of funds directly on an independent expenditure (*i.e.*, $1,000,000) and a limit would require a number of people to contribute a lesser amount to simply achieve the same independent expenditure level (*i.e.*, 100 people spending $10,000 each), a view previously expressed by a number of courts. Slip op. at 11. San Diego has sought Ninth Circuit review of this ruling. While neither *Speechnow* nor *Thalheimer* are binding on the City, both recognize the change in campaign finance law, especially with regard to independent expenditures resulting from the *Citizens United* case.

Although the *Long Beach* court ruled only on the provisions at issue in that case and applied its ruling only to the parties to that case (and similarly situated parties), in this Office's view, the Ninth Circuit's decision in the *Long Beach* case is applicable to the City and directly impacts the City laws. Because of the strong similarities between

the contribution limits in the City Charter and LAMC to those ruled unconstitutional by the Ninth Circuit in *Long Beach*, we believe that the *Long Beach* case together with the other cases on which the Ninth Circuit relied, *Citizens United,* and the current jurisprudence in the campaign finance area, constitute compelling legal authority to conclude that a constitutional challenge to the City's contribution limits on committees making independent expenditures could not be defended successfully. Moreover, many California jurisdictions already have litigated this issue and lost or voluntarily repealed their limits because they perceived the provisions to be unconstitutional. *See e.g.*, San Francisco (enjoined, litigation pending), Oakland (enjoined and repealed), San Jose (enjoined), Irvine (enjoined and repealed), Anaheim (enjoined), Huntington Beach (enjoined), Ventura County (voluntarily repealed), Sacramento (voluntarily repealed). The City also has a pending case involving these provisions. *Working Californians v. Los Angeles and City Ethics Commission*, U.S. District Court Case No. CV 09-08237 DDP (PJWx).

We understand that the Ethics Commission will be considering at its June 15th meeting a resolution to confirm that it does not intend not to enforce the subject provisions. In addition, there are a number of reasons for the City to repeal the provision. Private parties may complain that the continued existence of the provision inhibits political speech. Private parties could potentially file lawsuits against the City or possibly even against corporations or unions themselves because the provisions remain in the LAMC and remain City law. While we believe that we could defend the City because the provision is not being enforced, failure to repeal the provision invites potential lawsuits resulting in the unnecessary use of public resources to defend the City. Moreover, because the campaign finance ordinance provides for a private right of action, it may cause others to expend resources unnecessarily and provide additional risks to the City. Also, leaving an unconstitutional provision as part of the City's municipal laws may lead to confusion or even an incorrect conclusion for those reviewing and seeking to comply with City laws.

Recommendation

In light of the compelling legal precedent, it is the opinion of this Office that LAMC Section 49.7.24 and Charter Sections 470(c)(5) and 803(b)(4) should not be enforced and further should be repealed at the earliest possible time. For your convenience, we have attached a draft ordinance to repeal the LAMC provision. The Council should also at the earliest possible time place a measure on the ballot proposing to repeal the impacted Charter provisions.

Should you have any questions regarding this matter, please contact Deputy City Attorney Renee Stadel at (213) 978-7100. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:RS:ac

ORDINANCE NO. _____

An ordinance repealing in its entirety Section 49.7.24, Article 9.7, Chapter IV of the Los Angeles Municipal Code relating to contribution limits to committees making independent expenditures.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 49.7.24, Article 9.7, Chapter IV of the Los Angeles Municipal Code is hereby repealed in its entirety.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

_____
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By Renee A. Stadel
RENEE A. STADEL
Deputy City Attorney

Date June 9, 2010

File No. _____

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OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

August 26, 2008

LeeAnn Pelham, Executive Director
City Ethics Commission
200 North Spring Street, 24th Floor
Los Angeles, California 90012

Re: Recent U.S. Supreme Court Decision, *Davis v. FEC* (2008) 554 U.S. ___, 128 S. Ct. 2759

Dear Ms. Pelham:

You have requested our advice about the impact of the U.S. Supreme Court's recent decision regarding federal campaign finance laws in *Davis v. FEC* (2008) 554 U.S. ___, 128 S. Ct. 2759 (*Davis*) on the City's campaign finance laws, particularly Charter Section 470(c)(10). You particularly have asked for advice at this time in view of the City's upcoming 2009 municipal elections. The following responds to that request.

Davis v. FEC

In the landmark campaign finance law case, *Buckley v. Valeo* (1976) 424 U.S. 1, 54-59, the Supreme Court held that the government may not impose mandatory limits on campaign spending by candidates because those limits would violate the First Amendment. However, the Court stated that the government may offer public financing of election campaigns and may condition that funding on the candidate's voluntary agreement to abide by specific expenditure limitations.

In *Davis*, the Supreme Court again addressed the regulation of campaign spending by candidates under the First Amendment. At issue in *Davis* was a provision of the Bipartisan Campaign Reform Act of 2002 (BCRA) called the "millionaire's amendment," particularly those provisions concerning House of Representative candidates. BCRA § 319(a); 2 U.S.C. § 441a-1(a). The millionaire's amendment operates in much the same manner as our City Charter Section 470(c)(10) (discussed below). The millionaire's amendment sets a House candidate's "opposition personal funds amount" based on a statistical formula that takes into account a candidate's personal spending and fundraising. If a House candidate's "opposition personal funds

amount" exceeds $350,000, the contribution limits of his or her opponent are raised from the standard federal limit ($2,300) to triple that amount ($6,900). In order to carry out the provision, the millionaire's amendment requires the self-financed candidate to file a "declaration of intent" showing the amount of personal funds the candidate intends to spend in excess of $350,000, and to make two additional types of disclosures to the other candidates, political parties and the FEC, when the self-financed candidate spends or becomes obligated to spend more than $350,000 and each time the self-financed candidate is obligated to spend an additional $10,000 or more with personal funds. BCRA § 319(b), 2 U.S.C. § 441a-1(b)(1). The non-self-financed candidate also has notice requirements including when the candidate has raised the allowable amount of excess contributions. 11 CFR § 400.31(e)(1)(ii).

The Supreme Court in *Davis* struck down the millionaire's amendment and related reporting requirements as violative of the First Amendment. The Court found the millionaire's amendment places a significant burden on the spending of the self-financed candidate because it requires the self-financed candidate to either "abide by a limit on personal expenditures or endure the burden that is placed on that right by the activation of a scheme of discriminatory contribution limits." *Id.* at 2772. The Court treated the "asymmetrical" contribution limits as a spending limit on the self-financed candidate because by providing advantages to the non-self-financed candidate, the self-financed candidate's spending and speech are burdened. Based on the Court's prior decision in *Buckley* in relation to campaign spending limits, the Court applied a strict scrutiny analysis to the provision, requiring the government to demonstrate a compelling government interest that is served the regulation. *Id.*

In reviewing the government interests purported to be served by the millionaire's amendment, the Court strongly reaffirmed its view that the only government interest available to justify campaign finance restrictions is the interest in avoiding corruption or the appearance of corruption that may be caused by accepting private campaign funds. The Court further stated that leveling the playing field among candidates is not a legitimate basis on which to regulate campaign speech. *Id.* at 2773-2774. The Court concluded that the millionaire's amendment did not serve an interest in combating corruption or the appearance of corruption, noting that the candidate's use of personal funds reduces the threat of corruption posed by private contributions. The Court also stated that if the contribution limits were lifted for all candidates as opposed to just the non-self-financed candidates, no constitutional basis would exist for challenging the provision. *Id.* at 2771.

In addition to striking down the millionaire amendment's "asymmetrical" contribution limit system as "antithetical to the First Amendment," the Court also found the provision's related reporting requirements unconstitutional. *Id.* at 2275. The Court concluded that the disclosure provision's burden on the candidate's rights could not be

justified particularly because the purpose of the reporting (lifting of contribution limits) had been declared unconstitutional. *Id.*

Following the Court's decision, the Federal Election Commission took action to confirm that it would not enforce the provisions of millionaire's amendment relating to House candidates or the similar provisions applicable to Senate candidates that were not a subject of the Court decision. Federal Election Commission's Public Statement on the Supreme Court's Decision in *Davis v. FEC* (July 25, 2008).

City Charter Section 470(c)(10)

The City's campaign finance laws contain various provisions, including contribution limits and reporting requirements which have been in place, at least in part, since 1985. The City's campaign finance laws also include provisions directly concerning the City's matching funds program. For example, City Charter Sections 470(c)(3) and (4) provide for per person limitations on campaign contributions of $500 for City Council offices and $1,000 for Citywide offices. City Charter Section 470(c)(6) also limits a person's total contributions to all City candidates in an election. Charter Section 470(c) also specifically provides the following:

> (10) No candidate shall expend more than thirty thousand dollars ($30,000) in personal funds in connection with his or her campaign for City office unless and until the following conditions are met:
>
> (A) Notice of the candidate's intent to so expend or contribute shall be provided by registered mail to all opponents and to the City Ethics Commission at lease 30 days in advance of the election, specifying the amount intended to be expended or contributed.
>
> (B) All personal funds to be expended or contributed by the candidate in excess of thirty thousand dollars ($30,000) shall first be deposited in the candidate's campaign contribution checking account at least 30 days before the election.
>
> Each opponent of any candidate who has complied with above conditions shall be permitted to solicit and receive, and contributors to each such opponent may make, contributions in excess of the limitations established in subsections (c)(3) and (4) until such opponent has raised contributions in amounts above such limits equal to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account.

This provision has been referred to as the "wealthy candidate" provision. In past elections, City candidates have contributed more than $30,000 in personal funds to their own candidacies. In those instances, the opposing candidates have been permitted to raise "over-the limit" contributions (i.e., over the standard $500 and $1,000 limits) up to the amount of personal funds the "wealthy" candidate provided to his or her campaign, though contributions would remain subject to the aggregate per person contribution limit.[1] For example, in a City election where the maximum amount a person could contribute to all candidates is $7,000, if Candidate A provided $70,000 in personal funds to his campaign for Mayor, then Candidate B for Mayor could raise $40,000 in campaign contributions that are not subject to the $1,000 per person limit, but the contributor would still be subject to the aggregate contribution limit of $7,000.

Because of the strong similarities between the reporting provisions and variable contribution limits in the City Charter to those ruled unconstitutional by the U. S. Supreme Court in *Davis*, we believe that case constitutes compelling legal authority to conclude that a challenge to the City's provisions on constitutional grounds could not be successfully defended. In light of that compelling legal precedent, the City's provisions should not be enforced, and the Commission should ensure that candidates are informed that the provisions will have no operation during the 2009 municipal elections. We note that there is no discretion to enforce a law or regulation that is clearly established to be unconstitutional. In various cases, the Supreme Court has found liability on the part of governmental entities that enforced a law clearly established to be unconstitutional, and ruled that, in appropriate circumstances, staff and officials administering the unconstitutional law may be personally liable. *See e.g. Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818; *Saucier v. Katz* (2001) 522 U.S. 194, 202; *Hope v. Peltzer* (2002) 536 U.S. 730; *Fogel v. Collins* (9th Cir. 2008) 531 F.3d 824.

We are not currently aware of any other jurisdiction with this particular provision. Our advice is strictly limited to City Charter Section 470(c)(10) and the Commission's actions in relation to this provision will have no impact on any other provision of City law. We note that the debate about how this decision may impact other campaign finance laws will continue and may be resolved as other cases are pending. *See e.g., North Carolina Right To Life Committee Fund for Independent Political Expenditures, et al. v. Leake* (4th Cir. 2008) 524 F.3d 427, petition for cert. filed; *American Association of*

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[1] See *Investing in Competition: Campaign Finance Reform in the City of Los Angeles*, City Ethics Commission, June 1998, pp. 41-42; *Lessons from the 2001 City Elections, Volume I*, City Ethics Commission, October 2001, pp. 17-20; *Investing in the Public Trust, Campaign Finance Reform in the City of Los Angeles in the Fifteen Years Since Proposition H*, City Ethics Commission, February 2006, p. 61.

Physicians and Surgeons v. Brewer (D. Ariz.) No. CV 04-0200-PHX-EHC; *McComish v. Brewer* (D. Ariz.) No. CV 08-1550-PHX-ROS. We will keep you informed should any other court decision impact the City's campaign laws.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By
RENEE A. STADEL
Deputy City Attorney

RS:ac
Attachments
FEC v. Davis

cc: City Ethics Commissioners
Helen E. Zukin, President
Sean Treglia, Vice President
Michael Camuñez, Member
Nedra Jenkins, Member
Paul H. Turner, Member

CITY ETHICS COMMISSION

Helen E. Zukin
President

Sean Treglia
Vice President

Michael Camuñez
Paul H. Turner
Nedra Jenkins

CITY OF LOS ANGELES
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Memorandum

August 28, 2008

To: Members of the City Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: AGENDA ITEM NO. 8
Effect of *Davis v. FEC* on Enforceability of Charter Section 470c10

Attached for your review is a City Attorney communication regarding the effect of a recent U.S. Supreme Court decision, *Davis v. FEC,* on City campaign finance law. Because the Court's 5-4 decision directly affects a similar and longstanding provision of Los Angeles City law, Charter Section 470(c)10, clear information for both candidates and contributors about the impact of the Court's decision is vital, particularly as the 2009 municipal election cycle is well underway.

Toward that end, we have placed this item on the September 5th agenda to enable the Ethics Commission to review the City Attorney communication and affirm its advice and enforcement policy with regard to section 470(c)10 through the adoption of a policy resolution. Following the board's action on the matter, staff will update our training and informational materials and work to ensure the widest possible distribution of the Commission's new policy.

Background

On June 26, in its decision in *Davis v. FEC* (copy also attached), the U.S. Supreme Court struck down the so-called "Millionaire's Amendment" provision of federal campaign finance law. That provision – enacted as part of the Bipartisan Campaign Reform Act of 2002 – enabled Congressional candidates to raise contributions higher than the normal limits when an opponent in their race used personal expenditures beyond certain thresholds. It also required candidates to provide notice of their planned personal funds use to their opponents and to the Federal Election Commission, the agency responsible for administering and enforcing federal campaign finance law.

In the wake of that decision last month, I requested formal guidance on behalf of the Commission from the Office of the City Attorney about the impact of this decision on City Charter Section 470(c)10, a provision that pre-dates the 1990 creation of the City's comprehensive campaign financing system that included a public matching funds program.

History of the Provision

In September 1989, the staff of the Commission to Draft an Ethics Code for Los Angeles City Government (more commonly known as the Cowan Commission), proposed laws to supplement the City's existing contribution limits. Their report cited, among other proposals, the desire to allow those running against a significantly self-funded candidate to raise larger than normal contributions in response. It further noted that an existing provision of City law, then-codified under Charter Section 312, "already provides relief to candidates facing wealthy opponents who contribute more than $30,000 of their own money to their campaigns." [1].

That provision, now numbered 470(c)10, allows opponents of the self-funded candidate to solicit and receive, and their contributors to make, contributions in excess of the limits established in Charter sections 470(c)3 and 470(c)4 "until such opponent has raised contributions in amounts above such limits equal to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account." To implement the provision, it requires first that the self-funded candidate to a) deposit all personal funds in their campaign account no later than 30 days before the election, and b) to notify all opponents and the City Ethics Commission no later than 30 days in advance of the election of the amount of personal funds they plan to spend.

Indeed, since 1989, City candidates have been able to respond to large self-funding by candidates by raising beyond the normal $500 or $1,000 per person contribution limits under those circumstances. Between 1989 and 2005, of the 166 candidates who chose to use some personal funds in a primary or runoff election, 24, or roughly 15 percent, spent more than $30,000. Those personal funds represented just over one-third of all funds raised by the 24 candidates as a group, with it comprising as much as 100 percent of one candidate's funds, to as little as four percent for another. For just over half of those 24 candidates, their personal funds use represented half or more of the funds they used in the election.

To evaluate the impact of the lifting of the contribution limits as a result of Sec. 470(c)10, the Commission staff in past studies calculated for each opposing candidate the "net benefit" – the amounts those candidates raised in response that he or she otherwise would not have received had the limits remained in place. In Citywide races between 1993 and 2001, 17 candidates raised over $3,001,000 in response, with individual net benefits ranging from $25,150 to over $787,298 in primary or runoff election.

To date in the 2009 elections, only one candidate for City office has reported using $30,000 in personal funds on his primary election campaign, but no candidate has exceeded that amount, which would trigger lifted contribution limits for other candidates.[2]

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[1] *Ethics and Excellence in Government: Final Report and Recommendations of the Commission to Draft an Ethics Code for Los Angeles City Government*, November 1989, p. 198. The staff's *Draft Report on Campaign Financing for the City of Los Angeles* was included as part of that November 1989 final report.

[2] Detail of all candidates' fundraising, including their use of personal funds, can be found on the Ethics Commission's *2009 Municipal and LAUSD Election Totals* web page located at: http://ethics.lacity.org/efs/public_election.cfm?election_id=37&RequestTimeout=500#S147

City Attorney's Advice

As detailed in the City Attorney's communication, in *Davis v. FEC* the Supreme Court has "treated the 'asymmetrical' contribution limits as a spending limit on the self-financed candidate because by providing advantages to the non-self-financed candidate, the self-financed candidate's spending and speech are burdened." City Attorney report, p. 2. The City Attorney's Office further advises:

> "...the case constitutes compelling legal authority to conclude that a challenge to the City's provisions on constitutional grounds could not be successfully defended. In light of that compelling legal precedent, the City's provisions should not be enforced, and the Commission should ensure that candidates are informed that the provisions will have no operation during the 2009 municipal elections."

Going Forward

Based on the City Attorney's guidance, we recommend that the Commission adopt the attached policy resolution to clarify that:

- Section 470 C 10 will not be in operation during this or subsequent elections based on the *Davis* decision.
- City candidates may now spend more than $30,000 in personal funds without abiding by the requirements of 470(c)10.
- The Commission will not enforce the requirements of 470(c)10 against any candidate for failing to abide by its campaign account deposit and notice requirements.
- Candidates whose opponent(s) use more than $30,000 in personal funds in any election may no longer solicit or receive contributions in excess of the limits established in Charter Section 470(c)3 or (c)4 in response, and
- Contributors may no longer make contributions in excess of the limits established in Charter Section 470(c)3 or (c)4 to the opponent of any candidate who uses more than $30,000 in personal funds in his or her election.

A draft resolution is attached for your consideration. We look forward to answering any questions you may have about this item at your meeting next week.

CITY ETHICS COMMISSION RESOLUTION ON ENFORCEABILITY OF LOS ANGELES CITY CHARTER SECTION 470(c)10

WHEREAS the United States Supreme Court on a 5-4 vote decided *Davis v. FEC* (554 U.S.___, 128 S. Ct. 2759) on June 26, 2008, striking down as unconstitutional Section 319(a) the Bipartisan Campaign Reform Act of 2002 (BCRA), and

WHEREAS the Los Angeles City Charter, Sec. 470(c)10 is a provision similar to the provision at issue in the *Davis* case, and

WHEREAS the City Attorney's Office has advised that the *Davis* case constitutes compelling legal authority to conclude that a challenge to City Charter Section 470(c)10 on constitutional grounds could not be successfully defended, and

WHEREAS, in light of that compelling legal precedent, Sec. 470(c)10 should not be enforced, and

WHEREAS the City Ethics Commission should ensure that candidates are informed that the provisions of Sec. 470(c)10 will have no operation during the 2009 or subsequent municipal elections based on the *Davis* decision,

THEREFORE BE IT RESOLVED that the City Ethics Commission will now

- advise that City candidates may now spend more than $30,000 in personal funds without abiding by the requirements of 470(c)10,
- advise that City candidates whose opponent(s) use more than $30,000 in personal funds in any election may no longer solicit or receive contributions in excess of the limits established in Charter Section 470(c)3 or (c)4 in response, and
- advise that contributors may no longer make contributions in excess of the limits established in Charter Section 470(c)3 and (c)4 to the opponent of any candidate who uses more than $30,000 in personal funds in his or her election, and
- not enforce the deposit or notice requirements of 470(c)10 against any candidate.

September 5, 2008

Helen E. Zukin, President

CITY ETHICS COMMISSION

Helen Zukin
President

Sean Treglia
Vice President

Michael Camuñez
Nedra Jenkins
Paul Turner

CITY OF LOS ANGELES
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DRAFT MINUTES

REGULAR MEETING OF THE LOS ANGELES CITY ETHICS COMMISSION

Tuesday, September 5, 2008
9:30 a.m.

City Hall, Room 1050 – 10th Floor
200 North Spring Street
Los Angeles, CA 90012

1. Call to Order.

Commission President Helen Zukin called the meeting to order at 9:34 a.m.

Present: Commission President Helen Zukin, Commission Vice President Sean Treglia, Commissioner Michael Camuñez, Commissioner Nedra Jenkins, Commissioner Paul Turner.

2. Approval of draft minutes for the meeting of August 12, 2008.

Zukin asked for a motion to approve the minutes of the August 12 meeting. The minutes were approved 5-0.

3. Public Comment

There was no public comment.

4. Executive Director's report [*LeeAnn Pelham*].

Executive Director LeeAnn Pelham presented her report and there was no discussion.

5. Monthly policy and legislation report [*Heather Holt*].

Director of Policy and Legislation Heather Holt presented the item, and there was no further discussion.

6. Discussion and possible action on the proposed revisions to CEC Form 52 regarding neighborhood council financial disclosure filings [*Heather Holt*].

Holt explained that Councilmember Alarcón had asked the Commission to amend Form 52, so that it is an annual form required of all neighborhood council board members, rather than a form that is filed only when a neighborhood council participates in creating a neighborhood council file. A revised version of the form was presented to the Commissioners for consideration.

Treglia stated that he did not understand the need for neighborhood council disclosure. Jenkins voiced concerns about the staffing issues associated with the proposed disclosure, and Pelham responded that the Council will be made aware of the staffing needs associated with this new program. Public comment was heard from Leonard Schaffer, Daniel Wiseman, José Sigala, and BongHwan Kim. Camuñez stated that he does not think that the information requested in Form 52 is invasive. Zukin stated that she is comfortable with what the Commission previously put together, but she is concerned about a chilling effect on participation if every neighborhood council board member is required to file the form annually. Turner stated that, while neighborhood councils have an advisory role, they are still a part of local government's deliberative process; and he does not believe that the filing of this form will chill participation.

Camuñez moved to reaffirm the Commission's initial position that Form 52 is the most appropriate means of disclosure, to convey to the City Council that the Commission recommends Form 52 and disagrees with requiring universal disclosure of all neighborhood councils, to adopt a Form 53 as a form that should be used instead of Form 700 if the City Council determines that universal disclosure should be required, and to make some technical changes to the proposed form. Turner seconded the motion, and it was approved 4-1.

7. Snapshot of campaign finance data for 2009 City election through June 30, 2008 [*Jennifer Bravo*].

Senior Program Analyst Jennifer Bravo presented her report on campaign finance data for 2009 city election through June 30, 2008. Treglia mentioned that he did not understand the trends, but that everything looked good.

8. Discussion and possible action in connection with City Attorney communication regarding the enforceability of Los Angeles Charter Section 470(c)(10) in the wake of U.S. Supreme Court decision, *Davis v. FEC* [*LeeAnn Pelham & Renee Stadel*].

Pelham presented a report regarding *Davis v. FEC*, a United States Supreme Court decision, and its effect on the enforceability of Los Angeles City Charter Section 470(c)(10). Treglia commented that the *Davis* case is not applicable to the City's campaign finance system. Turner stated that he thinks that the Supreme Court's decision relied too much on the appearance of corruption rather than other considerations, such as equal rights. He questioned what impact this decision will have on the full public financing proposal. Deputy City Attorney Renee Stadel responded that the case before the Supreme Court did not address public financing, but the City Attorney's Office is watching that very closely and will keep the Commission informed. Pelham

added that there is a possible impact on Citywide candidates who may be contemplating spending up to $50,000 in personal funds on their campaigns. Treglia encouraged the Commission to act with caution regarding this issue due to its implications on the public financing system. Camuñez stated that he is prepared to accept the staff's resolution but does not think that it goes far enough to address the underlining public policy question of leveling the playing field and ensuring access in elections. He asked staff to consider whether limits should be raised for all parties. Pelham suggested amending the resolution, to give candidates immediate information about the final impact of the decision and to add that the Commission will explore recommendations to remedy the imbalance that the Supreme Court decision has created. Camuñez moved to adopt the resolution as amended, and Treglia seconded. The amended resolution was adopted 5-0.

[Items 10 and 11 were taken out of order.]

10. Consideration of and action on the following proposed stipulated settlements:

In the Matter of Los Angeles League of Conservation Voters, CEC Case No. 2008-14 [*Deena Ghaly & Terra Messina*].

Zukin recused herself on this issue. Director of Enforcement Deena Ghaly presented the item. Camuñez asked if this was the standard on how the Commission has treated similar violations and if there were no other mitigating circumstances that would warrant anything further. Ghaly responded that it was and that there were no other mitigating circumstances. Turner asked if this was the first violation for the League, and Ghaly responded that they had no prior enforcement history with the Commission. Treglia moved to accept staff's recommendation, and Turner seconded. Staff's recommendation was accepted 4-0.

11. Consideration of and action on statements of economic interests for commission and department head SEI reviews [*Shannon Prior*].

Program Analyst Shannon Prior presented the item, and there were no questions or discussion. Camuñez moved to accept the staff's recommendation, and Turner seconded. Staff's recommendation was approved 5-0.

9. Discussion and possible action on initial recommendations regarding registration under the Municipal Lobbying Ordinance [*Heather Holt*].

Treglia recused himself on this item. Holt presented the first substantive issues resulting from the comprehensive review of the lobbying ordinance. The presentation identified staff recommendations regarding who should qualify as a lobbyist, what activities should constitute lobbying, and whether any categorical exemptions should apply. Public comment was heard from Robert Stern, Madeline Janis, Jim Sutton, Veronica Perez-Becker, Jim Clark, Elizabeth Bluestein, Luis Baglietto, Betty Ann Downing, Vanessa Rodriguez, Barbara Shultz, Steven Bullock, and Arnold Sachs. The Commissioners agreed to begin their discussion of the lobbying issues at the October meeting.

12. Announcements and requests to schedule items on future agendas.

There were no announcements or requests to schedule items on future agendas.

13. Adjournment.

The meeting was adjourned at 12:39.

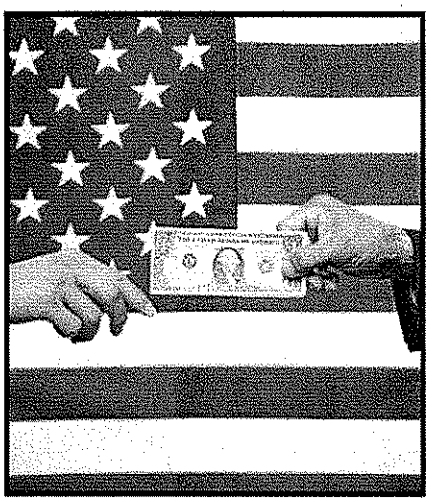
los angeles
CITY ETHICS COMMISSION

The Public Trust

October 2008

Volume 11, Issue 2

City's "Wealthy Candidate" Provision Now Unenforceable



At its September 5th meeting, the City Ethics Commission determined that Los Angeles Charter section 470(c)10 – often referred to as the City's "wealthy candidate provision" – will no longer be enforced based on a recent 5-4 U.S. Supreme Court decision in Davis vs. FEC, a case testing a similar provision of federal law known as the "Millionaires' Amendment." Enacted as Sec. 319(a) of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), that provision enabled Congressional candidates to raise contributions higher than the normal limits when an opponent in their race used personal expenditures beyond certain thresholds.

In a rare step for the Commission, the five-member panel concluded, based on advice from the City Attorney, that the City can no longer require candidates spending more than $30,000 in personal funds to abide by the notice and deposit requirements of Charter section 470(c)10; that opponents of any candidate spending more than $30,000 in personal funds in a primary or runoff election can no longer solicit or receive contributions in excess of the normal $500 or $1,000 per person contribution limit that applies for their election; and that contributors may no longer give contributions larger than the normal $500 or $1,000 limit to a candidate whose opponent uses more than $30,000 in personal funds.

Charter section 470(c)10 is a longstanding provision of City law that pre-dates the 1990 creation of the City's comprehensive campaign financing system and partial public financing program. It was designed to provide relief to candidates facing opponents who contribute more than $30,000 of their own money to fund their campaigns. Sec. 470(c)10 allowed candidates who do not have, or choose not to use, large personal funds in their own campaigns to raise larger than normal contributions from donors, up to the total amount of personal funds used by their self-funded opponent. It also allowed donors to give up to a higher per person limit under those circumstances.

Specifically, the provision allowed opponents of the self-funded candidate to solicit and receive, and their contributors to make, contributions in excess of the limits established in Charter sections 470(c)3 and 470(c)4 "until such opponent has raised contributions in amounts above such limits equal to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account." To implement the provision, it required first that self-funded candidates a) deposit all personal funds in their campaign account no later than 30 days before the election, and b) to notify all opponents and the City Ethics Commission no later than 30 days in advance of the election of the amount of personal funds they plan to spend.

The Commission's resolution on the provision's enforceability for the 2009 elections was triggered by advice it sought from the City Attorney's Office in the wake of the Supreme Court's Davis decision on June 26, 2008. In an August 26, 2008, letter to the Commission's Executive Director, the City Attorney's Office stated that the Supreme Court has "treated the 'asymmetrical' contribution limits as a spending limit on the self-financed candidate because, by providing advantages to the non-self-financed candidate, the self-financed candidate's spending and speech are burdened." Consequently, the Court struck down Sec. 319(a) as unconstitutional. The City Attorney's Office concluded that the Davis case

constituted "compelling legal authority to conclude that a challenge to the City's provisions on constitutional grounds could not be successfully defended."

With the 2009 municipal election cycle well underway, the Commission concluded that clear information for both candidates and contributors about the impact of the Court's decision is vital. Citing its strong concern that the decision has created a "disparate impact" between self-funded and non-self funded candidates, however, the Commission also directed its staff to explore alternative policies that could be adopted in the future to allow candidates some ability to respond under a "wealthy candidate" scenario while addressing the Court's concerns.

For a copy of the City Attorney's August 26 communication, or a copy of the September 5 resolution adopted by the Ethics Commission, please contact the CEC.

Detail of all candidates' campaign fundraising and expenditure activities, including their use of personal funds, will continue to be updated regularly on the City Ethics Commission's 2009 Municipal and LAUSD Election Totals web page, accessible at http://ethics.lacity.org/efs/public_election.cfm?election_id=37.

[Return to Newsletter Main Page]

Attachment B

10-2500

RULES & ELECTIONS

MOTION

CD14 has now held two forums on ideas for reforming Los Angeles' electoral and political system, with a third session scheduled on October 7 which will deal with the City Charter and possible amendments that could be made to it in the hopes of making Los Angeles a better place.

Several ideas were shared at the first two forums for how to meet the discussion's goals of increasing voter participation in elections, reducing overall costs and leveling the playing field for candidates by reducing the influence of money in political campaigns.

Some of these (vote by mail, election day voter registration and instant runoff/ranked choice voting) have been proposed previously by Council motion and reported on by the City Clerk (CF#09-1222 and 09-1222-S1, 09-1100-S1/S4, 07-1100-S10/12, and 02-0002-S112).

Other ideas mentioned included replacing Los Angeles County's antiquated Ink-A-Vote election system, breaking the City into boroughs to increase civic participation, making public information about who has and has not voted, reducing the size of Council districts, granting certain voting rights to noncitizens, providing greater public financing of candidates, increasing access to early voting, and promoting civic education through our local schools.

There is no denying that voting trends are generally heading in the wrong direction, with fewer and fewer people choosing to vote. Participation in the most recent City elections was just 15.6% of registered voters in the March primary and 17.1% in the May runoff. When you factor in the number of voting age residents who cannot be, or are not registered, the percentage of people making decisions for the City as a whole is miniscule.

With no candidates for citywide office and just one Council district contest expected without an incumbent, 2011 figures to set a new low for voter participation in Los Angeles. We need to eliminate existing barriers to voting and reduce the number of elections to reduce "voter fatigue" if we want to turn around the recent trend of diminishing participation.

We also need to begin moving toward an election system in which the main test for a potential candidate for office is not whether they can raise large amounts of money. The first step in this process is to allow for funds to accumulate, still at their current rate, in the Matching Funds Trust Fund without limit. The recent *Citizens United* court case also requires us to remove some language around donation limits that is in our Charter and is no longer legal due to the ruling.

I THEREFORE MOVE that the City Attorney, CLA and CAO be instructed to prepare and report back within two weeks on all the necessary steps and materials required for placing three separate Charter change ballot measures on the March 2011 ballot allowing for the use of ranked choice voting, vote-by-mail along with Neighborhood Vote Centers in City elections, and removing the cap on the maximum allowable amount that can be contained in the Matching Funds Program Trust Fund, as well as technical changes to comply with recent court cases.

PRESENTED BY: _____
JOSE HUIZAR
Councilmember
14th District

SEP 28 2010

SECONDED BY: _____
ERIC GARCETTI
Councilmember
13th District

ORIGINAL

Attachment C

JUNE A. LAGMAY
CITY CLERK

HOLLY L. WOLCOTT
EXECUTIVE OFFICER

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CALIFORNIA

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ANTONIO R. VILLARAIGOSA
MAYOR

April 8, 2010

Honorable Members of the Los Angeles City Council
c/o City Clerk
Room 395 City Hall

Re: 2010 Ranked Choice Voting (RCV) Working Group Report

Honorable Members:

Attached please find the end product of the collaborative effort of the Ranked Choice Voting (RCV) Working Group which was established in October 2008. The RCV Working Group met regularly over the course of a year, and consisted of representatives from the City of Los Angeles (Office of the City Clerk, Office of the City Attorney, City Administrative Office, Chief Legislative Analyst, and City Ethics Commission; the Los Angeles Unified School District and the Los Angeles Community College District; the L.A. County Registrar-Recorder/County Clerk, and subject matter experts such as Professor R. Michael Alvarez from the California Institute of Technology.

The RCV Working Group's report concludes that implementing an RCV model for municipal elections is feasible if certain criteria are met. Such criteria include:

1) The acquisition of a new and unconditionally certified voting system with RCV capabilities in acquired conjunction with the L.A. County Registrar-Recorder/County Clerk. The decision to pay the significant cost of such a new voting system would be the prerogative of the Council and the Mayor.

2) Clear Charter authority to implement RCV, along with the appurtenant Election Code (ordinance) changes and potential further changes to the City's Matching Funds Program (Ethics Commission). Again, the decision to place such a Charter change before the voters as a ballot measure would be the prerogative of the Council and the Mayor.

3) A significant voter outreach and education campaign. Some cost would likely be associated with this outreach.

The Ranked Choice Voting Working Group Report is respectfully submitted for the Council's consideration and review. Inasmuch as the report was provided to define the issues surrounding Ranked Choice Voting as an alternative voting methodology, it is recommended that the report be Noted and Filed.

Sincerely,

June Lagmay
City Clerk

JL:HLW:gp

EXE-018-10

2010 RANKED CHOICE VOTING WORKING GROUP

April 8, 2010

INTRODUCTION

On October 29, 2008, the Los Angeles City Council established a working group to identify issues related to implementation of Ranked Choice Voting (RCV), also known as Instant Runoff Voting (IRV), and return with options for the Council to set a public policy on RCV. This report will discuss the recommended policy options the City Council should consider when establishing a policy toward RCV.

The RCV Working Group consisted of representatives from the Office of the City Clerk (City Clerk), the City Attorney, the City Administrative Officer (CAO), the Chief Legislative Analyst (CLA), the City Ethics Commission, the Los Angeles Unified School District (LAUSD), the Los Angeles Community College District (LACCD), the Los Angeles County Registrar-Recorder/County Clerk (Los Angeles County), and Professor R. Michael Alvarez from the California Institute of Technology (CalTech).

To arrive at a set of policy options, the RCV Working Group raised several issues relative to implementing RCV for municipal elections. These issues include:

- **Operational and Legal**
  What operational and legal requirements would be necessary to adopt RCV and how will RCV affect the City's relationship with Los Angeles County and other cities for municipal elections?

- **Community and Outreach**
  What impact would RCV have on voters, pollworkers, and candidates and how can the City minimize or heighten this impact?

- **Savings/Cost**
  What costs and/or savings could the City expect from adopting RCV?

- **Candidate and Ethics**
  What implications will RCV have on the City's Matching Funds Program?

In addition to addressing these issues, the RCV Working Group also discussed issues raised by advocates and critics of RCV, including claims concerning election fatigue, voter turnout, and transparency in elections.

To address these and other issues, the RCV Working Group consulted with a variety of sources, including representatives from jurisdictions that have implemented RCV or will implement RCV in the near future, officials from the California Secretary of State and the Election Assistance Commission (EAC) in regards to voting system certification, and advocates and critics of RCV. In addition to these meetings, the RCV Working Group also developed the City of Los Angeles Ranked Choice Voting Working Group Election Jurisdiction Survey for jurisdictions currently using RCV to ascertain how RCV operates in those jurisdictions and how certain issues have been addressed.

After an extensive review, the RCV Working Group has concluded that implementing a RCV model for municipal contests is feasible if the following criteria were met:

- The acquisition of a new and unconditionally certified voting system with RCV capabilities in conjunction with Los Angeles County;
- Clear Charter authority for implementing RCV, along with Election Code changes and potential changes to the City's Matching Funds Program;
- A significant voter outreach and education campaign;

BACKGROUND RESEARCH AND FINDINGS

The City's Current Election Model

The City Clerk conducts elections for all elected City offices, including the Mayor, City Attorney, City Controller, and all 15 members of the City Council. The City also conducts elections for the seven members of the Board of Education for the Los Angeles Unified School District (LAUSD) and the seven members of the Board of Trustees for the Los Angeles Community College District (LACCD), both of which reimburse the City the cost of conducting their elections.

Under the City's current system, the outcome of an election for these offices is determined by what candidate receives a majority of the votes cast for his/her desired office. Initially, the City conducts a primary nominating election in March during which voters may vote for any eligible candidate. If, at that election, no candidate for a particular office receives a majority of votes cast, the top two candidates then participate in a "runoff" election in May in which one winner will necessarily be determined by majority of the votes cast.

When conducting municipal elections, the City regularly interacts with the Los Angeles County Registrar-Recorder/County Clerk (County). Historically, the City and the County have used the same polling place equipment, poll workers, and polling places and have provided each other with emergency equipment replacement and staff during elections, where possible. This partnership has provided voters with a consistent voting experience and is generally considered a benefit to both jurisdictions. In recent years, the City and County have taken steps expand to this partnership, including acquiring a shared vote tally system or, at the very least, guarantee the same polling place equipment to further provide a consistent voting experience for voters and election administrators alike.

In addition, the City consolidates elections with a number of cities who conduct a portion of the LAUSD and LACCD elections within their boundaries. In some instances, the City conducts concurrent elections with these other cities, in which the City conducts an election while the host city conducts their own. Any alteration to the City's current voting model will certainly effect how the City interacts with these jurisdictions.

Ranked Choice Voting

Ranked choice voting is a method of voting that produces winners with a majority support in a single election. Voters rank candidates in order of preference: a first ranking for their favorite candidate, a second ranking for their next favorite, and so on. If a candidate wins a majority of first choice rankings, he or she wins the election. If no candidate receives a majority of the votes cast in the initial tally, the candidate with the fewest first choice votes is eliminated and his or her second choice votes are counted and distributed amongst the remaining candidates. This process continues until a candidate receives majority support and is declared the winner.

To assist cities and counties in California that are exploring RCV for their elections, the California Secretary of State, with assistance from RCV advocates, is developing a set of RCV guidelines for that will serve as a roadmap for jurisdictions to use although these guidelines will not have the force of law.

The RCV Debate

Opinions of RCV are mixed. Advocates of RCV cite several benefits to this voting model. For example, the New America Foundation contends that RCV will eliminate runoff elections, fill vacant seats sooner, increase voter participation, invite a wider variety of candidates, reduce negative campaigns, and reduce the number of paper ballots that is used in an election. On the other hand, critics of RCV contend that RCV will reduce transparency and public oversight in election process, cause confusion about the voting and tabulation process, and enhance the difficulty in conducting a manual recount or audit.

Advocates' Positions

In Los Angeles, the most proactive advocates of RCV include the California RCV Coalition, Los Angeles Voters for Instant Runoff Elections, the New America Foundation, the Center for Voting and Democracy, and the Los Angeles League of Women Voters. All of these entities have directly expressed to the City their desire for further consideration of RCV for the City's municipal elections. Though specific details vary among groups their claims about RCV and its theoretical benefits for the City are largely the same. For example, the New America Foundation claims a variety of benefits to implementing RCV, all of which seem to be in keeping with the claims of the other advocacy agencies. These include:

- Fewer elections and reduced voter fatigue
- Increased voter participation
- Elimination of costly runoffs
- Ability to fill vacant seats quicker
- Introduction of new candidates to the election process
- Less negative campaigning

According to RCV advocates, reducing the number of municipal elections by one half would serve to decrease voter fatigue in the City. Advocates purport that the low turnout is due, at least in part, to voters being overly taxed by the frequency of elections. By reducing the number of elections, advocates argue that voters will be more inclined to participate.

In addition to reducing voter fatigue and increasing voter turnout, advocates argue that under a RCV system, there will be no need for a second election, and therefore all runoff election expenses would be eliminated. Also, advocates argue that the City would be able to fill vacancies significantly sooner than under the traditional runoff system. Under the current system, if there are more than two candidates who qualify to run for a vacant office,

there is always a possibility that a runoff election will need to take place. If a RCV system were put in place for recall and other special elections, this possibility would be eliminated, and the officer's replacement could resume duties significantly sooner than under the current system. In addition, advocates argue that once the implementation costs of an RCV voting system are recuperated, that RCV will save the City a significant amount of money. The New America Foundation also notes that eliminating a runoff election would result in environmental benefits by reducing the amount of paper products utilized in an election cycle.

Besides adding costs to the City, RCV advocates claim that the short time period between the primary and runoff elections inherently favors candidates that can raise money quickly. Accordingly, they conclude that eliminating this period would create more equitable footing for candidates. Advocates also argue that RCV is more representative of voters' intentions, one which does not result in strategic voting, and one which prevents tertiary candidates from "spoiling" the outcome of an election. Furthermore, they argue that the nature of RCV encourages civility between candidates since second and third choice rankings can play a major role in who is eventually elected. RCV advocates argue that such animosity between candidates distracts attention from the actual issues facing the voting community.

Critics' Positions

In general, critics of RCV agree that the idea of reducing voter fatigue, increasing voter participation, and saving money on elections are worthy goals. However, critics argue that RCV is not the singular means of achieving these goals or that the claims of advocates are not all accurate, or are overly presumptive in their conclusions. In general, critics cite several flaws with RCV. These include:

- RCV is confusing, complex, and time-consuming to manually count or audit;
- RCV increases the potential for undetectable errors, and;
- RCV does not treat all voters' ballots equally.

Some critics argue that opposition to RCV is rooted in the need to preserve citizen oversight over the City's elections process and increase operational transparency. Ranked choice voting, critics argue, will add to an already complicated (and flawed) election system and lead to voter confusion and disenfranchisement, which in turn will reduce citizen oversight and decrease transparency over the election process. For example, critics argue that under a RCV system, voters may not know if their ballots are counted accurately if they do not understand how RCV is tabulated in the first place. If a flaw was subsequently discovered, the public may not know of it until long after the election has taken place. If a flaw is discovered and manual recount or audit is required, confusion may increase, along with the time required to perform such a function. Critics also point out that the voting process in general may be a deterrent to some voters, particularly those in minority communities and that while RCV is not necessarily the deterrent in this case, it may be an added source of confusion to minority voters.

Critics also suggest that RCV treats voters' ballots unequally, although there is serious doubt that there is any merit to this claim. In general, critics argue that as RCV ballots are exhausted during tabulation, there are fewer ballots to calculate a majority. After 8 or 9 rounds of counting, there may be no majority winner of all votes cast, but rather, a majority of the votes remaining.

In addition to the aforementioned criticisms of RCV, there are concerns have been raised about the City's ability to consolidate municipal and LAUSD/LACCD races and measures with the County of Los Angeles and other cities holding elections on the same day as the City of Los Angeles if the City were to adopt RCV. If this option were eliminated, elections normally consolidated with the County or other cities would either have to be held concurrently on the same Election Day as each other or held on a separate Election Day, which in turn, would require separate ballot, tables at one or possibly two separate polling locations, and two sets of pollworkers. Also, if RCV is adopted, voters in the City could possibly be required to use two different voting systems.

RCV in Other Jurisdictions

Several jurisdictions around the United States have either implemented RCV or have adopted RCV for future elections. In California, the City and County of San Francisco has been conducting RCV elections for its municipal elections since 2004. In nearby Alameda County, the Alameda County Registrar of Voters anticipates holding RCV elections for the cities of Berkeley, Oakland, and San Leandro in November 2010. Elsewhere, RCV has been implemented in Burlington, Vermont, and Cary and Hendersonville, North Carolina. RCV has also been implemented in Pierce County, Washington although it should be noted that on November 3, 2009, voters in Pierce County, Washington approved Proposed Charter Amendment No. 3 (by a margin of 70.65% to 29.35%), which eliminated ranked choice voting for and restored the primary and general election system for all county elective offices. Nevertheless, these jurisdictions were available to shed light on their experiences in implementing RCV to the RCV Working Group. However, before any evaluation of other jurisdictions is performed it is necessary to consider key differences between Los Angeles and other large RCV jurisdictions.

Comparing Los Angeles and RCV Jurisdictions

The City of Los Angeles is California's largest city and the second largest election jurisdiction in the State with an estimated 2.2 million registered voters spread out over nearly 500 square miles.[1] San Francisco is the largest RCV jurisdiction in the United States and of the RCV jurisdictions, the most similar to Los Angeles in terms of population, diversity, and governmental structure. Pierce County is the second largest RCV jurisdiction in the United States and has a population nearly as large as San Francisco. However, there are several significant differences with both of these jurisdictions that will complicate direct comparisons. The following illustrate several of these differences:

[1] The City has 1.5 million registered voters. However, when combined with registered voters within the LASUD and the LACCD, the number of registered voters rises to 2.2 million.

- San Francisco is a consolidated city-county with over 800,000 residents and over 465,000 registered voters spread out over nearly 47 square miles;
- Pierce County has about 700,000 residents and about 441,331 registered voters spread out over nearly 1,700 square miles;
- 18 year old and older population in Los Angeles is 2.1 million and 650,000 in San Francisco. In addition, Los Angeles also has an overall younger population than San Francisco;
- Los Angeles has a higher foreign-born population than San Francisco. In addition, Los Angeles has a much higher Latino/Hispanic population than San Francisco whereas San Francisco has a higher Asian population than Los Angeles;
- Los Angeles has a higher population of people that are much more likely to speak a non-English language at home than San Francisco, 60% to 46%, respectively;
- Los Angeles has a much lower per capita income than San Francisco (about $26,000 to $43,000, respectively) and has more families and individuals living below the poverty line;
- Pierce County currently does not have a minority language requirement, although it may require Spanish as a result of the next Census, and;
- Voting by mail is far more ubiquitous in Pierce County than in Los Angeles.

These factors must be kept in mind when comparing RCV jurisdictions to Los Angeles, especially when considering what sort of voter education campaign will be necessary if the City were to implement RCV for municipal contests.

RCV Implementation

Overall, jurisdictions that have implemented RCV appear to have had a positive operational experience. The process, from beginning to end, is relatively straightforward, although not without complications. From an operational standpoint, conducting RCV elections requires significant preparation. According to John Arntz, the Elections Director for San Francisco, and election administrators in Pierce and Alameda County, the single most important factor in implementing RCV, and one that informs the entire RCV process, is to acquire a voting system that is unconditionally certified by the state and federal government and is ready for use far ahead of a given implementation date. Without a viable, unconditionally certified voting system, preparations for any type of election is destabilized.

The experience election administrators had in San Francisco after RCV was adopted provides a good example of the difficulties that may arise as a result of not having a certified voting system. In March 2002, voters in San Francisco approved a charter amendment adopting RCV, which was placed on the ballot as a result of a voter initiative. Following the March 2002 election, San Francisco paid Election Systems & Software (ES&S) $1.6 million to produce a viable RCV voting system for the November 2002

elections.[2] Unfortunately, a viable RCV voting system could not be produced before this deadline. To accommodate possible delays, the charter amendment stated that if a voting system with RCV capabilities was unavailable for the November 2002 election, the election could be waived until November 2003. However, a viable system was still unavailable so implementation was delayed once more to 2004. As a result of this delay, San Francisco was sued by the Center for Voting and Democracy to compel RCV implementation, although the lawsuit was subsequently dismissed and San Francisco held a traditional run-off election in December 2003. San Francisco eventually held its first RCV election November 2004 and acquired a new voting system through Sequoia for $12.6 million, which included a RCV component for $650,000. Currently, Sequoia is the only voting system in California with a RCV component.

Elsewhere, Pierce County, Washington implemented the first RCV election on November 4, 2008.[3] Voters in Pierce County adopted RCV on November 7, 2006, which was placed on the ballot at the recommendation of the Pierce County Charter Review Commission. To prepare, Pierce County formed a Blue Ribbon Review Panel to study and develop an implementation plan for RCV, which was adopted in November 2006, and, if necessary, provide input on additional charter rules.[4] The panel determined that the original charter amendment did not contain enough detail to set implementation parameters and that additional charter amendments were required before implementation could move forward. Four amendments, including establishing the ranking of three candidates (until technology allows for more rankings), allowing multiple elimination of losing candidates, a RCV algorithm that ends when a candidate has a majority, and an amendment asking for the possibility of postponement until 2010, were proposed to voters in 2007. All but the latter amendment were approved.

Although there are similarities between RCV and traditional elections, there are significant differences that will alter how elections are administered in Los Angeles. For example, voters in RCV jurisdictions are able to rank up to three candidates on large, optical-scan ballots whereas on traditional ballots, voters only mark a smaller ballot card one race at a time. For several jurisdictions, including San Francisco, Pierce County, and Alameda County, election administrators issue multiple ballot types since these jurisdictions are also responsible for conducting non-RCV elections. To reduce confusion, these jurisdictions have placed a heavy emphasis on educating voters and pollworkers on how to fill out the different types of ballots.

The RCV tabulation process is significantly different from a traditional ballot tabulation process. For example, if a candidate garners a majority of votes in a RCV or traditional election, the candidate is declared the winner of the election. In RCV elections, the RCV algorithm is not run when this occurs. However, if a candidate fails to receive majority

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[2] San Francisco uses RCV to elect the Mayor, the Board of Supervisors, the District and City Attorneys, Treasurer, Assessor-Recorder, Public Defender, and the Sheriff.

[3] Pierce County uses RCV to elect the County Executive, the County Council Members, Auditor, Assessor-Treasurer, and Sheriff.

[4] The Blue Ribbon Panel consisted of members of the Pierce County Auditor, the Attorney General, Pierce County election staff, the Chamber of Commerce, the Pierce County Veterans Advisory Council, the League of Women Voter of Washington, and various political parties.

support, RCV ballots are tabulated according to an algorithm that tabulates and redistributes votes. Under a traditional election, if a candidate fails to achieve majority support in a Primary Election, the two top candidates run off against each other in a General Election that is held at a later date. While a RCV tabulation will produce a winner without the need of a second election, the process is nevertheless intricate and complex. In fact, according to Mr. Arntz from San Francisco, the RCV process is time-consuming and in no way "instant" as the name "instant runoff voting" would suggest. For this reason, Mr. Arntz suggested that the City use the term "ranked choice voting" rather than "instant runoff voting" as the former better reflects the nature of the method.

Voter Outreach and Education

In addition to securing a certified voting system and establishing detailed implementation parameters, election administrators in RCV jurisdictions state that it is absolutely crucial that a widespread voter outreach and education campaign be prepared before RCV is implemented.

In 2004, the San Francisco Department of Elections collaborated with several community-based organizations (CBOs) and spent an estimated $850,000 on a multimedia outreach campaign in three languages: English, Spanish, and Chinese. Specifically, this campaign concentrated on teaching voters how to mark the ballot card as opposed to explaining how RCV is tabulated, and placed a strong emphasis on encouraging voters to fill out all three rankings. The Department also carefully trained its poll workers by adding an additional hour to pollworker training and simplified the RCV ballots and voting instructions. According to Mr. Arntz, the most effective form of outreach in 2004 appeared to be through the community organizations, radio, television, and bus advertisements. In subsequent elections, RCV outreach was incorporated into the normal outreach function of the Elections Department, which has a budget of about $125,000. In Pierce County, election administrators adopted many of San Francisco's best outreach practices and utilized an online tutorial, informational mailers, billboards, and public service announcements on major television networks to educate voters.

However, there are concerns that this approach to voter outreach and education is not fully transparent, specifically with regard to how RCV ballots are tabulated. While it appears that voters understand how to fill out RCV ballots, it appears that voters are uncertain as to how ballots are tabulated and how the final election results are determined.

Voter Turnout in RCV Elections

RCV advocates claim that RCV can increase voter participation, although there is reason to doubt that this claim is entirely accurate. When assessing past voter turnout for San Francisco and Pierce County, before and after the implementation of RCV, voter turnout appears to have been affected by RCV. However, as the following analysis will show, it is unclear if the rise in voter turnout is exclusively due to the introduction of RCV.

The following table illustrates voter turnout in San Francisco since 1999:

Municipal Elections In San Francisco 1999-2009			
Year and Election	Federal Election	Municipal Offices	Voter Turnout
November 1999 (Primary)		Mayor, District Attorney, Sherriff	44.95%
December 1999 (Runoff)		Mayor, District Attorney	48.84%
November 2000 (Primary)	Presidential/ Congressional	Board of Supervisors (Districts 1-11)	66.59%
December 2000 (Runoff)		Board of Supervisors (Districts 1,3-6, 7,8,10,11)	32.55%
November 2001 (Primary)		City Attorney, Treasurer	29.62%
December 2001 (Runoff)		City Attorney	16.58%
November 2002 (Primary)	Congressional	Assessor Recorder, Board of Supervisors (Districts 2, 4, 6, 8, 10)	50.08%
December 2002 (Runoff)		Board of Supervisors (Districts 4, 8)	38.38%
November 2003 (Primary)		Mayor, Board of Supervisors (Districts 1-11)	45.67%
December 2003 (Runoff)		Mayor, District Attorney	54.46%
November 2004 (RCV)	Presidential/ Congressional	Board of Supervisors (Districts 1-3, 5, 7, 9, 11)	74.31%
November 2005 (RCV)		Assessor-Recorder, City Attorney, Treasurer	53.61%
November 2006 (RCV)	Congressional	Assessor-Recorder, Public Defender, Board of Supervisors (Districts 2,4, 6, 8, 10)	60.66%
November 2007 (RCV)		Mayor, District Attorney, Sherriff	35.62%
November 2008 (RCV)	Presidential/ Congressional	Board of Supervisors (Districts 1, 3-5, 7, 9, 11)	81.25%
November 2009 (RCV)		City Attorney, Treasurer	22.58%

Overall, these figures appear to indicate that voter turnout is higher in RCV elections than in non-RCV.[5] However, increases in voter turnout appears to be skewed by the three presidential elections and five congressional elections that have taken place since 1999. In addition, it appears that increases in voter turnout under RCV do not appear to be as enduring as previously thought.

For example, when comparing the November 2005 RCV election (for the Assessor-Recorder, City Attorney, and Treasurer), with voter turnout at 53.61%, with the 2001 Primary and Runoff elections (for the City Attorney and Treasurer), with voter turnout at 29.62% and 16.58% respectively, there appears to be a significant increase in voter turnout under RCV. However, in November 2009, when the City Attorney and Treasurer seats were up for election, the turnout was only 22.58%, a 31% drop in turnout. In

[5] Election Archives by Year. City and County of San Francisco: Department of Elections. 2009. http://www.sfgov.org/site/elections_index.asp?id=61790

addition, when comparing mayoral elections prior to and under the RCV voting model, it appears that voter turnout decreased under RCV in 2007. Between 1999 and 2003, voter turnout for Mayoral runoff elections averaged 51.65%. However, in 2007, under RCV, turnout for the single Mayoral election was only 35.62%. It could be argued that the decrease in voter participation in the 2007 Mayoral can be attributed to a variety of factors, such as fewer candidates, fewer registered voters, or the presence of popular or unopposed incumbents. However, the rise and fall of voter turnout, in any type of election, will always be subject to a wide variety of factors, including whether or not a contentious issue is on the ballot or whether or not there are competitive campaigns among candidates.

The voter turnout in Pierce County appears to follow a similar pattern as in San Francisco, although there is less data to analyze since Pierce County has only had two RCV elections since 2006. The following table illustrates voter participation in Pierce County since 2002:[6]

County Elections In Pierce County, Washington 2002-2008			
Year and Election	Federal Election	County Offices	Voter
September 2002 (Primary)	Congressional	Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	34.52%
November 2002 (General)		Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	55.43%
September 2003 (Primary)		County Council - District 6	26.95%
November 2003 (General)		County Council - District 6	39.94%
September 2004 (Primary)	Presidential/ Congressional	County Executive, Assessor-Treasurer, County Council (Districts 2, 3, 4, 6)	43.87%
November 2004 (General)		County Executive, Assessor-Treasurer, County Council (Districts 2, 3, 4, 6)	78.26%
September 2006 (Primary)	Congressional	Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	34.89%
November 2006 (General)		Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	57.92%
November 2008 (RCV)	Presidential/ Congressional	County Executive, Prosecuting Attorney, Assessor-Treasurer, Sheriff, County Council (Districts 2, 3, 4, 6)	76.08%
November 2009 (RCV)		Auditor	39.22%

Prior to RCV, voter turnout was often higher during general elections than in the primary. For the initial RCV election, the voter turnout rate in Pierce County was 76.08%, although, as in San Francisco, this high turnout was likely skewed by the 2008 presidential election.[7] In fact, the turnout for the November 2004 presidential election was 78.26% In November

[6] Election Archives by Year. Pierce County, Washington: Elections Department. 2009. http://www.co.pierce.wa.us/pc/abtus/ourorg/aud/Elections/Archives/Archive_index.htm

[7] In November 2004, the turnout was 78.26%, an increase very likely due to the 2004 presidential election.

2009, the turnout for the County Auditor's race was 39.22%, which was just over 4% higher than the September Primary elections in 2002 and 2006.[8] Since Pierce County did not have the opportunity to develop a history of RCV elections, it is difficult to draw any conclusions on the effect of RCV voter turnout at this time.[9]

Overall, based on the data from San Francisco and Pierce County, attributing an increase in voter turnout solely to RCV at this time may be premature. Voter turnout in both jurisdictions in 2008 and 2004 appear to be skewed higher due to the presidential and congressional elections, both of which were high-profile, contentious events.

Voter Response to RCV

Despite initial setbacks and uncertainties, studies indicate that the voters of San Francisco had a relatively easy time transitioning from a two-round run-off voting model to a RCV model. According to a 2005 study by Professors Francis Neely and Corey Cook of San Francisco State University, the overall voter experience in the 2004 and 2005 RCV elections was positive.[10] The following are the most significant highlights from these studies:

- In 2004 and 2005, 86% and 87% of the voters, respectively, indicated that they understood the RCV system "perfectly well" or "fairly well", although Asian voters were the least likely to say that they understood RCV overall. In addition, in 2005, minority voters demonstrated high levels of understanding of the RCV system. For example, 89.8% of Hispanic or Latino voters, 85.7% of Asian or Pacific Islander voters, and 84.8% African American voters understood the RCV system "perfectly well" or "fairly well".
- In 2004, two-thirds of voters stated a clear preference for RCV over the traditional runoff system. Prior support of RCV was reported at 42%, so the 25% increase in preference indicates that voters may be more accepting of RCV once they have used it firsthand. However, in 2005, 51% of voters stated a preference of RCV model as opposed to 17% of those that preferred the two-round run-off voting model. The remainder expressed no preference.
- In 2004, two-thirds of voters understood that the ballot required ranking. However, 31% of voters stated that they were unfamiliar with RCV. Voters who supported RCV or vote more frequently were more likely to know that the ballot required ranking. On the other hand, the elderly and the least educated were the least likely to know that they would be using an RCV ballot and that they had to rank candidates.

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[8] It was in this election that the voters of Pierce County decided to rescind RCV and reinstate the traditional election format for its County seats.

[9] It should be noted that Pierce County voters, along with the rest of the State of Washington favor voting by mail rather than at the polls. In Pierce County, 78% of registered voters are absentee voters. In contrast, polling place turnout varies from 5% to 22%, depending on the competitiveness of an election.

[10] Ranked Choice Voting in San Francisco: Assessing the Ease of Electoral Reform to an Alternative Voting System. Francis Neely, Corey Cook. San Francisco State University. September 2005 & An Assessment of Ranked-Choice Voting in the San Francisco 2005 Election. Francis Neely and Corey Cook, San Francisco State University and Lisel Blash, Public Research Institute. Public Research Institute. San Francisco State University. July 2006.

- In 2004, 61% of the voters reported ranking three candidates whereas 15% ranked two and 24% voted for one. Latino voters were more likely to not take advantage of the ranking system and not rank three candidates. However, in 2005, minority voters as a whole demonstrated an increased tendency to rank three candidates. For example, 67.4% of Hispanic or Latino voters, 64.7% of Asian or Pacific Islander voters, and 72.1% of African American voters reported ranking three candidates.
- In 2005, 37% of voters perceived RCV as fairer than the traditional runoff system as opposed to 15% who did not. However, a plurality of voters surveyed perceived no difference between the two models.

In addition to these findings, RCV has also shown to produce low overvote rates, similar to rates in non-RCV elections, which results in fewer spoiled ballots and more countable ballots cast. According to FairVote, a non-profit, non-partisan election reform organization that supports RCV, a precinct analysis conducted in 2004 showed that the overvote rate (1%) and the undervote rate (8%) for RCV and non-RCV ballots produced nearly identical countable ballot rates (91.1% and 91.75%, respectively).[11] Voters in precincts where more campaign money was spent and where voters had previously used RCV produces fewer under and overvotes, which indicates that experience combined with voter outreach or high campaign activity may seem to help voters navigate the RCV system.

In contrast to San Francisco, voters in Pierce County were clearly more ambivalent toward RCV. Following the November 2008 Election, Pierce County asked its voters for feedback on RCV as a voting model. Of the 90,738 respondents, 33.98% stated that they liked RCV and 66.02% stated that they did not like RCV. The remaining respondents were either undecided or provided another response. According to this survey, voters that did not like RCV often stated that RCV was confusing and unnecessary. On top of apparent voter dissatisfaction, the Pierce County Council passed an ordinance proposing a Charter Amendment that would eliminate RCV and restore the traditional primary/runoff system. On November 3, 2009, voters in Pierce County, Washington approved Proposed Charter Amendment No. 3 (by a margin of 70.65% to 29.35%), which eliminated ranked choice voting for and restored the primary and general election system for all county elective offices.

Voting System Certification in California

The City currently tabulates ballots using its own vote tally system, Votec, which tabulates ballots that are scanned with LRC optical scan card readers. The Votec tally system has been in use in City elections for over 20 years and is capable of tabulating hundreds of thousands of ballots in a short span of time. However, the Votec vote tally system is incapable of accommodating RCV or other alternative vote tally methods and is limited in long-term resources necessary to accommodate new voting system standards promulgated by the Federal or State governments. The Votec tally system also operates under short term administrative approval from the California Secretary of State for the

[11] Instant Run-off Voting and Its Impact on Racial Minorities. The New America Foundation and the Center for Voting and Democracy/FairVote. Page 4. June 2008.

City's municipal elections. Any attempt to re-program the Votec tabulation system to accommodate RCV will be costly and subject to arduous and lengthy state testing.

In order to address this limitation, the City Clerk drafted and released a Request for Proposal (RFP) for a new voting system on October 7, 2009. The RFP was designed to encourage vendors to submit innovative proposals and demonstrate to the City Clerk the varieties of voting systems that were currently in use or in development, including RCV. While the City Clerk solicited several responses from qualified voting system vendors the City Clerk ultimately recommended that the City not acquire a voting system for the time being. The primary justification informing this decision is the fact that there is no state or federally-approved voting system, with or without a RCV component certified for use in California.

The voting system certification process begins with the U.S. Election Assistance Commission (EAC), a Federal body established as a result of the Help America Vote Act (HAVA) of 2002. The EAC is comprised of four commissioners and is responsible for testing and certifying voting systems using federally-certified laboratories. In general, the EAC will test a voting system's software and hardware and its logic and accuracy for functionality, security, accuracy, and usability. The EAC has been criticized for its lengthy testing process, which, according to the EAC, is necessary to ensure that every voting system undergoes thorough and rigorous scrutiny before proceeding to a given state's testing process, if necessary.

Once a system completes testing and is certified by the EAC, the system will be subject to ongoing monitoring. If problems are discovered during the state testing process or if new components, such as RCV, are added to the certified system, the EAC will re-test the voting system to ensure compliance. According to the EAC, the testing process under this program is much shorter than the initial testing process to ensure that the state testing process can continue on schedule.

According to the EAC, only two voting system vendors have submitted voting systems for testing with RCV components: Sequoia Voting Systems (Sequoia) and Unisyn Voting Solutions (Unisyn). Of these two, Sequoia is the furthest along in the testing process, which, according to the EAC, may be prepared to analyze and possibly issue laboratory results in a matter of months.

California Election Code 19250 requires that voting systems used in California must first obtain federal certification prior to obtaining approval from the California Secretary of State. Once a voting system receives full federal certification from the federal testing agency, the EAC, a vendor must then submit an application with the Secretary of State and undergo testing according to California standards. The testing process for a system with a RCV component has slight variations than other systems and will also include testing along jurisdiction-specific rules.

Since no voting system with RCV capabilities has yet to receive federal certification, jurisdictions that currently administer RCV elections, such as the City and County of San

Francisco and Alameda County, are only able to do so with conditional approval from the Secretary of State, which, according to election administrators in San Francisco and other RCV jurisdictions, can destabilize preparations for the RCV election process. As of December 2009, both San Francisco and Alameda County were granted conditional approval of Sequoia's blended RCV voting system to use in the 2010 Consolidated Gubernatorial Primary and General Elections.[12]

Whereas conditional approval resolves the short-term need to be in compliance with state law, the extensive testing process usually results in the imposition of strict and narrow guidelines for compliance, limited use, and late notification of needed changes. For example, when San Francisco recently received special administrative approval for its RCV elections, election administrators had to include one Direct Recording Electronic (DRE) unit at each polling place and manually remake each vote cast on the DRE. In addition, San Francisco was once required to inspect all VBM ballots for complete markings in dark ink or dark pencil. If a ballot did not have a dark ink or pencil mark, the ballot had to be remade. The concern was that, the ballot tabulator would not count the tens of thousands of VBM ballots that were not fully filled in. These additional conditions required more time, space, and staff to carefully inspect thousands of DRE and VBM ballots. In response to these conditions, San Francisco has developed a backup plan to tabulate ballots in the event conditional approval is denied, which includes purchasing or leasing a second voting system or resorting to a full manual count. The latter option is difficult and requires enough time, space, and staff to count ballots in an orderly fashion that voters could trust.

In Pierce County it was discovered during the certification process that Pierce County could not utilize the polling place tabulation process that had been used in past elections. The polling place tabulation process enabled voting machines to tabulate votes at the polling place. However, during the RCV testing process, these machines were unable to tabulate RCV ballots or run a RCV algorithm. As a result, Pierce County implemented a centralized count process and transported ballots from the polls to a central count area, a process very similar to election night processes in Los Angeles and San Francisco. Following the election, Pierce County instituted 24-hour shifts for one week to check in, inspect, and tabulate thousands of ballots using the same Sequoia system as San Francisco.

Pursuing RCV Election Reform

The California Constitution provides charter cities like Los Angeles with a substantial measure of self-governance including a special grant of authority over the conduct of city elections.[13] For example, Article XI, Section 5(b) of the state Constitution specifically grants charter cities "plenary authority" over the "manner in which, the method by which, the times at which, and the terms for which" city officers are elected. Accordingly, the City

[12]California Secretary of State, Voting Systems: Sequoia Voting Systems. 2010. http://www.sos.ca.gov/elections/elections_vs_sequoia.htm

[13] Cal. Const., Art. XI, §§ 3, 5; see *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-405 [discussing the home rule authority of charter cities].)

has the authority to establish its own method for electing City officers and the state Constitution does not prohibit the City from adopting RCV, provided that the reform is accomplished through an appropriate change to the City Charter and is consistent with other laws as further discussed below.

Other charter cities have adopted RCV charter amendments pursuant to the authority granted in the California Constitution. In contrast to charter cities, general law cities do not have the authority to conduct RCV elections. State lawmakers recently have introduced legislation, however, that would allow general law cities to experiment with RCV. (See AB 1121 (2009-2010 session); see also AB 1294, vetoed by Governor (2007-2008 session).)

Charter Change Required

Adopting RCV for City elections would require a charter change. The current City Charter establishes a traditional primary/run-off system for candidate elections.[14] RCV would eliminate the primary/run-off system in favor of a single instant run-off election. Thus, implementing RCV would necessitate an amendment to the City Charter approved by the voters. The City Charter's provisions regarding vacancies in office also contemplate a primary/run-off system. Therefore a charter change would be necessary even if RCV is to be used only in special vacancy elections.[15]

The City Charter may be changed through a charter amendment placed on the ballot by the City Council and approved by a majority of voters.[16] A charter amendment also may qualify for the ballot through a citizen-sponsored initiative.[17] In addition to charter changes, the City would need to adopt amendments to the City's Election Code and Campaign Finance Ordinance to accommodate for an RCV election system.[18]

A proposed change in the City's election system also impacts LAUSD elections because the City Charter governs the election of members to the LAUSD Board of Education.[19] Therefore, the charter amendment language must clearly state whether LAUSD candidate elections will be conducted on an RCV basis. In order to adopt RCV for LAUSD elections, the charter change must be submitted to the LAUSD electorate and approved by a majority of voters in the LAUSD. The charter change may be designed to make RCV effective only upon the approval of both the City and LAUSD electorates so that it does not result in the City and LAUSD having different election systems.

RCV and the Courts

The California courts have not addressed the legality of an RCV system. In February of 2010, a lawsuit was filed in federal court challenging the constitutionality of San

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[14] City Charter §§ 400-440.
[15] City Charter §§ 409, 410,
[16] Cal. Const., Article XI, § 3.
[17] Cal. Const., Article XI, § 3(b).
[18] Additional legal issues may arise depending on the nature of any changes to the City's campaign finance and matching funds laws.
[19] Cal. Const., Art. IX, § 16.

Francisco's RCV system. The lawsuit alleges that RCV violates the Equal Protection and Due Process Clauses of the 14th Amendment and the right to vote protected under the 1st Amendment of the United States Constitution. We are monitoring the litigation, which is in its early stages. This is not surprising considering that only a few cities in the state have adopted RCV election systems and only one city, San Francisco, has conducted an RCV election. San Francisco previously faced a legal challenge related to its RCV reform, but that challenge was based on its ability to meet the timetable for implementing RCV set forth in its charter amendment, and was not a direct challenge to the underlying validity of RCV.

A different type of preferential voting system, known as the Hare system, was invalidated by a California appellate court in *People v. Elkus* (1922) 59 Cal.App. 396. The Hare system at issue in the *Elkus* case was used to fill nine at-large seats on the Sacramento city council by allowing voters to rank one candidate as their first choice, one candidate as their second choice, and so on. The court held that this system violated a former provision of the state Constitution entitling voters to vote in "all elections" because it gave voters only one first-choice vote even though there were nine council seat elections on the ballot. RCV clearly is distinguishable from the Hare system in that RCV entitles voters to have a first-choice vote for each elected position on the ballot.

Outside California, the RCV Working Group is aware of two cases directly addressing the validity of RCV. Just recently, in June of 2009, the Minnesota Supreme Court upheld a voter-approved measure establishing RCV in the city of Minneapolis.[20] Adopted in November 2006, the Minneapolis RCV system is similar to the system currently utilized in San Francisco. Before Minneapolis could implement RCV, opponents filed a challenge to the charter amendment essentially alleging that RCV violated the right to vote and equal protection under one-person one-vote principles. Opponents argued that under RCV some votes count more than others in determining the outcome of elections. The Minnesota Supreme Court disagreed with this characterization, explaining that RCV systems are like traditional primary/run-off systems in that "only one vote per voter can be counted in each round."[21] The court held that RCV does not unequally weight votes because "every voter has the same opportunity to rank candidates when she casts her ballot, and in each round every voter's vote carries the same value."[22] The Minnesota Supreme Court concluded that the burdens imposed by RCV on the right to vote, if any, are "minimal" and that those burdens are justified by the city's purported interest in adopting RCV (e.g., reducing election costs, increasing voter turnout, encouraging less divisive campaigns).[23] Therefore, the court held that the Minneapolis RCV charter amendment was not unconstitutional on its face.

The other case is a 1975 state trial court decision from Michigan upholding the constitutionality of an RCV system adopted by the voters of Ann Arbor.[24] Plaintiffs alleged that the Ann Arbor voting system, which was similar to the San Francisco system, violated

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[20] *Minnesota Voters Alliance v. City of Minneapolis* (Minn. 2009) 766 N.W.2d 683.
[21] *Id.* at p. 692.
[22] *Id.* at p. 693.
[23] *Id.* at pp. 696-697.
[24] *Stephenson v. Ann Arbor Board of City Canvassers* (Mich. Cir. Ct. 1975) Jackson County Case No. 75-10166AW.)

the Equal Protection Clause because it allowed for the second choice ballots of some voters to be counted while the second choice of other voters whose first-choice candidate remained in the race are not counted. The Michigan court rejected this challenge, holding that RCV provides every person an equal right to vote because each voter has only one vote counted in a round.

As these cases indicate, opponents of RCV have challenged the system in court mainly alleging that it infringes on voters constitutional rights to vote and to equal protection. If a challenge were filed in Los Angeles, a court would evaluate the burdens, if any, imposed by RCV and then "weigh the asserted injury to the right to vote against the 'precise interests put forward by the [City] as justifications for the burden imposed by its rule.'"[25] In assessing the constitutionality of RCV, a California court likely will consider the holdings and reasoning of the Minnesota and Michigan cases discussed above. California courts are not bound, however, by the decisions of other state courts and the facts and circumstances surrounding an RCV system in Los Angeles may be different than those present elsewhere.

Opponents of RCV also have raised concerns about the validity of the system under the Voting Rights Act. Section 2 of the Voting Rights Act (VRA) prohibits the City from using any voting standard, practice or procedure in a manner which "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." The statute is violated if it is shown, based on a totality of circumstances, that the voting process is "not equally open to participation" in that protected class members "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[26] The RCV Working Group is not aware of any cases addressing the validity of RCV under Section 2 or any other provision of the Voting Rights Act. The Act was not raised in the Minnesota and Michigan cases discussed above. According to Department of Justice (DOJ) staff, the DOJ has not taken a position regarding the validity of RCV under the Voting Rights Act. DOJ staff confirmed, however, that measures must be taken to ensure equal access for all voters and compliance with minority language translation requirements. These measures clearly must include a voter education and outreach effort in all seven VRA-mandated languages to help ensure that voters are provided information about RCV and have the opportunity to participate in RCV elections on a equal basis.

Effects of RCV on Matching Funds Program

In addition to issues related to implementation, public education, and legal issues, the issue of how RCV might affect the City's comprehensive and groundbreaking public campaign financing program was also considered by the RCV Working Group.

In order to "encourage a broader participation in the political process", Los Angeles voters have placed limits on the amount a person may contribute to a candidate for elective City

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[25] *Crawford v. Marion County Election Bd.* (2008) 128 S.Ct. 1610, 1616 [quoting *Burdick v. Takushi* (1992) 504 U.S. 428, 434].
[26] 42 U.S.C.S. § 1973

office.[27] Similarly, in 1990, the voters adopted a partial public financing system for City elections, to reduce the disproportionate influence of large contributions, increase the value of smaller contributions, limit campaign expenditures, reduce excessive fundraising by incumbents, encourage competition for elective office, and help restore public trust in government.[28] All of these goals could be affected by RCV, depending on the mechanics of the particular system that is adopted and the resulting dynamics of elections conducted within that system.

Mechanics of the Current Matching Funds Program

City law currently provides public matching funds to City candidates who qualify for and agree to participate in the voluntary matching funds program. Candidates can receive matching funds for relatively small contributions from individual donors ($250 or less for City Council candidates and $500 or less for Citywide candidates).[29] Qualified candidates receive dollar-for-dollar matches of contributions from individual donors, up to the following maximums.[30]

Funding Amounts

	Mayor	City Attorney	Controller	Council
Primary:	$667,000	$300,000	$267,000	$100,000
General:	$800,000	$350,000	$300,000	$125,000

The dollar-for-dollar matching formula can be accelerated to a three-to-one formula in certain circumstances. In a primary election, the formula is accelerated in a particular race if a candidate who is not participating in the matching funds program (a "non-participating candidate") exceeds the expenditure limit (discussed below) and contributes personal funds equal to at least 50 percent of the expenditure limit.[31] In a general election, the formula is accelerated in a particular race in either of the following circumstances:

1. A non-participating candidate exceeds the expenditure limit (discussed below) and contributes personal funds equal to at least 50 percent of the expenditure limit; or

2. Non-candidate spending that either opposes a participating candidate or supports that candidate's opponent aggregates $200,000 in a Mayoral race, $100,000 in a City Attorney or Controller race, or $50,000 in a City Council race.[32]

Furthermore, if either of two circumstances occurs in a general election, the funding amounts are also increased as follows:[33]

Increased Funding Amounts in General Election

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[27] Los Angeles City Charter (Charter) § 470(a).
[28] Charter § 471(a)(2).
[29] Los Angeles Municipal Code (LAMC) § 49.7.19(A)(1).
[30] LAMC §§ 49.7.20(A), 49.7.22(A)–(B)
[31] LAMC § 49.7.22(C)
[32] LAMC § 49.7.22(E)
[33] LAMC § 49.7.22(D).

Race	Additional Funds	Total Public Funds
Mayor	$200,000	$1,000,000
City Attorney	$70,000	$420,000
Controller	$60,000	$360,000
City Council	$25,000	$150,000

Candidates who participate in the matching funds program also agree to limit their overall campaign spending.[34] Again, the expenditure limits are based on the type of candidate and the type of election, as indicated in the table below:

Expenditure Limits

	Mayor	City Attorney	Controller	Council
Primary:	$2,251,000	$1,013,000	$900,000	$330,000
General:	$1,800,000	$788,000	$676,000	$275,000

These expenditure limits are lifted in a particular race if a non-participating candidate spends more than the expenditure limits or if non-candidate spending aggregates more than $50,000 in a City Council race, $100,000 in a City Attorney or Controller race, or $200,000 in a Mayoral race.[35]

Financing the Matching Funds Program

The City is required to allocate $2,000,000 per fiscal year to the Public Matching Funds Trust Fund, unless the trust fund has reached a maximum of $8,000,000.[36] Those numbers must be adjusted based on the Consumer Price Index and are currently $3,075,200 per year, unless the trust fund balance is $12,300,800.[37]

One of the key issues in a successful public financing program is how much money to devote to it. First and foremost, there must be a consistent and guaranteed source of funding, so candidates know that they can rely on receiving a certain amount of funds in exchange for complying with the requirements of the program, such as limiting the use of personal funds and limiting their overall spending. In addition, the program must strike a delicate balance between providing appropriate funding, encouraging candidates to participate in the program, and meeting voter expectations that public funds will be used most effectively. If sufficient public funds are not offered, the program will not be attractive, candidates will not participate, and the program's goals may not be achieved.

RCV and the Matching Funds Program

There are a number of moving parts in the matching funds program, each of which affects a candidate's ability to wage a competitive campaign. If any one of those moving parts is altered in an RCV system, there could be significant implications for how well the City's

[34] LAMC § 49.7.13
[35] LAMC § 49.7.14
[36] Charter §§ 471(c)(1)–(2)
[37] *Id.*

election system achieves the goals of the matching funds program. For example, it is possible that RCV elections could affect the typical number of candidates in City elections. If that were to result in more candidates participating in the matching funds program, the program could require greater annual allocations to meet the demands, assuming the program's current funding levels for participating candidates remain constant. As another example, in RCV elections, something such as how many candidates voters are asked to rank could affect how candidates wage their campaigns in order to place among those with the highest rankings. Candidate communication strategies could be affected, which, in turn, could affect how candidates spend their money or how much money candidates believe they need to spend to be competitive within that RCV system. As a result, candidate expenditure limits might need to be adjusted accordingly.

Of particular interest to City candidates in recent years is how the matching funds program treats non-candidate spending (i.e., independent expenditures and member communications). Currently, as noted above, additional matching funds are provided in response to non-candidate spending in general elections only. With only two candidates in a race, it is much easier to determine which candidate is supported by non-candidate spending and which candidate is opposed. When there are multiple candidates in a race, such as in a primary or in a single-election system, it may be a difficult or impossible task to accurately and timely determine which candidates benefit from non-candidate spending.

If RCV elections are pursued, the question of whether the City will continue to provide additional matching funds in response to non-candidate spending must be addressed. If additional matching funds are maintained, the number of candidates and the levels of non-candidate spending in City races could significantly affect the sufficiency of the trust fund allocations. In addition to the possibility that non-candidate spending could continue to grow as it has in recent years, it is also possible that additional matching funds would need to be provided to multiple candidates. In that scenario, it is likely that more public money would be required to maintain the program.

Non-candidate spending has been on the rise. It represented just one percent of all campaign spending in the City's 1993 elections but has represented 14 to 19 percent of campaign spending in City elections since 2003. When citywide seats are open (meaning no incumbent is running for reelection), non-candidate spending tends to be highest. For example, in 2005's open Mayoral race, $4,295,062 in non-candidate spending was reported. More recently, $1,439,733 in non-candidate spending was reported in the 2009 open City Attorney race. In addition, the Supreme Court's recent decision in *Citizens United v. Federal Elections Commission,* 558 U.S.____ (2010), could further increase independent expenditures in City races. Providing candidates with some ability to respond to unplanned non-candidate spending that occurs in their races seems to be an important component of a public financing program that is attractive to candidates and can achieve it purposes. However, in RCV elections, the cost of providing a reasonable response could be very high if non-candidate spending continues to represent a sizeable percentage of all campaign spending and additional funding is provided to more than one candidate in any given race.

Contribution Limits

In addition to a public matching funds program, the voters have established contribution limits for City elections. A person may not give more than $500 in a single election to a City Council candidate or more than $1,000 in a single election to a Citywide candidate.[38]

As noted above, RCV elections could have an effect on the amount of money candidates believe they need to effectively communicate with the voters in a competitive campaign. If campaign costs in RCV elections are significantly higher or lower than current campaign costs, the City's contribution limits should be closely examined to determine whether they should be adjusted.

Required Amendments

As previously mentioned, an RCV election system could have multiple effects on the City's campaign financing laws and how they achieve their stated goals. To properly accommodate those effects, a thorough review of the laws would be imperative if the City is to continue to foster sound campaign financing laws and a successful public financing program. Amendments to the Charter would be required if contribution limits or allocations to the Public Matching Funds Trust Fund needed to be changed. Amendments to the LAMC and the Los Angeles Administrative Code (LAAC) would be required if the City's approach to matching fund formulas, expenditure limits, or responses to non-candidate spending needed to be changed.

In addition to the significant policy considerations associated with RCV's potential effect on the City's campaign finance laws, there are also technical amendments that would be required. For example, references to elections would need to be changed to reflect the system that the City adopts. This would be required in multiple sections of the Charter, the LAMC, and the LAAC.

San Francisco's Experience

The one jurisdiction that currently has both RCV and a matching funds program is San Francisco. The RCV Working Group communicated with the San Francisco Ethics Commission in an effort to gather data about how RCV has affected their matching funds program. However, despite studying its own election experiences, the San Francisco Ethics Commission has indicated that it has not been able to identify a clear relationship between RCV and changes in its matching funds program.

San Francisco first offered public financing in its 2002 Board of Supervisors election, to encourage more candidates to run for office, to allow candidates to spend more time discussing issues and less time fundraising, and to encourage candidates to limit their

[38] Charter §§ 470(c)(3)–(4)

spending.[39] The 2002 election did not have a large number of candidates, because many incumbents were running for reelection. The next election, in 2004, was their first RCV election, and no changes were made at that time to their public financing system. There were many more candidates in that election than there had been in 2002, but there were also more open-seat races. The number of candidates then dropped in 2006, when mostly incumbents were running for reelection. In 2008, many more candidates participated than usual; however, in addition to having mostly open-seat races, the amount of public funding available to each candidate had also been increased.

Since the inception of its public financing program, San Francisco has had an increase in the number of candidates participating in the program, as well as a corresponding increase in the amount of public money required to maintain the program. In 2002, they disbursed a total of $281,989 in public matching funds; and in 2008, that number had risen by 366 percent to $1,315,470.[40] However, the sense of the San Francisco Ethics Commission is that the change is likely a result of a larger funding cap, which encouraged more candidates to participate in the program.

San Francisco has also had a steady increase in the average amount of public funds disbursed per candidate since 2002. In fact, the average nearly doubled from 2006 ($36,131 per candidate) to 2008 ($69,235 per candidate).[41] Other variations include the number of candidates in any given election, which seems to be most closely tied to the number of incumbents running for reelection (since 2002, 100 percent of incumbents in San Francisco elections have won).[42] And finally, San Francisco experienced a huge increase in non-candidate spending in 2008 (141 percent more than in 2006, and 421 percent more than in 2004), but they attribute that to court action enjoining the enforcement of committee contribution limits and not to the RCV election system.

Based on the San Francisco experience, it is difficult to assess the effect that RCV elections would have on a Los Angeles matching funds program. Because many variables appear to have been at play in San Francisco elections since 2002, they have not been able to draw a definitive link between an RCV election system and changes in their public financing program.

Fiscal Impact of RCV

The Office of the City Administrative Officer is expected to report on the fiscal impact under separate cover.

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[39] *Report on San Francisco's Limited Public Financing Program: November 4, 2008 Board of Supervisors Election*, available July 6, 2009 at http://sfarchive.org/agencies/ethics/www.sfgov.org/site/uploadedfiles/ethics/campaign_finance/Public_Financing_Report-Final.pdf, p. 1.
[40] *Id.* at p. 19
[41] *Id.*
[42] *Id.*

RECOMMENDED POLICY OPTIONS

Based on discussions held with various jurisdictions, state and federal officials, and RCV advocates and critics and the RCV Working Group's research, the RCV Working Group has developed the following policy options for the City Council to take into consideration when developing a policy toward RCV:

Acquisition of an Unconditionally Certified RCV Voting System

If RCV is adopted, the City must first acquire a new voting system with RCV capabilities that is fully and unconditionally certified and approved for use in California. As previously mentioned, California Election Code 19250 requires that voting systems used in California must first obtain federal certification prior to obtaining approval from the California Secretary of State. Only by acquiring a new and fully certified voting system will the City ensure that any equipment and software used in municipal elections is in compliance with State and Federal voting system standards.

Currently, there is no state or federally-approved voting system with a RCV component for use in California and very few voting system vendors have developed or are developing voting systems with RCV capability. If the City were to acquire an uncertified voting system, there is a risk that the Secretary of State may not grant conditional certification in time to adequately prepare for an election or not at all, both of which would render the system inoperable and diminish public confidence in the integrity of municipal elections.

Furthermore, if the City were to proceed with an uncertified system, it is uncertain what conditions will be imposed on the City by the Secretary of State as a result of receiving temporary approval.

Considerations for a Charter Amendment

In order to implement RCV for municipal contests, the voters of Los Angeles must approve an amendment to the City Charter. In order to implement RCV, the Los Angeles City Charter (Charter), the Los Angeles Municipal Code (LAMC), the Los Angeles Administrative Code (LAAC), and the Los Angeles Election Code will require amendment. If the City Council were to place an RCV-related charter change on a ballot, the charter language must be drafted to provide sufficient notice to the voters of the specific changes contemplated in the measure and presented in a manner that avoids voter confusion. To those ends, the charter amendment language must set forth the basic details of the RCV system.

At a minimum, any proposed charter amendment should state the specific date or condition that would trigger implementation of RCV. This would provide clarity to the voters, clarity to City staff charged with conducting elections and clarity to potential candidates seeking to run for office. Moreover, to reduce legal risks, the timetable for implementing RCV should be based on realistic considerations. This would help the City

avoid the sort of litigation filed in San Francisco, which faced legal challenges because it was unable to meet the implementation schedule contained in its RCV charter amendment. In addition, a potential RCV measure must be carefully drafted to provide sufficient notice to the voters of the proposed changes and avoid voter confusion.

Voter Outreach and Education

If RCV is adopted, the City must engage in a significant multi-language, multi-media voter education program to last for at least two election cycles. Jurisdictions that have implemented RCV, such as San Francisco and Pierce County, Washington, engaged in considerable voter outreach and education programs to ensure that voters were aware of the change in voting method and knew how to fill out the ballot. The City must engage in a similar campaign to properly educate over 2 million voters of the new municipal voting system and how to use it. A variety of media, including television, radio and mass transit advertising, will be required in all 7 federally-mandated languages to effectively reach all segments of the City's diverse voting communities.

In addition to effectively educating voters, the City must also effectively educate pollworkers when implementing a new system since pollworkers will be required to understand RCV effectively assist voters. Failure to place a heavy emphasis on voter and pollworker outreach and education may result in greater confusion and decreased voter participation.

On a similar note, the assertion that RCV will increase voter turnout appears to be inconclusive and will require more research. Evidence suggests that RCV is a contributing factor to increasing voter turnout, but is merely one factor among many others that ultimately affects the rise and fall of voter turnout.

Coordination/Consolidation with the County and Other Jurisdictions

If RCV is adopted, the City may lose the ability to consolidate municipal and LAUSD/LACCD races and measures with the County of Los Angeles and other cities holding elections on the same day as the City of Los Angeles. The City often consolidates Special Elections onto County-run elections and currently consolidates LAUSD and LACCD races onto other neighboring cities ballots (such as Beverly Hills, San Fernando, West Hollywood). Eliminating this option would require that Special Elections would either have to be held concurrently on the same Election Day as each other or held on a separate Election Day. Holding concurrent elections would require two separate ballots, Vote-by-Mail ballots, tables at one or possibly two separate polling locations, and two sets of pollworkers. Certainly, this situation will likely increase the potential for confusion or error at the polls.

Because the City and County currently use the same voting system, voters and pollworkers have a consistent Election Day experience. Adopting RCV could change this scenario and represent a significant departure from what voters in Los Angeles have become accustomed to over the past several decades. If a RCV system were adopted,

voters in the City could possibly be required to use two different voting systems: one system for City municipal elections and a different system for County, State and Federal elections. However, if the City were to acquire a fully certified voting system, the City should consider purchasing a voting system in partnership with Los Angeles County. Acquiring a voting system with the County will ensure a consistent voting experience for election administrators and voters and will ensure that City contests consolidated onto elections administered by the County can be tallied in accordance with the City's Election Code.

RCV and the City's Matching Funds Program

If RCV is adopted, the City will have several options to consider regarding the City's campaign financing laws. The first option would be to make no changes. That would mean no additional funding in the face of non-candidate spending, and it could lead to unrealistic or outmoded contribution limits, expenditure limits, and funding amounts. The next option would be to provide additional public money in the matching funds program when non-candidate spending occurs and adjust the contribution, expenditure, and funding levels accordingly. This could result in the need for significantly more funding than the program currently receives.

The City may also want to once again consider the merits of a full public financing system as a reform enacted in tandem with an RCV election system. To do this effectively, the mechanics of a specific RCV system must first be identified, so that its unique dynamics can be better understood. At that point, the Ethics Commission could better analyze changes to the City's campaign financing laws that might be necessary to uphold the voter mandate to reform the financing of City elections and encourage broad participation in the electoral process.

Recommendation:

Inasmuch as this report is provided to define the issues surrounding Ranked Choice Voting, the report should be noted and filed.

Conclusion

Without a doubt, adopting RCV for municipal elections would represent a major change in the conduct of elections in Los Angeles. If adopted, RCV will require a certified election system, thorough planning, sufficient resources, and a flexible implementation schedule to ensure a smooth transition.

COUNTY OF LOS ANGELES
REGISTRAR-RECORDER/COUNTY CLERK
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DEAN C. LOGAN
Registrar-Recorder/County Clerk

May 11, 2009

TO: Supervisor Don Knabe, Chair
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

William T Fujioka, Chief Executive Officer

FROM: Dean C. Logan, Registrar-Recorder/County Clerk

Dean C. Logan

REPORT ON BOARD MOTION OF MARCH 31, 2009 REGARDING THE COSTS OF SPECIAL VACANCY ELECTIONS AND OPTIONS AVAILABLE TO THE BOARD TO REDUCE COSTS, VOTER FATIGUE, AND INCREASE VOTER PARTICIPATION

On March 31, 2009, by motion of Supervisor Ridley-Thomas and amended by Supervisor Yaroslavsky, your Board directed the Registrar-Recorder/County Clerk (RR/CC) to report back on:

1. Costs to the County associated with Special Elections to fill vacant partisan and non-partisan, local government, legislative and Congressional seats over the past decade;

2. Efforts being made by the Registrar-Recorder/County Clerk and other jurisdictions to make elections more cost-effective and participatory;

3. Efforts being made by the Registrar-Recorder/County Clerk and other jurisdictions to encourage voter participation and turnout; and

4. Options, including but not limited to Instant Runoff Voting, available to the Board and/or recommendations for legislative proposals to reduce election costs and voter fatigue with the estimated implementation costs and potential savings; and also including technical barriers to implementation; legal issues including the possible need for amendments to the California Elections Code and/or the Los Angeles County Charter.

COSTS TO THE COUNTY ASSOCIATED WITH SPECIAL ELECTIONS TO FILL VACANT PARTISAN AND NON-PARTISAN, LOCAL GOVERNMENT, LEGISLATIVE AND CONGRESSIONAL SEATS OVER THE PAST DECADE

Special elections to fill vacancies are provided for by the elections code and are not out of the ordinary. However they have, over the past decade, become a fairly regular item on the election schedule. As requested by the Board, an analysis of the costs of Special Vacancy elections going back ten years was conducted by Registrar-Recorder/County Clerk staff. The objective of the analysis was to assess costs to the County as a result of Special Vacancy elections. Because special elections conducted to fill vacancies in local governments such as municipalities, school boards, and special districts (e.g. Water Districts) are paid for by the government or agency calling the election, they have been excluded from this analysis.

Analysis

The analysis looked at costs for Special Vacancy Elections for state legislative and Congressional vacancies, which despite provisions for state reimbursements, are still primarily financed by the County up front and reimbursed at a prescribed rate by the state after the fact.

Since the institution of term limits in 1990 the state, beginning in 1993 when the number of elections to fill special vacancies increased, has, through legislative action, reimbursed the County for costs associated with conducting Special Vacancy elections. However, reimbursements are not guaranteed, nor do they cover the full costs of administering these elections. The practice of state reimbursement to counties has been provided for by a succession of legislative bills that contain sunset provisions. In addition, state formulas for reimbursements have not changed since 1993 and rarely provide full cost reimbursement. Consequently, the County has had to absorb a significant share of the costs for these elections.

Findings

Over the past ten years the County has had to conduct elections to fill 10 vacancies in state legislative or Congressional offices. For five of these elections a Special Run-Off Election was necessary to determine a winner[1]. In all, 15 individual elections were conducted to fill legislative and Congressional vacancies between 2000 and 2009. If the current Special Vacancy Election to fill the existing vacancy in the 32nd Congressional District does not produce a candidate with a majority of the vote, then, a

[1] Vacancies in congressional and legislative offices are to be filled by a Special Primary Election. If no candidate receives a majority of the vote in the Special Primary the candidate with the most votes for each party on the ballot will advance to a Special General Election (EC §10705).

second Special Run-Off Election will be scheduled for July 14, 2009. Additionally, the scheduled special run-off election for the 26th District State Senate vacancy will likely result in an additional vacancy for a State Assembly seat triggering another set of special elections.

In terms of actual costs to the County, Special Vacancy Elections conducted between 2000 and 2009 exacted a cost of nearly 11 million dollars ($10,679,725). If we were to also consider the cost of conducting a Special Run-Off Election for the 32nd Congressional District we estimate the actual costs would increase to approximately $12,217,725 and this figure does not account for the potential additional vacancy elections still to occur in the current year. State reimbursement for these costs totaled less than half of the actual election costs ($4,313,200). Factoring for state reimbursements, net cost to the County still totaled $7,904,435. This share of the costs was absorbed completely by the County within the operating budgets of the Registrar-Recorder/County Clerk; although it is unlikely that the Department can continue to absorb costs without supplemental funding given current fiscal conditions. "TABLE 1" below provides detailed cost breakdowns for each of the elections analyzed for this report.

TABLE 1[2]

ELECTION COSTS AND REIMBURESEMENTS FOR SPECIAL VACANCY ELECTIONS
LEGISLATIVE AND CONGRESSIONAL VACANCIES (2000-2009)

DISTRICT	DATE OF ELECTION	S / C (4)	(A) NUMBER OF VOTERS	(B) ACTUAL COSTS	(C) COST PER VOTER (B/A)	(D) STATE REIMBURSEMENT	(E) PAYMENT RATE PER VOTER	(F) NET COST TO RR/CC (D) - (B)
32ND STATE SENATE DISTRICT	01/11/2000	S	23,399	$ 44,829	$ 1.92	$ 32,057	$ 1.37	$ (12,772)
32ND STATE SENATE DISTRICT (RUNOFF)	**03/07/2000**	**C-13**	**20,887**	**$ 26,969**	**$ 1.29**	**$ 13,785**	**$ 0.66**	**(13,184)**
24TH STATE SENATE DISTRICT	03/06/2001	S	277,348	$ 558,424	$ 2.01	$ 379,967	$ 1.37	(178,457)
32ND US CONGRESSIONAL DISTRICT	04/10/2001	S	281,797	$ 336,869	$ 1.20	$ 336,869	$ 1.20	-
49TH STATE ASSEMBLY DISTRICT	05/15/2001	S	142,548	$ 306,073	$ 2.15	$ 195,291	$ 1.37	(110,782)
32ND US CONGRESSIONAL DIST. (RUNOFF)	**06/05/2001**	**S**	**281,797**	**$ 336,319**	**$ 1.19**	**$ 336,319**	**$ 1.19**	**-**
53RD STATE ASSEMBLY DISTRICT	09/13/2005	S	239,858	$ 581,210	$ 2.43	$ 337,410	$ 1.37	(243,800)
39TH STATE ASSEMBLY DISTRICT	05/15/2007	S	112,856	$ 711,414	$ 6.31	$ 154,339	$ 1.37	(557,075)
37TH CONGRESSIONAL DISTRICT	06/26/2007	S	266,017	$ 1,378,283	$ 5.18	$ 363,190	$ 1.37	(1,015,093)
37TH CONGRESSIONAL DISTRICT (RUNOFF)	**08/21/2007**	**S**	**263,482**	**$ 1,437,527**	**$ 5.46**	**$ 359,962**	**$ 1.37**	**(1,077,565)**
55TH STATE ASSEMBLY DISTRICT	12/11/2007	S	169,927	$ 931,776	$ 5.48	$ 233,986	$ 1.37	(697,789)
55TH STATE ASSEMBLY DIST.	02/05/2008	C-12	165,748	$ 229,032	$ 1.38	$ 229,032 (2)	$ -	-
26TH STATE SENATE DISTRICT	03/24/2009	S	404,379	$ 2,461,000 (3)	$ 6.09 (3)	$ 554,000 (3)	$ 1.37 (3)	(1,907,000) (3)
26TH STATE SENATE DISTRICT (RUNOFF)	**05/19/2009**	**C-7**	**409,928**	**$ 640,000 (3)**	**$ 1.56 (3)**	**$ 270,552 (3)**	**$ 0.66 (3)**	**(369,448) (3)**
32ND CONGRESSIONAL DISTRICT	05/19/2009	C-7	257,814	$ 700,000 (3)	$ 2.72 (3)	$ 170,157 (3)	$ 0.66 (3)	(529,843) (3)
32ND CONGRESSIONAL DISTRICT (RUNOFF)	**07/14/2009**	**S**	**252,554**	**$ 1,538,000 (3)**	**$ 6.09 (3)**	**$ 346,373 (3)**	**$ 1.37 (3)**	**(1,191,627) (3)**
TOTAL			3,569,939	$ 12,217,725		$ 4,313,290		$ (7,904,435)

(1) Reimbursement rate specified in Budget Act of 2000: $1.37 per RV for Stand Alone Elections and $0.66 per RV for Consolidated Elections.
(2) State reimbursement for the February 5, 2008 Primary Elections included the 55th State Assembly District election cost.
(3) Estimated Amounts.
(4) S=Stand Alone; C=Consolidated and number of agencies sharing

The cost of conducting elections has increased significantly over time, as illustrated in TABLE 1. These increases can be attributed to a myriad of factors, including regular salary and wage increases, greater costs for materials and voting system maintenance, increased access and application to vote by mail and other early voting options, and continually changing regulatory requirements – in particular those associated with implementing the federal Help America Vote Act of 2002 (HAVA), voting systems certification, use procedures and post election manual tally provisions. It is important to note however, that as election costs have increased, the reimbursement rates applied by the state have not. In the ten year period reviewed for this report, the rate of reimbursement per voter has remained constant at $1.37/voter in stand-alone Special Elections and $0.66/voter if the Special Election is consolidated with a County or Statewide election.

An important factor to consider as part of our analysis is the impact that consolidating Special Vacancy Elections with larger County or Statewide elections can have on costs.

[2] Note that in three elections per voter costs were less than or equal to the state reimbursement rate. As such, for these elections column (F) lists no "Net Cost to RR/CC."

Looking at the vacancy elections for the 32nd State Senate District in 2000 and the 55th Assembly District in 2007/2008 we are able to discern the actual cost savings produced by consolidating these vacancy elections (See TABLE 1). In both instances the Special Primary was conducted as a stand alone election, while the Special General Election was consolidated with a larger election, which produced significant cost savings.

A comparison of the cost per voter rate demonstrates the significant potential for savings. In the 32nd State Senate District Election the cost per voter for the Special Primary was $1.92, whereas for the consolidated Run-Off the cost decreased by 63 cents to just $1.29/voter. The cost savings for the vacancy elections for the 55th Assembly District were more pronounced decreasing from $5.48/voter in the Special Primary to $1.38/voter in the Run-Off. Clearly, the ability to consolidate special vacancy elections is important in mitigating the costs that these special elections can incur and the RR/CC is very vigilant about identifying such opportunities when impending vacancies present themselves.

EFFORTS BEING MADE BY THE RR/CC AND OTHER JURISDICTIONS TO MAKE ELECTIONS MORE COST-EFFECTIVE AND PARTICIPATORY

The sheer size and geographic as well as demographic complexities of Los Angeles County, coupled with the escalating costs associated with conducting elections in recent years, have prompted the Department to take proactive steps aimed at increasing our efficiency and service to the voter, while simultaneously controlling sharp increases in costs. Over the past few years, the Department has successfully implemented a battery of innovative processes and technologies that have had a dramatic impact on the efficiency, cost-effectiveness, and transparency of elections in the County. Through the use of new technologies, many operations once conducted manually have been automated and streamlined. As a result of such innovations the Department has achieved cost savings or cost increase avoidance in areas such as the mailing of sample ballot materials, processing of vote by mail ballots, and the conduct of the election canvass, to name a few. I would like to highlight several of these important innovations that the Department has successfully implemented.

Vote by Mail Processing

Systems automation and improvements in mailing processes have produced remarkable results for our Vote by Mail (hereafter VBM) program. As the use of Vote by Mail voting has increased over the last several even year election cycles, from 622,652 VBM requests in 2000 to more than one million requests for the 2008 General Election, our improvements have helped to both maintain a capacity to process the growing number of requests, while keeping potential cost increases in check.

Cost Savings of VBM Mailings
Prior to 2004, variations in the size and weight of VBM instructions and guides prevented us from taking advantage of Standard Class (3rd Class) postage rates. In 2004, changes to the materials and their weight allowed us to then mail VBM packets via Standard Class mail. The savings incurred have been significant. Since the implementation of the new standardized VBM packets in 2004, the Department has generated $1,634,262 in postage savings.

VBM Inserting and Sorting
The growing number of VBM requests and ballots to process requires a labor intensive effort involving thousands of staff hours. Through the strategic use of federal funding made available by the Help America Vote Act of 2002 the Department has been able to automate the process of preparing and inserting election materials for outgoing VBM requests as well as the scanning and signature verification process for returned ballots. Automation has also allowed us to sort returning VBM ballots by precincts, as required by the enactment of Assembly Bill 2770[3] in 2007. These innovations have had a dramatic impact on cost savings and VBM request processing times. More importantly the improvements have allowed us to increase our capacity to serve our voters without necessarily having to increase the staffing resources necessary to respond and complete increased volume workload within the legal deadlines prescribed by law.

The following is a summary of key highlights:

- Automated inserting equipment allows us to now process up to 25,000 outgoing VBM packets daily. Barcode readers and cameras installed on the equipment provide for automated quality control checks of the packets ensuring that each contains materials that are linked to the specific voter to whom the packet is addressed.

- Scanning and signature verification software now allows us to process returned VBM envelopes at a rate of nearly 4,000/hour. The new automated process has reduced the need for manual signature verification from 100% manual verification to an estimated 25% manual verification rate. In addition to the efficiency gained by this system, the criterion for verification is applied more uniformly and with less subjectivity.

- Our sorting equipment has also reduced staffing hours needed to manually sort returned envelopes by precinct, as required by the election code. Sorting equipment is capable of sorting 40,000 to 175,000 envelopes in a seven hour shift and provides for automated quality control checks that assure a higher rate of accuracy.

[3] The new legislation required Elections Officials to sort returned VBM envelopes by precinct before processing.

- VBM ballot extraction equipment has eliminated the need to manually extract ballots from returned envelopes and has increased the efficiency of the process with the capacity to extract an average of 1,000 ballots per hour. The Department currently operates ten extraction machines during major statewide elections.

Automated Roster Scanning System

The process of reviewing more than 5,000 precinct voter rosters during a countywide election canvass period was another labor intensive process that entailed hand counting and tabulating total individual voter signatures in every roster. In 2007, the Department developed a Roster Signature Scanning System to streamline and further automate the process. This in-house system eliminated the need to manually count signatures. With the Roster Signature Scanning System we have been able to reduce the amount of staff and time needed to complete this phase of the canvass. In addition, the system is able to provide important data reports. The innovation provides faster voter history updates to our voter file; once signature scanning and reporting is completed the data is used to electronically update voter history information. Recent productivity evaluations have found that productivity has increased by 300%, improving the process from one hour to count 500 signatures to just 20 minutes.

Scanning of Voter Registration Forms

The use of technology in elections has facilitated the implementation of many more efficiencies. Other jurisdictions have had similar successes to those I have highlighted in this report. One of the successes we are currently exploring is the use of smart scanning technology to scan voter registration forms. In Johnson County, Kansas the implementation of this technology has resulted in significant cost savings and greater efficiency. For Los Angeles County, where we received tens of thousands of voter registration forms leading up to the close of registration for a Presidential Election, the use of this technology could generate significant cost savings in overtime and temporary staffing.

The Department continues to explore new processes and technologies that can help improve our operations by constantly evaluating these operations. After every major election we have instituted an Election Critique process. This internal evaluation method ensures that we are continuously seeking improvements to our processes.

Efforts to Make Elections More Participatory

With respect to efforts to make elections more participatory, let me emphasize that it is my personal philosophy that elections are a collaborative process between election administrators and the citizenry and that I consider voter education and engagement a

part of our core responsibilities. In the Department we continuously strive to make the elections process 1) open and transparent and 2) accessible to all citizens. Our approach to conducting elections is one of working in partnership with the community and of making every effort to make election information as accessible as possible for all voters. This approach is carried forward in the various initiatives the Department has launched over the years.

In 1998, the Registrar-Recorder/County Clerk established the Community Voter Outreach Committee to form a partnership between the community and the Department. The committee is composed of a diverse array of non-profit, advocacy and political organizations, with as many as 200 participating organizations. The committee has proved invaluable in informing the effectiveness of the information the Department provides to all its voters. More importantly the partnership model has helped to identify many new strategies for serving our growing populations in the Asian and Latino communities as well as meeting the needs of voters with disabilities and special needs.

The Department has also placed great emphasis on using web-based technologies to make election information more accessible to voters. These new technologies allow voters to locate information independently and at their convenience; thereby, empowering voters to navigate the electoral process more freely. The following are some of the web tools that the Department has implemented:

- **Voter Registration Status Look-Up:** This tool allows voters to verify their registration status immediately without having to call our office or submit a request. In many instances dispelling the doubt of whether one is registered or not can avoid the frequency of re-registration when they are unsure of their registration status.

- **Vote by Mail Ballot Status:** Pursuant to recent changes in the elections code the Department developed this web-based system for voters who have requested a Vote by Mail ballot. With this tool voters are able to track the status of their ballot, whether it's been mailed, received, or processed.

- **Polling Place Locator:** Allows voters to locate their polling place for an upcoming election by simply entering their house number and street name. This application also provides online access to voters' sample ballot pages – both in English and in each of the required alternative languages provided for in our compliance with the federal Voting Rights Act minority language provisions.

More recently, in an effort to adapt to the changing modes of communication introduced by new media such as Facebook, Twitter and YouTube, the Department launched a new media initiative to establish a presence and a new platform by which to provide election information. Programs such as Facebook, Twitter and YouTube are

increasingly becoming a frequent means of communication for multiple generations. To give you an example, according to statistics provided by Facebook, there are currently about 31 million active users and an estimated 100,000 new users have been registering daily since January of 2007.

These new media technologies offer an excellent opportunity to communicate information about upcoming elections through an increasingly popular and accessible format. The expectation is that as the use of these tools continues grow, they will also produce efficiencies and enhanced service by reducing the volume of calls for basic information from the public. More importantly, these media offer voter information and education opportunities at no added cost to the Department.

OPTIONS, INCLUDING BUT NOT LIMITED TO INSTANT RUN-OFF VOTING, AVAILABLE TO THE BOARD AND/OR RECOMMENDATIONS FOR LEGISLATIVE PROPOSALS TO REDUCE ELECTION COSTS AND VOTER FATIGUE WITH ESTIMATED IMPLEMENTATION COSTS AND POTENTIAL SAVINGS

As directed in your Board's motion, we researched and considered a number of options, including "Ranked Voting," that the Board might consider as initiatives or recommendations for reducing election costs and voter fatigue. In particular our review considered the specific issues concerning the costs of rolling elections and the limitations of our current voting system. The goal in our review of options was to identify options that would 1) help reduce the costs of elections (specifically, vacancy elections), and 2) reduce voter fatigue.

The following set of options are preliminary considerations void of any comprehensive regulatory and legal analysis, research, or feasibility study.

1. Implementation of Ranked Voting

Ranked Voting (RV)[4] is a method of voting that allows voters in an election to cast their vote for qualified candidates by ranking them in order of preference—first, second, third choices. In elections requiring a 50% +1 majority vote to be elected, this method of ranked voting provides the ability to determine a majority winner without the need to conduct a run-off election. The ranked choices of every voter are used to conduct multiple election rounds until a majority winner is determined. This method of voting is in use both internationally in countries such as Australia and Great Britain, as well as in a limited number of jurisdictions in the United States. This report provides a preliminary review of the ability of Los Angeles County to implement Ranked Voting as a method for

[4] Ranked Voting (RV) is also referred to as Ranked Choice Voting (RCV) or Instant Run-Off Voting (IRV). For purposes of this report we refer to the method as Ranked Voting (RV) to maintain consistency with language inof current legislative proposals being considered by the California State Assembly.

conducting special elections to fill vacancies for local government, legislative, and Congressional offices and provides an initial assessment of the following questions:

- Is it possible to implement RV using the County's current voting system (InkaVote Plus and MTS)?
- Would the implementation of RV require any amendments to the County Charter, California State Constitution, and Election Code?
- Would RV cost anything to implement? Would it produce cost savings?
- Would RV help reduce voter fatigue?

Overview of Jurisdictions Using RV Systems
Were we to implement Ranked Voting for use in Special Vacancy Elections, Los Angeles County, with well over 4 million registered voters, would certainly be the largest and most diverse jurisdiction to do so in the United States. Per provisions of the federal Voting Rights Act, currently the County provides language assistance in seven different languages and administers around 4,000 polling locations in a given countywide election.

Currently, 17 different jurisdictions across the country have either implemented or are in the process of definitively implementing Ranked Voting.[5] Of these, the largest include: San Francisco, CA (477,651 Registered Voters); Pierce County, WA (468,656 Registered Voters); and the city of Memphis, TN (460,000), scheduled to implement RV in 2011. It is important to note that of the 17 jurisdictions; only nine have actually used RV in a live election. In addition, based on the summary provided, it appears that only two or three of those jurisdictions use RV for electing federal or state offices. Those that do so (Arkansas and South Carolina), use the method exclusively for military and overseas voting. This is important to note only for purposes of considering a jurisdiction of comparable size and diversity within the United States, which could provide our analysis valuable information. However, the fact that Los Angeles is a unique case is neither an impediment to considering Ranked Voting, nor an unknown situation for the County.

As far as the tally systems involved in executing RV, at least five involve a hand count or some other manual procedure, or a combination of software programs. Currently, there is only one voting system approved for use in California that has been tested and certified to process RV ballots. We would need to further research comparable systems to inquire about audit procedures and state or federal certification of systems in place for RV.

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[5] New America Foundation, "Instant Run-Off Voting: Use in U.S. Jurisdictions." http://www.newamerica.net/files/jurisdiction_summary_irv_apr_2009.pdf.

Is it possible to implement RV using the County's current voting system?
The Department evaluated the possibility of implementing RV under our current voting system by considering the system's technical environment, procedural functions, and state certification guidelines. Voting system transparency and security integrity was also given due consideration in evaluating this option. Based on our preliminary evaluation, it is the Department's opinion that implementation of a Ranked Vote method using our existing voting system would prove difficult without a significant and fundamental overhaul of the voting system. The department further finds that, at least in our initial assessment, the programming and procedural changes required to implement RV would present significant challenges and complexities in providing a tally process of the utmost transparency and auditability to our public.

Currently the County's paper based voting system is comprised of InkaVote Plus and the County's proprietary Microcomputer Tally System (MTS) operated on a DOS-based PC platform. Voters cast their ballots using the InkaVote Vote Recorder, an adaptation of the County's previous punch card system. Voters utilize an ink pen to mark their ballots and votes are recorded onto IBM 312 format paper ballot cards. In compliance with Help America Vote Act (HAVA) requirements for second chance voting, our InkaVote Plus voting system uses Precinct Ballot Readers, deployed at every polling place, to check ballots for *overvotes* and *blank* ballots. Voted ballots are then processed, inspected and counted centrally at our Norwalk headquarters. The tally of the votes is then executed using LR 3000 card readers, which scan the entire voted ballots and detect ink marks in specified ballot positions associated with contests and candidates. The votes detected are then pushed to an MTS terminal and tabulated for the corresponding position/contest. The precinct tally results from each individual terminal are sent over a Token-Ring network to a Summary server that cumulates the precinct totals into a summary total for the entire election. This description is intended to provide a basic overview of our voting system architecture, as approved for use by the Secretary of State.

It is important to emphasize that the state of our current voting system is one requiring serious consideration and attention. As the description of the system and the findings of this assessment suggest, our voting system has served, and continues to serve, the voters of Los Angeles County with accuracy and integrity, but the design of the system and the age of the technology upon which it was built, offer very little technical and functional elasticity for making the major changes that RV would entail.

To implement RV our MTS tally system program code would need to be rewritten to support multiple reads of a single ballot. Currently every ballot that is run through MTS in a live election is read and counted once. The system currently cannot discern whether a ballot was run once before. Furthermore, if a second reading were possible, our systems would need to be altered to ignore all contests except for the RV contest.

Programming changes of this magnitude would require recertification. Because the County is both the vendor and client of the MTS system, all costs involved in recertification would be born by the County. In practical terms, what this is identifying is the broader need for a new voting system as it is unlikely that modification to our existing, legacy voting system would meet new and developing standards for certification and approval at the state and federal levels.

Without further analysis of the re-programming required to implement RV, we cannot at this time provide a clear assessment of the new measures of transparency and auditability that would be required to preserve the integrity of tally processes and results using the potential fixes. This matter requires further consideration of the detailed technical requirements that would need to be developed to implement RV.

Would the implementation of RV require any amendments to the County Charter, California State Constitution, and Election Code?
This question was addressed separately by County Counsel in a memorandum to the Board of Supervisors and filed in conjunction with this report.

Would RV cost anything to implement and would it produce cost savings?
It is difficult to provide a fixed figure for cost and cost savings at this time. We can, however, consider the following:

Cost Savings:

- Election of County Offices occurs during even year statewide elections in June and if necessary in November. As such, County Office elections fall on regularly scheduled election dates, whether there is a run-off or not the Department would be faced with conducting a countywide election. Under these circumstances, it is unclear whether using RV would result in a cost savings for the County; although in some forms of implementation it would provide for cost avoidance.

- In the case of RV for Special Vacancy elections for legislative and Congressional offices, the system could yield cost avoidance by eliminating the need for a run-off election. Again, the cost avoidance would vary based on whether the election would have been consolidated or a stand alone. The cost of a single election can also vary depending on the district size. Using the 37th Congressional District run-off in 2007 as an example, the cost avoidance could have been around $1.4 million.

Costs:

- Staffing costs would be incurred in the re-programming of our voting system; although as previously stated this option may not be cost-effective if the assessment of our voting system is that it is in need of replacement.

- Added costs might also be expected for the voting systems certification process. In order to conduct legislative and Congressional vacancy elections using RV, per County Counsel, the voting system would first need to obtain federal certification and then approval by the Secretary of State.

- Potential costs for any new hardware or software equipment would be needed for implementation.

- As part of implementing any new voting system we would strongly recommend the County should expect significant costs associated with voter education and outreach necessary to ensure voters fully understand the alternate method of voting and ranking their choices. Using even a conservative estimate of about $.55/voter a countywide education campaign could cost $2.2 million. If we conducted district specific education costs could be around $200,000. These figures would represent voter education costs for a single election cycle. It is unknown the degree to which these specific costs would become ongoing election expenses beyond the first election with RV, especially if the system were used intermittently for special vacancy elections only.

Would RV help reduce voter fatigue?
Voter fatigue is understood to mean the growing disinterest of voters to participate in elections as a result of successive and frequent elections. While not much empirical data exists on measuring and studying the phenomenon of voter fatigue, it is rational to assume that participating in elections takes a physical and emotional investment on the part of voters. The time required making election related transactions, such as registering to vote, reviewing the sample ballot, requesting a vote by mail ballot or taking time to go to the polls certainly requires some investment of time on the part of the voter. Additionally, impacted election schedules have a significant impact on the ability of communities to mobilize the necessary resources to conduct voter education and Get-Out–The-Vote activities. With all these factors considered, it is safe to say that rolling elections can have a significant impact one could characterize as voter fatigue.

Given that RV would eliminate the need to conduct run-off elections, there is definite cause for concluding that RV could have a positive impact on reducing some form of voter fatigue. It is important to note however, that to what extent this would result in greater voter participation in unscheduled stand alone Special Vacancy Elections is unclear. The research cited by RV advocates suggesting exponential increases in voter

turnout dealt with regularly scheduled contests as part of a city or countywide consolidated election and not a stand alone unscheduled election.

Another related issue that is worthy of further research and review of data from jurisdictions where RV has been used is the issue of residual vote to assess the percentage of voters who properly mark their ballots to reflect ranked choices. Through our participation on the City of Los Angeles' task force on Instant Runoff Voting, we are aware that such data is being compiled and analyzed within the academic community. Access to this data could prove valuable as the County considers how its diverse populations may be affected by a new method of voting.

Following is a summary of additional options or approaches that could impact the costs of elections and issues of voter fatigue. As with RV, further consideration of any of these options would warrant more comprehensive analysis and recommendation:

1. Expand the election calendar to include odd year elections for consolidation

Establish an expanded regular election calendar that would provide for even and odd year June and November election schedules. These could provide greater opportunities to amend the election code to require that vacancy elections be consolidated with regularly scheduled elections, while at the same time avoiding the problem of extended vacancies. This would require changes to the election code. In particular, changes to the prescribed provisions for filling legislative and congressional vacancies. In theory, this option also allows for greater consolidation of special district and municipal elections and, therefore, has the potential to favorably address issues of voter fatigue.

2. Institute Limited Appointments to Fill Vacancy Period

Amend the special vacancy provisions in the election code to allow for an appointment process for filling legislative and Congressional vacancies. Appointees would fill the vacancy until the next scheduled general election at which time a successor would be elected. With an expanded election calendar this would reduce the appointment period. Elected County Central Committees could help appoint the candidates with confirmation by the Governor. A similar model is currently in place in the Los Angeles County Charter for filling vacancies in county offices.

3. Move to Plurality Winners for Special Vacancy Elections

Amend legislative and congressional vacancy election rules to allow for plurality winners. This proposal would eliminate the need for runoff elections under the current 50%+1 majority requirements. Note that this option would achieve the same cost

avoidance benefit as identified under Ranked Voting without the costs associated with procuring and certifying a voting system with ranked choice capability.

4. All Vote by Mail Special Vacancy Elections

Amend state elections code to authorize Counties to conduct special vacancy elections entirely by mail. This would include legislative and non-legislative offices. Statistically, based on a limited sampling of Vote by Mail elections conducted in the County, this option would both reduce election costs and would increase voter participation in filling vacancies. An anecdotal illustration of this is a comparison in the percentage of voter turnout in the recent March 24, 2009 Special Vacancy Primary election for the 26th District State Senate seat, which was 7.91% and the all vote by mail election conducted earlier this month for the San Marino Unified School District, which exceeded 50%. This issue would require serious considerations regarding its implementation in traditionally under served communities.

5. Make State Reimbursement for Special Vacancy Elections Permanent and Amend Payment Formulas

Currently, reimbursement provisions passed by the legislature include sunset provisions. However, since the passage of the first reimbursement bill in 1993, vacancy elections have persisted and in some respects increased in frequency. In addition, reimbursement is based on "per voter" rates established in 1993. These rates remain unchanged despite the increasing cost of conducting elections. State reimbursement should cover all costs associated with conducting the vacancy elections for legislative and Congressional district offices. While beneficial to the County, this option alone only shifts the economic burden associated with the current system for filling vacancies to the state and does not address the overall costs of conducting vacancy elections or the issues of voter participation and fatigue.

EFFORTS BEING MADE BY THE RR/CC AND OTHER JURISDICTIONS TO ENCOURAGE VOTER PARTICIPATION AND TURNOUT

The RR/CC has made it an operational priority to conduct comprehensive voter information and education efforts aimed at reducing what social scientists refer to as the cost of participation. Over the past decade the Department has placed great emphasis on making sure that the County's citizenry has access to important election information and, more importantly, that the franchise, through voter registration, a fundamental piece of our elections process, is at the fingertips of all our citizens. The Department is fully committed to the concept that an important factor influencing voter participation is access to information and the process. Although, many studies have shown that direct contact by campaigns or non-partisan organizations is the most effective in actually turning people out to vote, voters' ability to be informed about simple aspects of the

process such as being registered to vote, how to locate their polling place, access to a sample ballot, voting by mail can also play a vital role in setting the context for greater participation and for achieving and maintaining voter confidence.

Over the years the Department has conducted several programs aimed at accomplishing these goals:

A. Established a Deputy Voter Registrar Training Program aimed at assisting community based organizations, political campaigns, and other special interest groups with training on completing voter registration forms and guiding voters through the voter registration process.

B. Providing voter registration services at Naturalization Ceremonies for new citizens.

C. Strengthened our collaboration with the Sheriff's Department to ensure that eligible inmates have access to the franchise through the Inmate Registration and Voting Program.

D. The Department also conducts a Senior Citizen and Elderly Voting Assistance program that works with Senior Citizen Residential Care Facilities to assist our County's seniors with the elections process.

Obviously, the geographic magnitude and demographic diversity of Los Angeles County makes reaching all of our residents extremely difficult. In 2008, in advent of the historic Presidential Election the RR/CC launched an aggressive partnership with regional media companies, serving English, Spanish, and Asian language communities. Additionally, partnerships established to highlight services to voters with disabilities and to increase voter engagement in underserved or underrepresented communities was prioritized. The effort created a network of public-private partnerships aimed at ensuring the dissemination of information across various media (e.g. print, radio, television, and internet) as well as in covered languages. The County sought to engage media outlets under the construct of a community service partnership with the intent of having greater access to other media formats beyond simply advertising (e.g. interviews and notices in the news, community calendars, etc.). The media campaign focused on providing information on target HAVA requirements up to one month prior to the election. The strategy included:

- Community service partnerships with media outlets.

- A series of public service announcements that promote vote by mail and Election Day voting systems in print and on broadcast media.

- Voter education news series/community affairs programming with multiple media partners.

- On-air interviews with departmental leadership to promote voter rights and to instill voter confidence in the County's Voting Systems.

While the efforts of the community as a whole are to be commended for the historic participation of Los Angeles County voters, which registered the highest level of voter turnout since 1968, 82% of registered voters, we believe that our initiative played an important role in ensuring that the millions of voters, particularly new voters, were well informed about their options and rights for casting a successful ballot, and that they did so with increased confidence in the integrity of the voting process.

Highlights:

- Record number of registered voters-4.3 million
- Record number of Vote by Mail ballot requests-1 million
- Highest turnout in 42 years-82%
- 20,000 registered voters in a single day through our "Midnight Madness" event at the close of registration
- Highest number of attendees to poll worker trainings-30,000

Looking ahead the Department seeks to continue its efforts to promote greater participation amongst the County's citizens, as greater participation ensures a stronger and more resilient democracy. As the populace continues to grow and become ethnically as well as generationally diverse, we look forward to working with your Board in strengthening our democratic process for the 21st Century.

CONCLUSION

Given the current fiscal environment as well as the dynamics of the electoral process in California and throughout the nation, the elements addressed in this motion and the initial analysis prepared for this report are very timely and align well with the Department's priorities and strategic focus concerning the current state of rolling special elections and our voting system. As we move ahead and prepare for the 2010 Gubernatorial and Statewide election cycle and the 2012 Presidential election cycle, three areas of focus are emerging:

1. **Addressing the future needs of our voting system(s) in Los Angeles County.**

   Our current voting system has served the County well and the County has acted with prudence in being cautious not to jump to a new voting system without first

identifying the long term needs and sustainability of available systems that meet federal certification requirements and approval for use by the Secretary of State. The system, however, depends on aging ballot layout and central tally systems that are increasingly difficult to support and operate, due both to technology obsolescence and a shortage of skilled technical staff. The voting device itself is increasingly viewed by regulators, advocacy groups, and the general public as being out of alignment with voting technology standards and developing trends in voting systems guidelines.

The voting system certification process at the state and federal level has experienced profound and rapid change since the establishment of the United States Election Assistance Commission (EAC) in 2002, and the requirements for certifying voting systems have continually expanded and become more complex. This has created uncertainty in the industry and has slowed the testing and certification process for any new advancement or development of voting systems. This situation creates a particularly challenging environment for Los Angeles County. On the one hand, there are no certified Commercial-Off-The-Shelf (COTS) voting systems currently on the market that will meet the special needs of the County, and the new as-yet-uncertified COTS systems proposed by the major vendors do not seem sufficient either. On the other hand, the process of developing or purchasing a custom voting system solution especially for Los Angeles County can be costly and risky in terms of certification.

With that in mind, the RR/CC is embarking on a Voting System Assessment project to discuss, analyze, and document the issues and factors central to the implementation of a new voting system, and the options available for moving forward. It will also set priorities and make recommendations as to how the County would like to proceed. At the end of the project, the Department will have developed and committed to a workable strategy and a formal project plan for implementing a new voting system. This process provides a logical venue for furthering discussion and application of the options outlined in this report.

The New Voting System Assessment project will convene a team of managers from RR/CC and key County departments that will, over a series of meetings, identify, discuss, prioritize, and document the issues, factors, and options involved in implementing a new voting system for Los Angeles County. The project will document the Department's analysis and recommendations, provide a recommendation to the Board of Supervisors and Chief Executive Officer that commits the County to a concrete and specific voting system solution, and a detailed project plan for implementing the new voting system. A vital part of this assessment process will be the input and consent of community stakeholders representing important constituencies such as city officials, racial/ethnic communities, disability rights advocates, voting integrity activists, etc. The

County's assessment project will seek to actively engage these stakeholders throughout the process.

2. **Modernization of the voter registration process and continued commitment to voter outreach and engagement.**

   Following the successful administration of the 2008 Presidential election cycle, much of the national policy focus on elections has shifted toward a review and analysis of the way in which we register and engage voters in the electoral process. The RR/CC is participating in this dialogue and is part of a collaborative working group with advocates and researchers considering alternative approaches. As with voting system dynamics, the focus of these efforts is two-fold – 1) increased access and participation and 2) modernization and cost effectiveness.

   Consistent with efforts to look at the voter registration process, we need to build on the successful partnerships that were formed with the media and community organizations committed to providing comprehensive and accessible voter education and information. Experience has shown that increased confidence in the electoral process is linked to readily available and easily accessible information; a voters understanding of the mechanics of casting their ballot; and knowing what to expect when they show up to vote.

3. **Engaging with and anticipating the expectations of future generations of voters.**

   In 2008 we experienced a noticeable increase in registered voters between the ages of 18 and 29; a demographic often disproportionately under represented, electorally. As we look at new options for voting and new technology for facilitating the franchise, we must focus on the expectations that future voters will have and ensure that we are cultivating a process that encourages and accommodates our newest generations of voters. Identifying options and solutions that meet the needs of today's electorate alone misses the target. We need to lead efforts to be prepared for and that engage the voters of tomorrow.

Attachment D

10-2481

RULES & ELECTIONS

SEP 24 2010

MOTION

Elected officials have no greater obligation than that of honoring the trust placed in them by the voters. By oath and by law, elected officials must act solely in the best interests of those they represent.

The City of Los Angeles has long recognized that transparency and openness allows the public to verify the integrity of its government. Our democracy promises a government of the people, by the people, and for the people. Keeping this promise requires an environment that prevents even the perception that individuals have the ability to unduly sway an elected official. Accordingly, the City has implemented a number of regulations and laws related to gifts, campaign contributions and disclosure. These existing measures are currently being reviewed and additional recommendations will be forwarded to the City Council by the City Ethics Commission that would apply to gifts to public officials and their staff particularly as it relates to gifts from city contractors or entities with business before the City of Los Angeles.

This important discussion does not include a review and recommendation of stricter standards on comparable campaign contribution laws as applied to city contractors and entities with current business before the city. It is crucial for the integrity of government that our discussion of strict reporting and bans on gifts also includes a similar application to campaign contributions. Any revisions to campaign contributions laws will likely require a charter amendment to be fully effective.

I THEREFORE MOVE that the Chief Legislative Analyst and the City Attorney with assistance from the City Ethics Commission as necessary, be requested to prepare a measure for the March 2011 ballot that would revise the City's Charter to add a new provision which would prohibit campaign contributions from entities bidding on City contracts.

PRESENTED BY: _____
ERIC GARCETTI
Councilmember, 13th District

SECONDED BY: _____

September 24, 2010

ORIGINAL

Attachment E

GREEN PARTY OF CONNECTICUT, S. MICHAEL DEROSA, LIBERTARIAN PARTY OF CONNECTICUT, ELIZABETH GALLO, JOANNE P. PHILIPS, ANN C. ROBINSON, ROGER C. VANN, ASSOCIATION OF CT LOBBYISTS, and BARRY WILLIAMS, Plaintiffs-Appellants, v. JEFFREY GARFIELD, RICHARD BLUMENTHAL, PATRICIA HENDEL, ROBERT N. WORGAFTIK, JACLYN BERNSTEIN, REBECCA M. DOTY, ENID JOHNS ORESMAN, DENNIS RILEY, MICHAEL RION, SCOTT A. STORMS, SISTER SALYL J. TOLLES, and BENJAMIN BYCEL, Defendants-Appellees, AUDREY BLONDIN, TOM SEVIGNY, COMMON CAUSE OF CT, and CONNECTICUT CITIZEN ACTION GROUP, Intervenor-Defendants-Appellants.

Docket Nos. 09-0599-cv(L), 09-0609-cv(CON)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

2010 U.S. App. LEXIS 14248

January 13, 2010, Argued
July 13, 2010, Decided

SUBSEQUENT HISTORY: As Amended August 11, 2010.
On remand at, Judgment entered by, Injunction granted at *Green Party of Conn. v. Lenge, 2010 U.S. Dist. LEXIS 81875 (D. Conn., Aug. 11, 2010)*

PRIOR HISTORY: [*1]
Appeal from a February 11, 2009 partial final judgment of the United States District Court for the District of Connecticut (Stefan R. Underhill, Judge) entered after the Court granted summary judgment to defendants, upholding several provisions of Connecticut's Campaign Finance Reform Act (CFRA) against a First Amendment challenge.

We affirm the judgment of the District Court insofar as it upheld certain provisions banning state contractors and associated individuals from making campaign contributions to candidates for state office.

We reverse the judgment of the District Court insofar as it upheld certain provisions (a) banning lobbyists from making campaign contributions and (b) banning contractors and lobbyists from soliciting contributions on behalf of candidates for state office. We hold that those provisions violate the First Amendment.

In a judgment entered September 2, 2009, the District Court disposed of additional claims challenging Connecticut's Citizen Election Program, a part of the CFRA that provides public funds to candidates running for state office. We address an appeal of the September 2, 2009 judgment in a separately filed opinion.
Green Party of Conn. v. Garfield, 590 F. Supp. 2d 288, 2008 U.S. Dist. LEXIS 103775 (D. Conn., 2008)

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs sued defendant state officials claiming that certain provisions of Connecticut's Campaign Finance Reform Act (CFRA) violated the U.S. Const. amends. I and *XIV*, and the Connecticut Constitution. Following cross-motions for summary judgment, the United States District Court for the District of Connecticut determined that each of the challenged provisions was consistent with the First Amendment.

OVERVIEW: Inter alia, the appellate court held that the bans on contributions by state contractors, lobbyists, and associated individuals were marginal

speech restrictions that would withstand scrutiny under the First Amendment if they were closely drawn to match a sufficiently important government interest. The contractor contribution ban stood, as it was closely drawn to address addressed both the actuality and appearance of corruption involving state contractors. However, the lobbyist contribution ban violated the First Amendment because the scandals that promoted the law's passage did not involve lobbyists and even if the anticorruption interest was sufficiently important in this context, an outright ban on lobbyist contributions--as opposed to a mere limit --was not closely drawn to achieve the state's interest. As the ban on contribution solicitation burdened political speech, it was subject to strict scrutiny. Under that standard, it violated the First Amendment. Even if the state had a compelling interest in preventing contractors and lobbyists from "bundling" contributions, the solicitation ban was not narrowly tailored because it prohibited numerous unrelated activities.

OUTCOME: The appellate court affirmed as to the contractor contribution bans, but reversed as to the remaining bans, and remanded to the district court to determine severability.

LexisNexis(R) Headnotes

Governments > State & Territorial Governments > Elections
[HN1] Connecticut's Campaign Finance Reform Act's (CFRA) ban on contractor contributions applies to any person, business entity or nonprofit organization that enters into a state contract. *Conn. Gen. Stat.§ 9-612(g)(1)(D)*. It also applies to any prospective contractor; to any principal of a contractor or prospective contractor; and to the spouse or dependent child of a contractor, a prospective contractor, or a principal of a contractor or prospective contractor. *§ 9-612(g)(2)*. The prohibition on contributions by dependent children applies only to a dependent child who is eighteen years of age or older. *§ 9-612(g)(1)(F)(v)*.

Governments > State & Territorial Governments > Elections
[HN2] Connecticut's Campaign Finance Reform Act's (CFRA) ban on contractor contributions is what might be called "branch specific." If the contract in question is with or from a state agency in the executive branch, the contractor may contribute to a candidate for the General Assembly but not to a candidate for an executive office *Conn. Gen. Stat. § 9-612(g)(2)(A)*. If the contract in question is with or from the General Assembly, the contractor may contribute to a candidate for an executive office but not to a candidate for the General Assembly. *§ 9-612(g)(2)(B)*. Nonetheless, any holder, or principal of a holder of a valid prequalification certificate, such a certification being required in order to bid or perform work on certain high-cost, state-funded projects, is precluded from contributing to candidates for either branch of government. *§ 9-612(g)(2)(A)-(B)*. Further, all individuals and entities covered by the contractor ban are prohibited from contributing to any state or town party committee. *Conn. Gen. Stat. § 9-601(1)-(2)*.

Governments > State & Territorial Governments > Elections
[HN3] See *Conn. Gen. Stat. § 9-612(g)(2)*

Governments > State & Territorial Governments > Elections
[HN4] Connecticut's Campaign Finance Reform Act (CFRA) prohibits contractors from soliciting campaign contributions on behalf of candidates for state office. *Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)(A)-(B)*. Like CFRA's ban on contributions, the ban on the solicitation of contributions applies not only to current state contractors, but also to any prospective contractor; to any principal of a contractor or prospective contractor; and to the spouse or dependent child of a contractor, a prospective contractor, or a principal of a contractor or prospective contractor. *Conn. Gen. Stat. § 9-612(g)(2)*.

Governments > State & Territorial Governments > Elections
[HN5] See *Conn. Gen. Stat. § 9-610(h)*.

Governments > State & Territorial Governments > Elections
[HN6] The term "solicit" is defined by Connecticut's Campaign Finance Reform Act (CFRA) to include, among other things, requesting that a contribution be made, participating in any fund-raising activities for a candidate, and bundling contribu-

tions for a candidate. *Conn. Gen. Stat. § 9-601(26)*. Excluded from the statutory definition of "solicit" is, among other things, making a contribution that is otherwise permitted under this chapter and informing any person of a position taken by a candidate.

Governments > State & Territorial Governments > Elections
[HN7] See *Conn. Gen. Stat. § 9-601(26)*.

Civil Procedure > Summary Judgment > Appellate Review > Standards of Review
[HN8] An appellate court conducts a de novo review of a District Court's decision to grant summary judgment.

Civil Procedure > Summary Judgment > Standards > Genuine Disputes
Civil Procedure > Summary Judgment > Standards > Legal Entitlement
Civil Procedure > Summary Judgment > Standards > Materiality
[HN9] Summary judgment is appropriate if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)(2)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN10] In a long line cases beginning with Buckley, the United States Supreme Court has distinguished laws restricting campaign expenditures and campaign-related speech from laws restricting campaign contributions. The Court has determined that laws limiting campaign expenditures and campaign-related speech impose significantly more severe restrictions on protected freedoms of political expression and association than do laws limiting campaign contributions. As a result, the court has evaluated laws limiting campaign expenditures and campaign-related speech under the strict scrutiny standard, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN11] For laws limiting campaign contributions, the United States Supreme Court has conducted a relatively complaisant review under the First Amendment. Such laws, the Court has concluded, are merely marginal speech restrictions, since contributions lie closer to the edges than to the core of political expression. Thus, instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest, a law limiting contributions passes muster if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN12] The United States Supreme Court has always applied the "closely drawn" standard to evaluate First Amendment challenges to laws restricting campaign contributions.The Court has applied the closely drawn standard even when the law in question imposed an outright ban on contributions.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN13] Although the United States Supreme Court's campaign-finance jurisprudence may be in a state of flux (especially with regard to campaign-finance laws regulating corporations), Beaumont and other cases applying the closely drawn standard to contribution limits remain good law. Indeed, in the recent Citizens United case, the Court overruled two of its precedents and struck down a federal law banning independent campaign expenditures by corporations, but it explicitly declined to reconsider its precedents involving campaign contributions by corporations to candidates for elected office.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN14] Appellate courts evaluate the contribution bans imposed by campaign finance reform laws under the closely drawn standard. Courts will uphold the statutory bans against First Amendment challenges only if they are closely drawn to achieve a sufficiently important government interest.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN15] The fact that provisions impose outright bans--and not limits--on political contributions is a factor a court will consider when it applies scrutiny at the level selected and determinse whether the provisions are, in fact, closely drawn to achieve the state's interests.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN16] An "anticorruption" interest has been recognized as a legitimate reason to restrict campaign contributions. The United States Supreme Court has repeatedly held that laws limiting campaign contributions can be justified by the government's interest in addressing both the "actuality" and the "appearance" of corruption.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN17] Connecticut's Campaign Finance Reform Act (CFRA)'s ban on contractor contributions, in particular, applies not only to individuals who currently have contracts with the state, but also to "prospective" state contractors who seek (but do not currently have) state contracts. *Conn. Gen. Stat. § 9-612(g)(1)(E), (2)(A)-(B)*. It also applies to any "principal" of an entity that has (or is seeking) contracts with the state, *§ 9-612(g)(1)(F), (2)(A)-(B)*, and it applies to any "spouse" or "dependent child" of a covered individual, *§ 9-612(g)(1)(F)(v), (1)(G), (2)(A)-(B)*. To survive First Amendment scrutiny, Connecticut's Campaign Finance Reform Act's contractor contribution bans must be "closely drawn" to the state's anticorruption interest with respect to each of those groups of individuals.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN18] Connecticut's Campaign Finance Reform Act (CFRA) applies to contributions made by any current state contractor, as well as any prospective state contractor, Conn. Gen. Stat. v*§ 9-612(g)(2)(A)-(B)*, which is defined to include, in essence, any individual or entity that submits a response to a call for bids on state contracts, *§ 9-612(g)(1)(E)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN19] If an artificial entity, rather than an individual, is awarded (or seeks) a state contract, Connecticut's Campaign Finance Reform Act (CFRA) bans contributions made by any "principal" of that entity. *Conn. Gen. Stat. § 9-612(g)(1)(F), (2)(A)-(B)*. A "principal" is defined to include, among other things, (1) any member of the entity's board of directors, (2) any individual who has an ownership interest of five per cent or more in the entity, (3) the president, treasurer or executive vice president of the entity, and (4) any officer or employee of either a business entity or a nonprofit organization who has managerial or discretionary responsibilities with respect to a state contract.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN20] Although in most cases, Connecticut's Campaign Finance Reform Act (CFRA) applies

equally to for-profit and nonprofit organizations, the definition of "principal" does not include an individual who is a member of the board of directors of a nonprofit organization. *Conn. Gen. Stat. § 9-612(g)(1)(F)(i)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN21] If an entity is not a business entity, Connecticut's Campaign Finance Reform Act applies to the chief executive officer of the entity or the officer who duly possesses comparable powers and duties. *Conn. Gen. Stat. § 9-612(g)(1)(F)(iii)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN22] For purposes of Connecticut's Campaign Finance Reform Act, "principal" is defined to include the spouse or dependent child of a contractor. *Conn. Gen. Stat. § 9-612(g)(1)(F)(v)*. Principal is also defined to include a political committee established or controlled by an individual described in subparagraph (F) or the business entity or nonprofit organization that is the state contractor or prospective state contractor. *Conn. Gen. Stat. § 9-612(g)(1)(F)(vi)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN23] Connecticut's Campaign Finance Reform Act (CFRA) not only bans contributions by contractors, prospective contractors, and the principal of any contractor or prospective contractor; it also bans contributions by the spouse or dependent child of any of those covered individuals. *Conn. Gen. Stat. § 9-612(g)(1)(F)(v), (1)(G), (2)(A)-(B)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN24] The United States Supreme Court has recognized that, in regulating campaign contributions, the legislature must be given room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process. Nonetheless, the Court has struck down so-called anti-circumvention provisions where the government has put forward only scant evidence of a particular form of evasion.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN25] The majority of campaign laws reviewed by the United States Supreme Court--and other courts--have involved limits on contributions, not bans. The Court has, however, upheld the long-standing federal ban on direct corporate contributions. That is enough to demonstrate that laws banning contributions by a discrete group are not unconstitutional per se.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN26] As a restriction on campaign contributions, not campaign expenditures, An appellate court reviews Connecticut's Campaign Finance Reform Act's ban on lobbyists contributions under the closely drawn standard. ante. A court will uphold the ban against plaintiffs' First Amendment challenge only if it is closely drawn to achieve sufficiently important government interests.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN27] An outright ban on contributions is a drastic measure that substantially infringes one aspect of the contributor's freedom of political association. As opposed to a contribution limit, which merely restricts those First Amendment freedoms, a contri-

bution ban utterly eliminates an individual's right to express his or her support for a candidate by contributing money to the candidate's cause. Indeed, a contribution ban cuts off even the symbolic expression of support evidenced by a small contribution.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN28] Where a court is not applying strict scrutiny, and acknowledges that a ban on lobbyist contributions need not be narrowly tailored to achieve the state's anticorruption interest. nonetheless, the ban must be closely drawn to the state's interest, a standard that requires some measure of tailoring. In this context, if a contribution limit would suffice where a ban has been enacted, the ban is not closely drawn to the state's interests.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN29] The anticorruption interest recognized by Buckley and other cases is limited to quid pro quo corruption and does not encompass efforts to limit favoritism and influence or the appearance of influence or access. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt, and favoritism and influence are unavoidable in representative politics. Influence and access, moreover, are not sinister in nature. Some influence, such as wise counsel from a trusted advisor--even if that advisor is a lobbyist--can enhance the effectiveness of our representative government.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN30] Connecticut's Campaign Finance Reform Act (CFRA) prohibits contractors from soliciting contributions on behalf of candidates for state office. *Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)*. That prohibition applies to current state contractors, prospective state contractors, and the principals of current and prospective state contractors, as well as to the spouses and dependent children of covered lobbyists and contractors. *Conn. Gen. Stat. §§ 9-601(24), 9-610(h), 9-612(g)(1)(F), (2)*.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN31] Unlike laws limiting contributions, which present marginal speech restrictions that lie closer to the edges than to the core of political expression, a limit on the solicitation of otherwise permissible contributions prohibits exactly the kind of expressive activity that lies at the First Amendment's core. That is because the solicitation of contributions involves speech--to solicit contributions on behalf of a candidate is to make a statement: You should support this candidate, not only at the polls but with a financial contribution. Whatever may be said about whether money is speech, speech is speech, even if it is speech about money, Speech uttered during a campaign for political office, moreover, requires the fullest and most urgent application of the protections set forth in the First Amendment.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN32] Connecticut's Campaign Finance Reform Act's provisions banning the solicitation of contributions are laws that burden political speech and are, as a result, subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN33] McConnell declined an invitation to apply strict scrutiny to certain provisions of federal law that banned the solicitation of contributions. However, the McConnell solicitation provisions largely

barred the solicitation of contributions that the potential donor would have been prohibited from making in the first place. Strict scrutiny certainly does not apply to laws prohibiting the solicitation of illegal contributions, just as strict scrutiny does not apply to laws prohibiting the solicitation of other prohibited activity.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN34] Offers to engage in illegal transactions are categorically excluded from First Amendment protection.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN35] Although the anticorruption interest has been held sufficiently important to justify restrictions on contributions, in reviewing limits on campaign expenditures under the strict scrutiny standard, the United States Supreme Court has consistently held that the anticorruption interest is not a compelling government interest.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Governments > State & Territorial Governments > Elections
[HN36] When Buckley identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to quid pro quo corruption.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Political Speech
Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
[HN37] In order to narrowly tailor a law to address a problem, the government must curtail speech only to the degree necessary to meet the particular problem at hand, and the government must avoid infringing on speech that does not pose the danger that has prompted regulation. The government must prove that there is no less restrictive alternative to the law in question, for if a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative.

Governments > Legislation > Severability
[HN38] See *Conn. Gen. Stat. § 9-717*.

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JUDGES: Before KEARSE, CABRANES, and HALL, Circuit Judges.

OPINION BY: JOSE A. CABRANES

OPINION

JOSE A. CABRANES, *Circuit Judge*:

This is the second of two opinions in which we consider a constitutional challenge **[*3]** to certain

provisions of Connecticut's Campaign Finance Reform Act (CFRA).

As we describe in our first opinion, the CFRA was enacted in 2005 as a comprehensive effort to bring about campaign finance reform in Connecticut. In our first opinion, which we file separately, we consider a challenge to the Citizens Election Program (CEP), a part of the CFRA that provides public funds to candidates running for state office. *See Green Party of Conn. v. Garfield, No. 09-3760-cv(L), ___ F.3d ___, 2010 U.S. App. LEXIS 14286 (2d Cir. July 13, 2010)*. We consider here a challenge to provisions of the CFRA that ban campaign contributions and the solicitation of campaign contributions by state contractors, lobbyists, and their families.

Following cross-motions for summary judgment, the United States District Court for the District of Connecticut (Stefan R. Underhill, *Judge*) determined that each of the challenged provisions was consistent with the First Amendment. *See Green Party of Conn. v. Garfield, 590 F. Supp. 2d 288 (D. Conn. 2008)* ("*Green Party I*"). We affirm part of that decision, as we hold that the CFRA comports with the First Amendment insofar as it bans contributions by state contractors, "prospective" state contractors, **[*4]** the "principals" of contractors and prospective state contractors, [1] and the spouses and dependent children of those individuals.

> 1 We use the term "principal" in this opinion to mean those individuals and entities defined in *Conn. Gen. Stat. § 9-612(g)(1)(F)(i)-(iv), (vi)*. Although it is included in the statutory definition, we do not use the term "principal" to mean the "spouse" or "dependent child" of a contractor. *See id. § 9-612(g)(1)(F)(v)*. We analyze the CFRA's effect on a contractors' spouses and dependent children separately from the statute's effect on "principals." The opinion will refer to the "spouses" or the "dependent children" of contractors by using those terms or by using the term "families."

We also reverse part of the District Court's decision, as we hold that the CFRA violates the First Amendment insofar as it bans contributions by lobbyists and their families and insofar as it prohibits contractors, lobbyists, and their families from soliciting contributions on behalf of candidates.

BACKGROUND

We first describe the history of the CFRA. We then outline the challenged provisions and briefly recount the procedural history of this action.

I. The History of the CFRA

In our **[*5]** first opinion addressing the CFRA, we summarized the history of the statute:

> The CFRA . . . was passed in response to several corruption scandals in Connecticut. [*See Green Party of Conn. v. Garfield, 648 F. Supp. 2d 298, 306-07 (D. Conn. 2009)* ("*Green Party II*").] The most widely publicized of the scandals involved Connecticut's former governor, John Rowland. In 2004, Rowland was accused of accepting over $ 100,000 worth of gifts and services from state contractors, including vacations, flights on a private jet, and renovations to his lake cottage. Rowland accepted the gifts, it was alleged, in exchange for assisting the contractors in securing lucrative state contracts. Rowland resigned amidst the allegations, and in 2005 pleaded guilty--along with two aides and several contractors--to federal charges in connection with the scandal. Rowland was fined and sentenced to a year and a day in federal prison. *See id. at 307*.
>
> Sadly, the ignominy of public corruption was not limited to Rowland. As the District Court discussed in detail, the "Rowland scandal was but one of the many corruption scandals involving elected officials in state and local government that helped earn the state the nickname **[*6]** 'Corrupticut.'" *See id. at 307-08* (cataloging the scandals); *see also id. at 307* & n.9 (discussing the decline of the reputation of Connecticut's state government).

> It was in the wake of those scandals that Connecticut lawmakers resolved to enact "expansive campaign finance reforms." *Id. at 309*. In the summer of 2005, Governor M. Jodi Rell established the Campaign Finance Reform Working Group (the "Working Group"), a collection of six state representatives and six state senators who were charged with drafting a new campaign finance reform law. After holding televised hearings for three months, the Working Group proposed an expansive bill, much of which would be incorporated into the final version of the CFRA. *See id. at 309-10*.
>
> In the fall of 2005, Governor Rell called a special session of the General Assembly for the sole purpose of considering the Working Group's proposed bill. After a month of debate, the General Assembly passed the CFRA, and Governor Rell signed it into law. *See id. at 310-11*. As the District Court set forth in detail, several contemporaneous statements from General Assembly members, as well as Governor Rell, explain that the CFRA was passed "to combat actual and **[*7]** perceived corruption in state government." *Id. at 311*.

*Green Party, No. 09-3760-cv(L), ___ F.3d at ___, 2010 U.S. App. LEXIS 14286 at *4*.

II. The Challenged Provisions

The CFRA is a broad-ranging and complex statute, and plaintiffs challenge only parts of the law. Put succinctly, the challenged provisions of the CFRA prohibit state contractors and certain lobbyists from (1) making campaign contributions to candidates for state office and (2) soliciting campaign contributions on behalf of candidates for state office. Violations of those prohibitions are punishable by civil penalties and criminal sanctions. *See Conn. Gen. Stat. §§ 9-610(j), 9-622(8), 9-622(10), 9-623(a)*.

A. Contribution Bans

First, the CFRA prohibits state contractors and lobbyists from making campaign contributions to candidates for state office. *See Conn. Gen. Stat. §§ 9-610(g), 9-612(g)(2)(A)-(B)*.

[HN1] The CFRA's ban on *contractor* contributions applies to any "person, business entity or nonprofit organization that enters into a state contract." *Id. § 9-612(g)(1)(D)*. It also applies to any "prospective" contractor; to any "principal" of a contractor or prospective contractor; and to the "spouse" or "dependent child" [2] of a contractor, a prospective contractor, **[*8]** or a principal of a contractor or prospective contractor. *Id. § 9-612(g)(2)*. (We discuss these terms in detail below.)

> 2 The prohibition on contributions by dependent children applies only to "a dependent child who is eighteen years of age or older." *Conn. Gen. Stat. § 9-612(g)(1)(F)(v)*.

In addition, [HN2] the ban on contractor contributions is what might be called "branch specific." If the contract in question is "with or from a state agency in the executive branch," the contractor may contribute to a candidate for the General Assembly but not to a candidate for an executive office (*i.e.*, a candidate for "Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer"). *Id. § 9-612(g)(2)(A)*. If the contract in question is "with or from the General Assembly," the contractor may contribute to a candidate for an executive office but not to a candidate for the General Assembly. *Id. § 9-612(g)(2)(B)*. [3] Nonetheless, any "holder, or principal of a holder of a valid prequalification certificate," such a certification being required in order to bid or perform work on certain high-cost, state-funded projects, is precluded from contributing to candidates **[*9]** for either branch of government. *Id. §§ 9-612(g)(2)(A)-(B)*. Further, all individuals and entities covered by the contractor ban are prohibited from contributing to any state or town "[p]arty committee." *Id. § 9-601(1)-(2)*.

> 3 The ban on contractor contributions reads in full:
>
> [HN3] (A) No state contractor, prospective state contractor, principal of a state contrac-

tor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee[.]

> (B) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state **[*10]** contractor, with regard to a state contract or a state contract solicitation with or from the General Assembly or a holder, or principal of a holder, of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee[.]

Conn. Gen. Stat. § 9-612(g)(2).

The CFRA's ban on *lobbyist* contributions applies to any "communicator lobbyist," defined (a) as "someone compensated for lobbying over the threshold amount of $ 2,000 in any calendar year," *Green Party I, 590 F. Supp. 2d at 295 n.3* (quoting State Elections Enforcement Commission (SEEC) Declaratory Ruling 2006-1, at 2), and (b) as "a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action," *Conn. Gen. Stat. § 1-91(v).* **[*11]** The ban on lobbyist contributions also applies to the "spouse" or "dependent child" of a communicator lobbyist. *See id. § 9-610(g)* (applying the ban to the "immediate family" of a communicator lobbyist); *id. § 9-601(24)* (defining "[i]mmediate family" as "the spouse or a dependent child of an individual"). [4]

4 The ban on lobbyist contributions reads in full:

> No communicator lobbyist, member of the immediate family of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or a member of the immediate family of a communicator lobbyist shall make a contribution or contributions to, or for the benefit of (1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, (2) a political committee established or controlled by any such candidate, (3) a legislative caucus committee or a legislative leadership committee, or (4) a party committee.

Conn. Gen. Stat. § 9-610(g).

B. Solicitation Bans

[HN4] The CFRA also prohibits contractors and lobbyists from **[*12]** "solicit[ing]" campaign contributions "on behalf of" candidates for state office. *See Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)(A)-(B).*

Like the CFRA's ban on contributions, the ban on the solicitation of contributions applies not only to current state contractors, but also to any "prospective" contractor; to any "principal" of a contractor or prospective contractor; and to the "spouse" or "dependent child" of a contractor, a prospective contractor, or a principal of a contractor or prospective contractor. *Id. § 9-612(g)(2).* [5] The solicitation ban also applies to any "communicator lobbyists" and to the "spouse" or "dependent child" of such a lobbyist. *Id. §§ 9-601(24), 9-610(h).* [6]

5 For the full version of the ban on the solicitation of contributions by contractors, see note 3, *ante*.

6 The ban on the solicitation of contributions by lobbyists reads in full:

> [HN5] No communicator lobbyist, immediate family member of a communicator lobbyist, agent of a communicator lobbyist, or political committee established or controlled by a communicator lobbyist or any such immediate family member or agent shall solicit (1) a contribution on behalf of a candidate committee or an exploratory committee established **[*13]** by a candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, a political committee established or controlled by any such candidate, a legislative caucus committee, a legislative leadership committee or a party committee, or (2) the purchase of advertising space in a program for a fund-raising affair sponsored by a town committee, as described in subparagraph (B) of subdivision (10) of section 9-601a.

Conn. Gen. Stat. § 9-610(h).

[HN6] The term "solicit" is defined by statute to include, among other things, "requesting that a contribution be made," "participating in any fund-raising activities for a candidate," and "bundling contributions" for a candidate. *Id. § 9-601(26).* Excluded from the statutory definition of "solicit" is, among other things, "making a contribution that is otherwise permitted under this chapter" and "informing any person of a position taken by a candidate." *Id.* [7]

7 The full statutory definition of "solicit" reads as follows:

> [HN7] "Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, **[*14]** exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office, or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this subdivision.

Conn. Gen. Stat. § 9-601(26).

The CFRA is administered and interpreted by a state agency known as the State Elections Enforcement Commission (SEEC). The SEEC has issued a "declaratory ruling" that clarifies the scope of the CFRA's solicitation ban. According to the SEEC, a contractor or lobbyist may, consistent with **[*15]** the CFRA's solicitation ban, engage in a number of political activities; for example, a contractor or lobbyist may "[v]olunteer for a . . . candidate's political campaign," "[e]xpress support for a candidate," "[r]un for office," or "[b]e the spouse or dependent child of someone running for office." *Green Party I, 590 F. Supp. 2d at 298* (quoting SEEC Declaratory Ruling 2006-1, at 5-6).

III. This Action

Plaintiffs-appellants ("plaintiffs") brought this action in 2006 claiming that certain provisions of the CFRA violated the First and *Fourteenth Amendments to the United States Constitution*. Plaintiffs also claimed that the challenged provisions violated the Connecticut Constitution.

A. The Parties

We described the parties to this action in our first opinion:

> Plaintiffs include two minor parties operating in Connecticut: the Green Party of Connecticut and the Libertarian Party of Connecticut. Plaintiffs also include several Connecticut-based lobbyists and state contractors . . . . *See Green Party II, 648 F. Supp. 2d at 302-06*; J.A. [No. 09-3760-cv(L)] 49-52 (Compl. PP 10-17). [8]
>
> Defendants-[appellees] ("defendants") include Jeffrey Garfield, who is named in his official capacity as the Executive **[*16]** Director and General Counsel of the State Elections Enforcement Commission, and Richard Blumenthal, who is named in his official capacity as the Attorney General of the State of Connecticut. *See Green Party II, 648 F. Supp. 2d at 306*; J.A. [No. 09-3760-cv(L)] 52 (Compl. PP 18-19).
>
> The parties in this action also include several individuals and entities who successfully moved to intervene as defendants. The intervenor-defendants-appellants include three former major-party candidates for state office and two advocacy groups: Connecticut Common Cause and Connecticut Citizens Action Group. *See Green Party II, 648 F. Supp. 2d at 306*. The intervenor-defendants defend the constitutionality of the [challenged provisions of the CFRA].

*Green Party, No. 09-3760-cv(L), ___ F.3d at ___, 2010 U.S. App. LEXIS 14286 at *15*.

8 Citations to the "Complaint" are to the amended complaint filed by the Green Party of Connecticut and others on September 29, 2006.

B. The Claims

We also described plaintiffs' claims in our first opinion:

> Plaintiffs have organized their claims into five counts. [9] In Count One, plaintiffs claim that the CEP's qualification criteria and distribution formulae, *Conn. Gen. Stat. §§ 9-702(b), 704-05*, violate the First Amendment **[*17]** and the *Equal Protection Clause of the Fourteenth Amendment* by invidiously "discriminat[ing]" against minor parties and their candidates. *See* J.A. 66 [No. 09-3760-cv(L)] (Compl. P 53). In Counts Two and Three, plaintiffs assert First Amendment challenges to the CEP's excess expenditure provision, *Conn. Gen. Stat. § 9-713* (Count Two), and the CEP's independent expenditure provision, *id. § 9-714* (Count Three). *See* J.A. [No. 09-3760-cv(L)] 66-67 (Compl. PP 54-55).
>
> In Counts Four and Five, plaintiffs assert First Amendment challenges to aspects of the CFRA that do

> *not* involve the CEP. In Count Four, plaintiffs challenge the CFRA's bans on contributions (and the solicitation of contributions) by registered lobbyists, state contractors, and their families. *Conn. Gen. Stat. §§ 9-610(g)(h), 9-612(g)*. In Count Five, plaintiffs challenge disclosure requirements imposed by the CFRA on state contractors. *Id. § 9-612(h)(2)*; *see* J.A. 67 (Compl. PP 56-57).

*Green Party, No. 09-3760-cv(L), ___F.3d at ___, 2010 U.S. App. LEXIS 14286 at *16.*

> 9 As we noted in our first opinion, there are two operative complaints in this action: (1) an "amended complaint" filed by the Green Party of Connecticut and others on September 29, 2006, and **[*18]** (2) a "second amended complaint" filed by the Association of Connecticut Lobbyists and Barry Williams on January 16, 2007. In discussing the various "counts" asserted by plaintiffs, we refer to the counts contained in the complaint filed by the Green Party on September 29, 2006. *See* note 8, *ante*. Count Four of the Green Party's complaint is, for all relevant purposes, identical to the claims raised in the complaint filed by the Association of Connecticut Lobbyists.

Our first opinion addresses Counts One, Two, and Three. This opinion addresses Count Four. Plaintiffs have not pursued Count Five in these appeals; thus we do not address it.

C. Proceedings in the District Court

The District Court disposed of plaintiffs' claims by means of two separate judgments. First, following cross-motions for summary judgment, the Court granted summary judgment to defendants on Count Four, holding that the CFRA's contribution and solicitation bans did not violate the First Amendment. *See Green Party I, 590 F. Supp. 2d 288*. The Court evaluated each of the challenged provisions under the so-called "closely drawn" standard, *see Fed. Election Comm'n v. Beaumont, 539 U.S. 146, 162, 123 S. Ct. 2200, 156 L. Ed. 2d 179 (2003)*, and held that in light **[*19]** of Connecticut's recent corruption scandals, each aspect of the contribution and solicitation bans were "closely drawn to the state's sufficiently important state interest of preventing actual and perceived corruption," *Green Party I, 590 F. Supp. 2d at 294*.

On February 11, 2009, the District Court entered a partial final judgment for defendants with respect to Count Four. *See Fed. R. Civ. P. 54(b)*. Plaintiffs filed a timely appeal of that partial final judgment, which we address in this opinion.

The Court then held a bench trial and, on September 2, 2009, entered a judgment in plaintiffs' favor with respect to Counts One, Two, and Three. *See Green Party of Conn. v. Garfield* ("*Green Party II*"), *648 F. Supp. 2d 298 (D. Conn. 2009)*. Defendants filed a timely appeal of the District Court's September 2, 2009 judgment (2d Cir. Docket No. 09-3760-cv(L)), which we address in our first, separately filed opinion.

DISCUSSION

[HN8] We conduct a *de novo* review of a District Court's decision to grant summary judgment. *See, e.g., Jeffreys v. City of N.Y., 426 F.3d 549, 553 (2d Cir. 2005)*. [HN9] Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the movant is entitled **[*20]** to judgment as a matter of law." *Fed. R. Civ. P. 56(c)(2)*.

I. The CFRA's Contribution Bans

We first consider whether the provisions of the CFRA that prohibit state contractors, lobbyists, and associated individuals from making campaign contributions to candidates for state office violate the First Amendment.

A. The Standard for Evaluating the CFRA's Contribution Bans

[HN10] In a long line cases beginning with *Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)*, the Supreme Court has distinguished laws restricting campaign *expenditures* and campaign-related *speech* from laws restricting campaign *contributions*. The Court has determined that laws limiting campaign *expenditures* and campaign-related *speech* "impose significantly more severe restrictions on protected freedoms of political ex-

pression and association than do" laws limiting campaign contributions. *Id. at 23*. As a result, the Court has evaluated laws limiting campaign expenditures and campaign-related speech under the "strict scrutiny" standard, which "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753 (2010)* **[*21]** (quotation marks omitted).

[HN11] For laws limiting campaign *contributions*, by contrast, the Court has conducted a "relatively complaisant review under the First Amendment." *Beaumont, 539 U.S. at 161*. Such laws, the Court has concluded, are "merely 'marginal' speech restrictions," since contributions "lie closer to the edges than to the core of political expression." *Id*. Thus, "instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest," a law limiting contributions "passes muster if it satisfies the lesser demand of being 'closely drawn' to match a 'sufficiently important interest.'" *Id. at 162* (quoting *Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 387-88, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000))* (some quotation marks omitted); *see also Buckley, 424 U.S. at 25*.

[HN12] The Court has always applied that lower standard--often referred to as the "closely drawn" standard--to evaluate First Amendment challenges to laws restricting campaign contributions. *See, e.g., Randall v. Sorrell, 548 U.S. 230, 253, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006)* (plurality opinion); *McConnell v. Fed. Election Comm'n, 540 U.S. 93, 138 n.40, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003), overruled in part on other grounds by Citizens United, 130 S. Ct. at 913*; *Beaumont, 539 U.S. at 161*. **[*22]** The Court has applied the closely drawn standard even when the law in question imposed an outright *ban* on contributions. In *Beaumont*, for instance, the Court applied the closely drawn standard in upholding a federal law that banned all campaign contributions made by corporations. *See id. at 149, 161-62*.

[HN13] Although the Court's campaign-finance jurisprudence may be in a state of flux (especially with regard to campaign-finance laws regulating corporations), *Beaumont* and other cases applying the closely drawn standard to contribution limits remain good law. Indeed, in the recent *Citizens United* case, the Court overruled two of its precedents and struck down a federal law banning independent campaign *expenditures* by corporations, but it explicitly declined to reconsider its precedents involving campaign *contributions* by corporations to candidates for elected office. *See 130 S. Ct. at 909* ("Citizens United has not made direct contributions to candidates, and it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.").

We will, therefore, evaluate the contribution bans imposed by the CFRA under the closely drawn **[*23]** standard. [HN14] We will uphold the statutory bans against plaintiffs' First Amendment challenge only if they are closely drawn to achieve a "sufficiently important" government interest. *Beaumont, 539 U.S. at 162* (quotation marks omitted).

In so doing, we reject plaintiffs' argument that we must apply strict scrutiny because the provisions at issue here are *bans*, as opposed to mere *limits*. Such an argument was explicitly rejected in *Beaumont* (which, as discussed above, remains binding precedent). *See id. at 162*. As *Beaumont* concisely explained: "It is not that the difference between a ban and a limit is to be ignored; it is just that the time to consider it is when applying scrutiny at the level selected, not in selecting the standard of review itself." *Id*. Accordingly, the closely drawn standard applies to the bans on contributions imposed by the CFRA. As we discuss in greater detail below, however, [HN15] the fact that the provisions impose outright bans--and not limits--on contributions is a factor we will consider when we "apply[] scrutiny at the level selected" and determine whether the provisions are, in fact, closely drawn to achieve the state's interests. *Id*.

B. The Ban on Contributions by [*24] Contractors and Associated Individuals

In assessing the CFRA's ban on contributions by *contractors* and associated individuals, we first determine whether the ban furthers a "sufficiently important" interest; we then determine whether the ban is closely drawn to achieve that interest. *See Beaumont, 539 U.S. at 162*

1. Do the Bans on Contractor Contributions Further a "Sufficiently Important" Interest?

As set forth above, the Connecticut General Assembly enacted the CFRA's ban on contractor contributions in response to a series of scandals in which contractors illegally offered bribes, "kickbacks," and campaign contributions to state officials in exchange for contracts with the state. The ban was designed to combat both actual corruption and the appearance of corruption caused by contractor contributions. *See Green Party I, 590 F. Supp. 2d at 303*.

Such [HN16] an "anticorruption" interest, *see Citizens United, 130 S. Ct. at 903*, has been recognized as a legitimate reason to restrict campaign contributions. Beginning with *Buckley*, the Supreme Court has repeatedly held that laws limiting campaign contributions can be justified by the government's interest in addressing both the "actuality" and the **[*25]** "appearance" of corruption. *424 U.S. at 26*; *accord McConnell, 540 U.S. at 143* ("Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits.").

The record before us, moreover, shows that the General Assembly had good reason to be concerned about both the "actuality" and the "appearance" of corruption involving contractors. Connecticut's recent corruption scandals showed that contributions by contractors could lead to corruption. And it took no great leap of reasoning to infer that those scandals created a strong *appearance* of impropriety in the transfer of any money between contractors and state officials--whether or not the transfer involved an illegal *quid pro quo*. The scandals reached the highest state offices, leading to the resignation and eventual criminal conviction and imprisonment of the state's governor. They were, as a result, covered extensively by local media and garnered the attention of national media outlets as well. *See Green Party II, 648 F. Supp. 2d at 307 n.9* (providing examples of newspaper articles covering Connecticut's corruption scandals). Thus, corruption **[*26]** spurred by state contractors became a salient political issue in Connecticut, and there arose an appearance of impropriety with respect to all contractor contributions. *See* Meadow Decl. P 30 (May 24, 2007) (describing a public opinion poll in which 76% of Connecticut voters believed that "campaign contributions Governor Rowland received influenced him in awarding government contracts").

Accordingly, we conclude that the CFRA's ban on contractor contributions furthers "sufficiently important" government interests. *See Beaumont, 539 U.S. at 162*. There is sufficient evidence in the record of actual corruption stemming from contractor contributions, and in light of the widespread media coverage of Connecticut's recent corruption scandals, the General Assembly also faced a manifest need to curtail the appearance of corruption created by contractor contributions.

2. Are the Bans on Contractor Contributions "Closely Drawn" to Achieve the State's Interest?

The more difficult question, however, is whether each aspect of the CFRA's ban on contractor contributions is closely drawn to achieve the state's anticorruption interest. *See Beaumont, 539 U.S. at 162*. We first describe the standard for determining **[*27]** whether a statute is closely drawn to achieve the state's interest, and we then apply that standard to the provisions of the CFRA banning contributions of state contractors, prospective state contractors, principals of state contractors, and the spouses and dependent children of state contractors.

a. The Standard for Determining Whether a Statute is "Closely Drawn"

On only one occasion has the Supreme Court held that a contribution limit was not closely drawn to the government's interests. In *Randall v. Sorrell*, the Supreme Court applied a multifactor test and struck down a Vermont law that limited the amount of money that any single individual could contribute to a campaign for state office. *See 548 U.S. at 253-62*. A plurality of the Court found the law "too restrictive" because, among other things, its limits were so low that they "prevent[ed] candidates from 'amassing the resources necessary for effective [campaign] advocacy.'" *Id. at 248, 253* (quoting *Buckley, 424 U.S. at 21*) (second alteration in *Randall*).

The District Court relied extensively on *Randall's* multifactor test in determining whether the CFRA's contribution bans were "closely drawn" to the asserted government interests. **[*28]** *See Green Party I, 590 F. Supp. 2d at 309-16*. We disagree

with that approach. *Randall* addressed *general* contribution limits that applied to *all* citizens. The law in *Randall*, for instance, prohibited *any* Vermont resident from contributing more than $ 400 to a candidate for governor. *See 548 U.S. at 238*. Thus *Randall's* multifactor test was concerned primarily with the effect the contribution limits would have on the electoral system as a whole. *See, e.g., id. at 248-49* ("[C]ontribution limits that are too low can . . . harm the *electoral process* by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." (emphasis added)).

Here, however, plaintiffs are not challenging the provisions of the CFRA that impose general contribution limits on all Connecticut citizens. *See generally Conn. Gen. Stat. § 9-611* (imposing, for instance, a limit of $ 3500 on any individual's contributions to a gubernatorial campaign). Rather, plaintiffs are challenging the provisions of the CFRA that impose contribution *bans* on discrete groups of Connecticut citizens. And unlike the situation in *Randall*, there is no serious argument here **[*29]** that the challenged contribution bans will harm the electoral process by stifling candidates' ability to raise sufficient campaign funds. *See 548 U.S. at 248-49*. Indeed, contributions by contractors and lobbyists have, in the past, made up only a small fraction of the total amount of money given as campaign contributions in Connecticut. *See Green Party I, 590 F. Supp. 2d at 316*.

Accordingly, the First Amendment inquiry in this case does not focus on the *electoral process*, for the issue is not--as it was in *Randall*--whether the law in question "prevent[s] candidates from 'amassing the resources necessary for effective [campaign] advocacy.'" *Randall, 548 U.S. at 248* (quoting *Buckley, 424 U.S. at 21*) (second alteration in *Randall*). We will not, therefore, look to *Randall's* multifactor test as a means of evaluating whether the CFRA's ban on contributions is closely drawn to the state's interests.

The issue, instead, is whether the CFRA's contribution bans impermissibly infringe the First Amendment rights of the discrete groups of citizens it regulates--contractors, lobbyists, and associated individuals. To address that issue, we are required to examine how the CFRA applies to the different **[*30]** groups of individuals it regulates and determine, in each case, whether the law is closely drawn to the state's interest in combating corruption and the appearance of corruption.

[HN17] The CFRA's ban on *contractor* contributions, in particular, applies not only to individuals who currently have contracts with the state, but also to "prospective" state contractors who seek (but do not currently have) state contracts. *See Conn. Gen. Stat. § 9-612(g)(1)(E), (2)(A)-(B)*. It also applies to any "principal" of an entity that has (or is seeking) contracts with the state, *see id. § 9-612(g)(1)(F), (2)(A)-(B)*, and it applies to any "spouse" or "dependent child" of a covered individual, *see id. § 9-612(g)(1)(F)(v), (1)(G), (2)(A)-(B)*. To survive First Amendment scrutiny, the CFRA's contractor contribution bans must be "closely drawn" to the state's anticorruption interest with respect to each of those groups of individuals.

b. Current and "Prospective" Contractors

[HN18] The CFRA applies to contributions made by any current state contractor, as well as any "prospective state contractor," *id. § 9-612(g)(2)(A)-(B)*, which is defined to include, in essence, any individual or entity that "submits a response" to a **[*31]** call for bids on state contracts, *see id. § 9-612(g)(1)(E)*. That aspect of the CFRA is, without question, "closely drawn" to meet the state's interest in combating corruption and the appearance of corruption. It is undisputed that nearly all of the corruption scandals that gave rise to the CFRA--including the scandal involving Governor Rowland--involved both current and prospective state contractors offering bribes in exchange for assistance in winning new state contracts. *See Green Party I, 590 F. Supp. 2d at 304-06*. Contributions by current and prospective state contractors, therefore, lie at the heart of the corruption problem in Connecticut.

Thus, insofar as it applies to campaign contributions made by both current and prospective state contractors, *see Conn. Gen. Stat. § 9-612(g)(1)(D)-(E), (2)(A)-(B)*, the CFRA is closely drawn and survives First Amendment scrutiny.

c. "Principals" of Contractors

[HN19] If an artificial entity, rather than an individual, is awarded (or seeks) a state contract, the CFRA bans contributions made by any "principal" of that entity. [10] *See id. § 9-612(g)(1)(F), (2)(A)-(B)*.

A "principal" is defined to include, among other things, (1) any member of the entity's **[*32]** board of directors, [11] (2) any "individual" who "has an ownership interest of five per cent or more" in the entity, (3) the "president, treasurer or executive vice president" of the entity, [12] and (4) any "officer" or "employee" of either a business entity or a nonprofit organization who "has managerial or discretionary responsibilities with respect to a state contract." [13]

> 10 We note that many state contractors are likely artificial entities, so the provisions governing the behavior of "principals" of contractors are particularly important.
>
> 11 [HN20] Although in most cases, the CFRA applies equally to for-profit and nonprofit organizations, the definition of "principal" does not include "an individual who is a member of the board of directors of a nonprofit organization." *Conn. Gen. Stat. § 9-612(g)(1)(F)(i)*.
>
> 12 [HN21] If the entity is "not a business entity," the CFRA applies to the "chief executive officer" of the entity or "the officer who duly possesses comparable powers and duties." *Conn. Gen. Stat. § 9-612(g)(1)(F)(iii)*.
>
> 13 [HN22] "Principal" is also defined to include the "spouse" or "dependent child" of a contractor. *See Conn. Gen. Stat. § 9-612(g)(1)(F)(v)*. We discuss that aspect of the definition separately. **[*33]** *See* note 1, *ante*.
>
> "Principal" is also defined to include "a political committee established or controlled by an individual described in [subparagraph (F)] or the business entity or nonprofit organization that is the state contractor or prospective state contractor." *See Conn. Gen. Stat. § 9-612(g)(1)(F)(vi)*.

The definition of "principal" sweeps broadly and prevents a wide range of individuals from contributing to campaigns for state office. We have some doubts, therefore, as to whether the provision is indeed closely drawn to achieve the state's anti-corruption interest.

Nonetheless, we are mindful of the teachings of the Supreme Court that we, as judges, cannot consider each possible permutation of a law limiting contributions, and thus we "cannot determine with any degree of exactitude the precise restriction necessary to carry out the statute's legitimate objectives." *Randall, 548 U.S. at 248*. Moreover, in light of the troubling episodes involving state contractors in Connecticut's recent history, we are reluctant to second-guess the judgment of the General Assembly when it defines which individuals associated with an artificial entity are likely to attempt to exert improper influence **[*34]** over a state official.

We will, therefore, follow the "ordinar[y]" approach in evaluating the ban on principal contributions and "defer[] to the legislature's determination of such matters." *Id*. The ban on principals' contributions strikes us as bordering on overboard, but the record shows that the dangers of corruption associated with contractor contributions are so significant in Connecticut that the General Assembly should be afforded leeway in its efforts to curb contractors' influence on state lawmakers.

We thus conclude that, insofar as it applies to campaign contributions made by "principals" of state contractors or prospective state contractors, *see Conn. Gen. Stat. § 9-612(g)(1)(F), (2)(A)-(B)*, the CFRA is closely drawn and withstands First Amendment scrutiny.

d. Spouses and Children of Contractors

[HN23] The CFRA not only bans contributions by contractors, prospective contractors, and the principal of any contractor or prospective contractor; it also bans contributions by the "spouse" or "dependent child" of any of those covered individuals. *See Conn. Gen. Stat. § 9-612(g)(1)(F)(v), (1)(G), (2)(A)-(B)*. Defendants do not attempt to justify the ban on family-member contributions by arguing **[*35]** that a contractor's family members will themselves attempt to exert improper influence over a state official. *See* Appellees' Br. 80-83, 98. That is for good reason, as there is no record evidence to suggest that the spouses or dependent children of state contractors have been in any way involved in Connecticut's recent corruption scandals (or, for that matter, any other corruption scandals of which the parties have made us aware). Rather, defendants attempt to justify the ban on family-member contributions by arguing that it is a "reasonable measure to avoid circumvention of the prohibition of contributions by [contractors]." *Id. at 80*.

That is, defendants argue that contractors and other covered individuals will avoid the CFRA's ban on contractor contributions by siphoning their improper contributions through their spouses and children.

[HN24] The Supreme Court has recognized that, in regulating campaign contributions, the legislature must be given "room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process." *McConnell, 540 U.S. at 137*; *see also Beaumont, 539 U.S. at 155*. Nonetheless, the Court has struck down so-called **[*36]** anti-circumvention provisions where the government has put forward only "scant evidence" of a particular "form of evasion." *McConnell, 540 U.S. at 232*.

Here, the record in support of the ban on contributions by contractors' spouses and dependent children is by no means overwhelming. There is little direct evidence suggesting that contractors will use their spouses or children to circumvent the CFRA's contribution bans. Nevertheless, the recent corruption scandals in Connecticut have shown that contractors are willing to resort to varied forms of misconduct to secure contracts with the state. That, we think, is far more than the "scant evidence" required by *McConnell*. See id.

In light of the recent corruption scandals, therefore, the General Assembly must be given "room to anticipate and respond to concerns about" the "circumvention" of the bans on contractor contributions. *Id. at 137*. Indeed, were we to affirm the ban on contributions by contractors but strike down the ban on contributions by their family members, we would invite the very circumvention that the General Assembly was trying to prevent.

Thus, we conclude that the CFRA's ban on contributions by contractors' spouses and dependent **[*37]** children, *see Conn. Gen. Stat. § 9-612(g)(1)(F)(v), (1)(G), (2)(A)-(B)*, is "closely drawn" to avoid the circumvention of the ban on contractor contributions.

e. A "Ban" as Opposed to a "Limit"

Finally, we consider the fact that the CFRA imposes an outright ban--not a mere limit--on contributions made by contractors, prospective contractors, and their principals. That fact, as discussed above, does not require us to review the law under the strict scrutiny standard. But we must nevertheless determine whether an outright ban on contractor contributions is closely drawn to the state's anti-corruption interest. *See Beaumont, 539 U.S. at 162* ("It is not that the difference between a ban and a limit is to be ignored; it is just that the time to consider it is when applying scrutiny at the level selected, not in selecting the standard of review itself.").

[HN25] The majority of campaign laws reviewed by the Supreme Court--and other courts--have involved *limits* on contributions, not bans. *See, e.g., Randall, 548 U.S. at 246*; *Nixon, 528 U.S. at 381*; *Cal. Med. Ass'n v. Fed. Election Comm'n, 453 U.S. 182, 184, 101 S. Ct. 2712, 69 L. Ed. 2d 567 (1981); Buckley, 424 U.S. at 13*. The Court has, however, upheld the longstanding federal "ban on **[*38]** direct corporate contributions." *Beaumont, 539 U.S. at 154*. That is enough to demonstrate that laws banning contributions by a discrete group are not unconstitutional *per se*.

Yet a ban is a drastic measure. A limit on contributions causes some constitutional damage, as it "*restrict[s]* 'one aspect of the contributor's freedom of political association.'" *Randall, 548 U.S. at 246* (quoting *Buckley, 424 U.S. at 24-25*) (emphasis added). But a ban on contributions causes considerably more constitutional damage, as it wholly *extinguishes* that "aspect of the contributor's freedom of political association." A limit, moreover, leaves intact the contributor's right to make "the symbolic expression of support evidenced by a contribution." *Id. at 247* (quoting *Buckley, 424 U.S. at 21*). But a ban infringes that constitutional right, as it precludes the "symbolic expression" that comes with a small contribution.

There are, therefore, undoubtedly many situations in which a strict contribution limit--as opposed to an outright contribution ban--will adequately achieve the government's objectives. In those situations it will be difficult for the government to establish that a contribution ban is "closely **[*39]** drawn" to its asserted interests. Instead, such a ban risks being struck down as unconstitutionally overbroad.

Here, for example, a limit--as opposed to a ban--would likely be sufficient to address the General

Assembly's interest in addressing *actual* corruption. If, for example, the CFRA were to allow contractors to make small contributions (say, $ 50 per election) to state officials, it is unlikely that a contractor could exert any influence over an official with the promise of such a modest sum. Yet such a limit would not wholly extinguish a contractor's associational rights, and it would allow the contractor to make "the symbolic expression of support evidenced by a contribution." *Id. at 247* (quoting *Buckley, 424 U.S. at 21*). Thus, if the state's only interest in this case were combating *actual* corruption, the CFRA's outright ban on contractor contributions would likely be held overbroad.

Combating *actual* corruption, however, is not the state's only interest here; the CFRA is also meant to address the *appearance* of corruption caused by contractor contributions. *See Green Party I, 590 F. Supp. 2d at 303*. As discussed above, Connecticut's recent corruption scandals were widely publicized, **[*40]** and corruption involving state contractors became a major political issue in Connecticut in recent years. *See* subsection I.B.2.e, *ante*. A limit on contractor contributions would have partially addressed the perception of corruption created by those incidents, but such a limit still would have allowed some money to flow from contractors to state officials. Even if small contractor contributions would have been unlikely to influence state officials, those contributions could have still given rise to the appearance that contractors are able to exert improper influence on state officials.

The CFRA's *ban* on contractor contributions, by contrast, unequivocally addresses the perception of corruption brought about by Connecticut's recent scandals. By totally shutting off the flow of money from contractors to state officials, it eliminates any notion that contractors can influence state officials by donating to their campaigns. Thus, although the CFRA's ban on contractor contributions is a drastic measure, it is an appropriate response to a specific series of incidents that have created a strong appearance of corruption with respect to all contractor contributions.

We hold, as a result, that **[*41]** in light of Connecticut's recent experience with corruption scandals involving state contractors, the CFRA's imposition of an outright ban on contributions by contractors, prospective contractors, and their principals, *see Conn. Gen. Stat. § 9-612(g)*, is closely drawn to the state's interest in combating the appearance of corruption.

B. The Ban on Contributions by Lobbyists and Their Families

The CFRA's ban on contributions by lobbyists presents markedly different considerations than the CFRA's ban on contributions by contractors. The distinction centers on the fact that the recent corruption scandals in Connecticut in no way involved lobbyists. *See, e.g., Green Party I, 590 F. Supp. 2d at 321* ("[L]obbyists ha[ve] not been directly linked to the pay-to-play scandals, which primarily involved *state contractors* offering bribes in exchange for preferential treatment . . . ." (emphasis added)).

[HN26] As a restriction on campaign contributions, not campaign *expenditures*, we review the CFRA's ban on lobbyists contributions under the closely drawn standard. *See Beaumont, 539 U.S. at 162*; subsection I.A, *ante*. We will uphold the ban against plaintiffs' First Amendment challenge only if it is closely **[*42]** drawn to achieve sufficiently important government interests. *Beaumont, 539 U.S. at 162*.

Defendants seek to justify the ban on lobbyist contributions as necessary to combat both actual corruption and the appearance of corruption. We decline to decide whether those interests are sufficiently important in this context, *see id*., for "[e]ven assuming, *arguendo*, the Government advances an important interest," *McConnell, 540 U.S. at 232*, the CFRA's ban on lobbyist contributions is not closely drawn to the asserted interests.

As set forth above, *see* subsection I.B.2.e, *ante*, [HN27] an outright ban on contributions is a drastic measure that substantially infringes "one aspect of the contributor's freedom of political association." *Randall, 548 U.S. at 246* (quoting *Buckley, 424 U.S. at 24-25*). As opposed to a contribution *limit*, which merely restricts those First Amendment freedoms, *see id*., a contribution ban utterly eliminates an individual's right to express his or her support for a candidate by contributing money to the candidate's cause. Indeed, a contribution ban cuts off even the "symbolic expression of support evidenced by" a small contribution. *Id. at 247* (quoting *Buckley, 424 U.S. at 21*). **[*43]** Thus, if the state's interests in

this case can be achieved by means of a *limit* on lobbyist contributions, rather than a ban, the ban should be struck down for failing "to avoid unnecessary abridgment of associational freedoms," *Buckley, 424 U.S. at 25*. [14]

> 14 We reiterate that [HN28] we are *not* applying strict scrutiny, and thus we acknowledge that the ban on lobbyist contributions need not be narrowly tailored to achieve the state's anticorruption interest. Nonetheless, the ban must be closely drawn to the state's interest, a standard that requires some measure of tailoring. In this context, if a contribution limit would suffice where a ban has been enacted, the ban is not closely drawn to the state's interests.

We have upheld the CFRA's ban on *contractor* contributions because the recent corruption scandals in Connecticut have created an appearance of corruption with respect to *all* exchanges of money between state contractors and candidates for state office. We have held that an outright ban on contractor contributions was justified (*i.e.*, closely drawn to meet the state's anticorruption interest) because even a severe limit on contractor contributions would allow a small flow of contributions **[*44]** between contractors and candidates and would, as a result, likely give rise to an appearance of corruption.

The situation is different with lobbyists. The recent corruption scandals had nothing to do with lobbyists, *see Green Party I, 590 F. Supp. 2d at 321*, and thus there is insufficient evidence to infer that *all* contributions made by state lobbyists give rise to an appearance of corruption. Plaintiffs have submitted some evidence suggesting that many members of the public generally distrust lobbyists and the "special attention" they are believed to receive from elected officials. *See, e.g.*, Meadow Decl. PP 13-14, 26. But as the Supreme Court has recently clarified, [HN29] the anticorruption interest recognized by *Buckley* and other cases is "limited to *quid pro quo* corruption" and does not encompass efforts to limit "[f]avoritism and influence" or the "appearance of influence or access." *Citizens United, 130 S. Ct. at 909-10* (quotation marks omitted). "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt," and favoritism and influence are "[un]avoidable in representative politics." *Id. at 910* (quotation marks omitted). **[*45]** Influence and access, moreover, are not sinister in nature. Some influence, such as wise counsel from a trusted advisor--even if that advisor is a lobbyist--can enhance the effectiveness of our representative government.

Accordingly, there is insufficient evidence to demonstrate that all lobbyist contributions give rise to an appearance of corruption, and the evidence demonstrating that lobbyist contributions give rise to an appearance of "influence," *see, e.g.*, Meadow Decl. P 26, has no bearing on whether the CFRA's ban on lobbyist contributions is closely drawn to the state's anticorruption interest. We conclude, as a result, that on this record, a *limit* on lobbyist contributions would adequately address the state's interest in combating corruption and the appearance of corruption on the part of lobbyists. [15] The CFRA's *ban* on lobbyist contributions, therefore, is *not* closely drawn to achieve the state's anticorruption interest. Thus, we hold that the CFRA's ban on lobbyist contributions, *Conn. Gen. Stat. § 9-610(g)*, violates the First Amendment. [16]

> 15 Again we emphasize that the recent corruption scandals in Connecticut in no way implicated lobbyists. *See Green Party I, 590 F. Supp. 2d at 321*.
>
> 16 The **[*46]** CFRA's ban on contributions by a lobbyist's spouse or dependent children, a measure intended to prevent lobbyists from circumventing the contribution ban, is likewise *not* closely drawn to achieve the state's anticorruption interest. On this record, therefore, it too violates the First Amendment.

II. The CFRA's Solicitation Bans

As set forth above, [HN30] the CFRA prohibits contractors and lobbyists from "solicit[ing]" contributions "on behalf of" candidates for state office. *See Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)*. That prohibition applies to current state contractors, prospective state contractors, and the principals of current and prospective state contractors, as well as to the spouses and dependent children of covered lobbyists and contractors. *See id. §§ 9-601(24), 9-610(h), 9-612(g)(1)(F), (2)*.

[HN31] Unlike laws limiting contributions, which present "marginal speech restrictions" that "lie closer to the edges than to the core of political expression," *Beaumont, 539 U.S. at 161* (quotation marks omitted), a limit on the solicitation of otherwise permissible contributions prohibits exactly the kind of expressive activity that lies at the First Amendment's "core." That is because the solicitation **[*47]** of contributions involves *speech*--to solicit contributions on behalf of a candidate is to make a statement: "You should support this candidate, not only at the polls but with a financial contribution." Whatever may be said about whether money is speech, *see, e.g., Davis v. Fed. Election Comm'n, 554 U.S. 724, 128 S. Ct. 2759, 2778-79 & n.3, 171 L. Ed. 2d 737 (2008)* (Stevens, J., dissenting in part), *speech* is speech, even if it is speech about money, *see, e.g., Bates v. State Bar of Ariz., 433 U.S. 350, 363, 97 S. Ct. 2691, 53 L. Ed. 2d 810 (1977)* ("[O]ur cases long have protected speech even though it is . . . in the form of a solicitation to pay or contribute money . . . ."). Speech "'uttered during a campaign for political office,'" moreover, requires the "'fullest and most urgent application'" of the protections set forth in the First Amendment. *Citizens United, 130 S. Ct. at 898* (quoting *Eu v. S.F. County Democratic Cent. Comm., 489 U.S. 214, 223, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989))* (quotation marks omitted).

Thus, [HN32] the CFRA's provisions banning the solicitation of contributions are "[l]aws that burden political speech" and are, as a result, "'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly **[*48]** tailored to achieve that interest.'" *Id.* (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc., 551 U.S. 449, 464, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007) (Opinion of Roberts, C.J.))*. [17]

17 We recognize that [HN33] *McConnell* declined an invitation to apply strict scrutiny to certain provisions of federal law that banned the solicitation of contributions. *See 540 U.S. at 138-40*. As the District Court in this case concisely explained, however, the *McConnell* solicitation provisions largely "barred the solicitation of contributions that the potential donor would have been prohibited from making in the first place." *Green Party I, 590 F. Supp. 2d at 339* (citing *McConnell, 540 U.S. at 138*). Strict scrutiny certainly does not apply to laws prohibiting the solicitation of *illegal* contributions, just as strict scrutiny does not apply to laws prohibiting the solicitation of other prohibited activity. *See, e.g., United States v. Williams, 553 U.S. 285, 297, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008)* ([HN34] "Offers to engage in illegal transactions are categorically excluded from First Amendment protection.").

Here, however, the CFRA's solicitation bans prohibit contractors and lobbyists from soliciting contributions that are otherwise *legal* for the contributors to make. Such **[*49]** provisions are categorically different from most of the provisions at issue in *McConnell*, a point the state "concede[d]" to the District Court. *See Green Party I, 590 F. Supp. 2d at 339*. Many of the solicitation provisions in *McConnell* took the ordinary step of banning the solicitation of contributions that were already prohibited; thus strict scrutiny was plainly inapplicable. The CFRA, by contrast, takes the extraordinary step of banning the solicitation of contributions that are *not* otherwise prohibited; that is a burden on political speech requiring the application of strict scrutiny.

In any event, to the extent that a few of the provisions in *McConnell* banned the solicitation of otherwise legal contributions, *McConnell* is distinguishable: the extreme breadth of the CFRA's solicitation provisions--unlike the provisions in *McConnell*--justifies the application of strict scrutiny because the CFRA's provisions "burden[] speech in a way that a direct restriction on the contribution itself would not." *McConnell, 540 U.S. at 139*.

The state attempts to justify the CFRA's solicitation bans, like the CFRA's contribution bans, as a means to combat corruption and the appearance of corruption. **[*50]** [HN35] Although the anticorruption interest has been held sufficiently important to justify restrictions on contributions, *see, e.g., McConnell, 540 U.S. at 143*; *Buckley, 424 U.S. at 25-26*, in reviewing limits on campaign expendi-

tures under the strict scrutiny standard, the Supreme Court has consistently held that the anticorruption interest is not a compelling government interest, *see, e.g., Citizens United, 130 S. Ct. at 908-09* (striking down a restriction on corporate independent expenditures); *Buckley, 424 U.S. at 45* (striking down a different restriction on independent expenditures).

As we observed above, moreover, [HN36] "[w]hen *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption." *Citizens United, 130 S. Ct. at 909*. It is easy to see how a "large contribution[]" can be "given to secure a political *quid pro quo* from current and potential office holders." *Buckley, 424 U.S. at 26*. That is the "hallmark" of corruption: "dollars for political favors." *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm., 470 U.S. 480, 497, 105 S. Ct. 1459, 84 L. Ed. 2d 455 (1985)*. It is far more difficult to see **[*51]** how an individual might secure a political favor by *recommending* that *another person* make a campaign contribution, if for no other reason than that the third person must exercise his own free will to make a contribution.

Nevertheless, the District Court upheld the CFRA's solicitation bans based primarily upon its finding that contractors and lobbyists could exert improper influence over state officials by "bundling campaign contributions" made by their clients or employees. *Green Party I, 590 F. Supp. 2d at 343* & n.33. The threat posed by "bundling" is that contractors and lobbyists will promise to deliver large numbers of coordinated contributions to a state official in exchange for political favors. A prospective state contractor, for instance, might promise to organize a large fundraising event in exchange for a candidate's assistance in securing a lucrative state contract.

There are good reasons to think that the threat of bundling does not provide a compelling justification for the solicitation bans, especially with regard to lobbyists. But even assuming, without deciding, that the threat of bundling makes the anti-corruption interest compelling in this context, the CFRA's ban on **[*52]** solicitations is by no means narrowly tailored to address that threat.

[HN37] In order to narrowly tailor a law to address a problem, the "government must curtail speech only to the degree necessary to meet the particular problem at hand," and the government "must avoid infringing on speech that does not pose the danger that has prompted regulation." *Fed. Election Comm'n v. Mass. Citizens for Life, Inc., 479 U.S. 238, 265, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986)*. The government must prove that there is no "less restrictive alternative" to the law in question, for "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Entm't Group, Inc., 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000)*.

Here, the state has not met its burden to show that the CFRA's solicitation ban is narrowly tailored to address the problem posed by "bundling," for the ban prohibits a wide range of activity unrelated to bundling, and there are several less restrictive alternatives that would more directly address the perceived bundling threat. For one thing, the CFRA prohibits small-scale solicitation efforts that could not possibly be deemed "bundling." A state contractor, for instance, is prohibited **[*53]** under the CFRA from advising his mother about whether she should contribute to a particular gubernatorial candidate. A less restrictive alternative to address the problem of bundling would be to ban only large-scale efforts to solicit contributions--for example, a ban on state contractors organizing fundraising events of a certain size.

In addition, the problem with bundling, according to the District Court, is that lobbyists will bundle contributions by their "deep-pocketed clients" and state contractors will bundle contributions from their "many employees and subcontractors." *Green Party I, 590 F. Supp. 2d at 343*. If that is the case, then a less restrictive means to address the bundling problem would be simply to ban lobbyists from soliciting contributions from their clients and contractors from soliciting contributions from their employees and subcontractors. The CFRA, however, bans *all* solicitation efforts by lobbyists and contractors--even those not directed at clients, employees, or subcontractors.

Finally, insofar as the CFRA's solicitation ban was intended to combat corruption and the appearance of corruption caused by "bundling," the state

has not adequately explained why it **[*54]** could not simply outlaw *bundling* itself. Indeed, the CFRA currently defines the term "solicit" to include, among other things, "bundling contributions," *see Conn. Gen. Stat. § 9-601(26)*, and the SEEC has issued a decision that defines the term "bundling," *see Green Party I, 590 F. Supp. 2d at 297* (citing SEEC Declaratory Ruling 2006-1, at 4). The problem is that, in addition to banning bundling, the CFRA also bans many other activities that often do not involve bundling. *See Conn. Gen. Stat. § 9-601(26)* (broadly defining "solicit" to include, among other things, "requesting that a contribution be made" and "serving as . . . deputy treasurer" of a "political committee").

We are not, of course, called upon here to determine the constitutionality of other, hypothetical laws. Our conclusion is only that less restrictive alternatives exist, and thus the state has not met its burden of showing that the CFRA's solicitation ban is narrowly tailored. We hold, therefore, that on this record, the CFRA's bans on the solicitation of contributions, *see Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)*, violate the First Amendment.

III. Remaining Claims

In addition to their First Amendment claims, plaintiffs **[*55]** have asserted claims under the *Equal Protection Clause* and the *Due Process Clause of the Fourteenth Amendment*, as well as under the Connecticut Constitution.

The equal protection and due process claims, asserted only by the Association of Connecticut Lobbyists and Barry Williams, challenge provisions of the CFRA that we have struck down under the First Amendment--namely, the CFRA's ban on lobbyist contributions and the solicitation of contributions by lobbyists. Thus we need not address those claims.

With respect to the claims under the Connecticut Constitution, we agree with the District Court that "there is no indication" in Connecticut case law that the Connecticut Constitution "provide[s] broader protection [than] the [federal constitutional] rights at issue here." *Green Party I, 590 F. Supp. 2d at 346*. Thus, insofar as we have held that certain provisions of the CFRA are consistent with the First Amendment, the Connecticut Constitution provides no additional basis--beyond the First Amendment--for challenging the CFRA. Insofar as we have held that certain provisions of the CFRA violate the First Amendment, it is unnecessary for us to decide--and we expressly decline to decide--whether **[*56]** those provisions also violate the Connecticut Constitution.

IV. The Severability of the Unconstitutional Provisions and the Appropriate Injunctive Relief

We have held that two aspects of the CFRA violate the First Amendment: the ban on lobbyist contributions and the ban on the solicitation of contributions. The question arises, therefore, whether those provisions are severable from the CFRA or whether the entire CFRA must be struck down along with the unconstitutional provisions. The District Court did not consider the severability issue because it held that each of the challenged provisions was constitutional.

In our first opinion, published today, which addressed plaintiffs' challenge to the CFRA's Citizen Election Program (CEP), we remanded the cause to the District Court to determine in the first instance whether certain unconstitutional provisions of the CEP were severable. We specifically instructed the District Court to examine the meaning of *§ 9-717* of the General Statutes of Connecticut in connection with its ruling on the severability issue. [18]

18 That statute, which was recently amended, now reads in full:

> [HN38] (a) If, during a period beginning on or after the forty-fifth day prior **[*57]** to any special election scheduled relative to any vacancy in the General Assembly and ending the day after such special election, a court of competent jurisdiction prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclu-

sive, for a period of seven days or more, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race of such special election that is the subject of such court order until the day after such special election, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be inoperative until the day after such special election with respect to any such race, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until the day after such special election with respect to any such race, **[*58]** and (C) the provisions of subsections (g) to (j), inclusive, of *section 9-612* shall not be implemented until the day after such special election with respect to any such race.

(b) Except as provided for in subsection (a) or (c) of this section, if, on or after April fifteenth of any year in which a state election is scheduled to occur, a court of competent jurisdiction prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of thirty days or more, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race that is the subject of such court order until December thirty-first of such year, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be inoperative until December thirty-first of such year, (B) the provisions of said sections of the general **[*59]** statutes, revision of 1958, revised to December 30, 2006, shall be effective until December thirty-first of such year, and (C) the provisions of subsections (g) to (j), inclusive, of *section 9-612* shall not be implemented until December thirty-first of such year. If, on the April fifteenth of the second year succeeding such original prohibition or limitation, any such prohibition or limitation is in effect, the provisions of subdivisions (1) and (2) of this section shall be implemented and remain in effect without the time limitation described in said subdivisions (1) and (2).

(c) If, during a year in which a state election is held, on or after the second Tuesday in August set aside as the day for a primary under section 9-423, a court of competent jurisdiction prohibits or limits the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of fifteen days, or if said Tuesday occurs

during a period of fifteen days or more in which period such a court continues to prohibit or limit such expenditures, then, after any such fifteen-day period, (1) sections 1-100b, **[*60]** 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race that is the subject of such court order until December thirty-first of such year, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be inoperative until December thirty-first of such year, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until December thirty-first of such year, and (C) the provisions of subsections (g) to (j), inclusive, of *section 9-612* shall not be implemented until December thirty-first of such year. If, on the April fifteenth of the second year succeeding such original prohibition or limitation, any such prohibition or limitation is in effect, the provisions of subdivisions (1) and (2) of this section shall be implemented and remain in effect without the time limitation described in said subdivisions (1) and (2).

(d) Any candidate who has received any funds pursuant to the provisions of sections 1-100b, **[*61]** 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session prior to any such prohibition or limitation taking effect may retain and expend such funds in accordance with said sections unless prohibited from doing so by the court.

Conn. Gen. Stat. § 9-717 (as amended by Public Act 10-2 on April 14, 2010).

We adopt that same approach here and remand to the District Court to determine whether the unconstitutional provisions of the CFRA addressed in this opinion are severable from the remainder of the law. In so doing the District Court should examine the relevancy, if any, of *§ 9-717*. After the District Court has ruled on the severability issue, it should then enter appropriate injunctive relief in light of our holdings in this opinion.

CONCLUSION

In summary, we hold as follows:

(1) The CFRA's bans on contributions by state contractors, lobbyists, and associated individuals, *see Conn. Gen. Stat. §§ 9-610(g), 9-612(g)(2)(A)-(B)*, are "marginal speech restrictions" that withstand scrutiny under the First Amendment if they are "closely drawn to match a sufficiently important [government] interest." *Fed. Election Comm'n v. Beaumont, 539 U.S. 146, 161-62, 123 S. Ct. 2200, 156 L. Ed. 2d 179 (2003)* **[*62]** (quotation marks omitted).

(2) The CFRA's ban on *contractor* contributions, *see Conn. Gen. Stat. § 9-612(g)(2)(A)-(B)*, is consistent with the First Amendment. The ban furthers "sufficiently important" government interests, *Beaumont, 539 U.S. at 162* (quotation marks omitted), in that it addresses both the "actuality" and the "appearance" of corruption involving state contractors, *see Buckley v. Valeo, 424 U.S. 1, 26, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)*. It is also "closely drawn" to achieve those interests. *Beaumont, 539 U.S. at 162* (quotation marks omitted). With respect to the ban on contractor contributions, therefore, we affirm the District Court's grant of summary judgment to defendants.

(3) The CFRA's ban on *lobbyist* contributions, *Conn. Gen. Stat. § 9-610(g)*, violates the First Amendment. Although an outright ban on *contrac-*

tor contributions can be justified as a means to address the appearance of corruption caused by Connecticut's recent corruption scandals, those scandals did not involve lobbyists and thus do not provide sufficient justification for an outright ban on lobbyist contributions. Rather, even assuming, without deciding, that the state's anticorruption interest is "sufficiently important" in this **[*63]** context, an outright *ban* on lobbyist contributions--as opposed to a mere *limit* on lobbyist contributions--is not closely drawn to achieve the state's interest. *See Beaumont, 539 U.S. at 162*. With respect to the ban on lobbyist contributions, therefore, we reverse the District Court's grant of summary judgment to defendants and instruct the Court to grant summary judgment to plaintiffs.

(4) The CFRA's ban on the solicitation of contributions, *see Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)(A)-(B)*, is a law that "burden[s] political speech" and is, as a result, subject to strict scrutiny, *Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753 (2010)*. The law will be upheld only if the "[state]. . . prove[s] that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Id*. (quotation marks omitted).

(5) Under the strict scrutiny standard, the CFRA's solicitation ban, *see Conn. Gen. Stat. §§ 9-610(h), 9-612(g)(2)(A)-(B)*, violates the First Amendment. Even assuming, without deciding, that the state has a "compelling" interest in preventing contractors and lobbyists from "bundling" contributions, the state has failed to establish that the CFRA's **[*64]** solicitation ban is narrowly tailored to meet that interest because the law prohibits numerous activities unrelated to "bundling." With respect to the solicitation ban, therefore, we reverse the District Court's grant of summary judgment to defendants and instruct the Court to grant summary judgment to plaintiffs.

(6) We need not address plaintiffs' equal protection and due process claims, for they challenge provisions of the CFRA that we have struck down under the First Amendment--namely, the CFRA's ban on lobbyist contributions and the solicitation of contributions by lobbyists.

(7) Insofar as we have upheld certain provisions of the CFRA under the First Amendment, we likewise uphold those provisions under the Connecticut Constitution, which provides no additional basis--beyond the First Amendment--for challenging the provisions in question. Insofar as we have held that certain provisions of the CFRA violate the First Amendment, it is unnecessary for us to decide--and we expressly decline to decide--whether those provisions also violate the Connecticut Constitution.

(8) We remand the cause to the District Court (a) to determine, in the first instance, whether the unconstitutional provisions **[*65]** of the CFRA are severable from the remainder of the statute; (b) to grant appropriate injunctive relief in light of our holdings in this opinion and the District Court's resolution of the severability issue on remand; and (c) to conduct any further proceedings, consistent with this opinion, that may be required.

* * *

The February 11, 2009 partial judgment of the District Court on Count Four of this action is **AFFIRMED** in part and **REVERSED** in part as set forth in sections (1) through (7) of this conclusion. The cause is **REMANDED** to the District Court for further proceedings in accordance with the instructions set forth in section (8) of this conclusion.

Recognizing that an election has been scheduled for November 2, 2010, and given the importance of this case to ongoing campaigns for state office, we request that the District Court act expeditiously in considering the issues presented for decision on remand.

Attachment F

Los Angeles City Charter

Amendments to implement a ban on contributions and fundraising by bidders and lobbying entities

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SEC. 470(b) Definitions.

(1) The definitions set forth in the Political Reform Act of 1974 as amended (Government Code sections 82000 through 82055) shall govern the interpretation of this section, unless otherwise specified herein.

(2) The term “elected City office” shall mean the offices of Mayor, City Attorney, Controller, and members of the City Council.

(3) The term “election” shall include a primary nominating election, a general municipal election, a special election, and a recall election.

(4) The term “agency” shall mean any department, bureau, office, board, or commission of the City and any other government agency that is required to adopt a conflict of interests code subject to City Council approval.

(5) The terms “agent”, “bidder”, “contract”, “prohibited fundraising”, and “subcontractor” shall have the same meaning as provided in Los Angeles Administrative Code section 24.16.

SEC. 470(c) Campaign Contribution Limitations.

(11) No elected City officer or candidate for elected City office, nor any of that individual’s City controlled committees, shall solicit or accept any contribution or proceeds of prohibited fundraising from any lobbying entity registered to lobby the elected City office the candidate seeks or the current elected City office or agency of the candidate or officer. No person shall make any contribution to or engage in prohibited fundraising on behalf of an elected City officer or candidate for elected City office, or to any of that individual’s City controlled committees, if the person is required by ordinance to be registered to lobby the elected City office the candidate seeks or the current elected City office or agency of the candidate or officer.

(12) No elected City officer or candidate for elected City office, nor any of that individual’s City controlled committees, shall solicit or accept any contribution or proceeds of prohibited fundraising from a person who the officer or candidate knows or has reason to know is a bidder, agent, or subcontractor for a contract that is required by law to be approved by an elected City officer. No person who is a bidder, agent, or subcontractor for a contract that is required by law to be approved by an elected City officer shall make a contribution to or engage in prohibited fundraising on behalf of an elected City officer or any of his or her City

controlled committees. This section shall not apply if the only approval required for the contract is technical oversight approval by the Mayor, the City Attorney, or the Controller. A person found by the Ethics Commission to have violated this section may not be selected as an agency contractor for four years following the date of the violation. The Ethics Commission shall adopt regulations concerning contributions and prohibited fundraising by bidders, agents, and subcontractors.

SEC. 609(e) Prohibition of Underwriter Gifts and Political Contributions.

(1) No underwriting firm which, within the prior 12 months, made one or more gifts totaling fifty dollars ($50) or more; made one or more political contributions totaling one hundred dollars ($100) or more to any member of the board of the department whose bonds are the subject of the sale or any other City official having the authority to make or participate in making decisions concerning the sale; or made a political contribution to or engaged in prohibited fundraising on behalf of the Mayor, the City Attorney, or a member of the City Council shall be selected by the Council or by a department as the underwriter for a sale of Revenue Bonds where the selection of the underwriting firm is made on a basis other than by competitive bidding (referred to hereafter as "noncompetitive sale"). An underwriting firm seeking selection shall cause one of its officers to certify under oath that no such gifts or contributions were made and no such fundraising occurred. That certification shall be filed with the City Clerk prior to the date on which a selection is made. If the selected underwriting firm made any of the gifts or contributions or engaged in the prohibited fundraising specified above, but the certification was nevertheless made, the underwriting firm and any other person responsible for the error in the certification shall be subject to the penalties provided for violation of Section 470.

(2) No underwriting firm selected as the underwriter for a noncompetitive sale of Revenue Bonds shall make the gifts or political contributions or engage in the fundraising referenced in subsection (e)(1) during the 12 months after being so selected. Any person violating the provisions of this subsection shall be subject to the penalties provided for violations of Section 470.

(3) Gifts, contributions, and prohibited fundraising shall be attributable to an underwriting firm if given or engaged in by the firm itself; by any other business entity related to the firm as a parent, subsidiary or other related business entity; by any political action committee controlled or primarily financed by the firm or by a business entity related to the firm as a parent, subsidiary or other related business entity; by the president, chairperson of the board, chief executive officer, or chief operating officer of the firm; by any vice president, assistant vice president or managing director employed in the public finance unit of the firm; by any other employee of the firm who communicates with one or more City officers or employees for the purpose of influencing the City's selection of an underwriter for a particular bond issue; or by any person owning a 10% or greater investment in the firm.

(4) A contribution shall be considered as having been made to and prohibited fundraising shall be considered as having been engaged in on behalf of any of the officials referenced in subsection (e)(1) if it is made to or engaged in on behalf of the official or any controlled committee of the official.

(5) “Prohibited fundraising” shall have the meaning set forth in Los Angeles Administrative Code section 24.16. Any other term used herein which is defined in the California Political Reform Act of 1974, as amended, or in the regulations of the California Fair Political Practices Commission, as amended, shall have the meaning set forth in those provisions.

(6) No provision of subsection (e) shall require any person to do or refrain from doing any act which would violate federal law.

Los Angeles City Charter

Amendments to implement a ban on contributions and fundraising by bidders and lobbying entities

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SEC. 470(b) Definitions.

(1) The definitions set forth in the Political Reform Act of 1974 as amended (Government Code sections 82000 through 82055) shall govern the interpretation of this section, unless otherwise specified herein.

(2) The term "elected City office~~, as used herein,~~" shall mean the offices of Mayor, City Attorney, Controller, and members of the City Council.

(3) The term "election" shall include a primary nominating election, a general municipal election, a special election, and a recall election.

(4) The term "agency" shall mean any department, bureau, office, board, or commission of the City and any other government agency that is required to adopt a conflict of interests code subject to City Council approval.

(5) The terms "agent", "bidder", "contract", "prohibited fundraising", and "subcontractor" shall have the same meaning as provided in Los Angeles Administrative Code section 24.16.

SEC. 470(c) Campaign Contribution Limitations.

(11) No ~~elective~~elected City officer or candidate for ~~elective~~elected City office, nor any of ~~his or her~~that individual's City controlled committees, shall solicit or accept any contribution ~~to the officer or candidate, or to any of his or her City controlled committees,~~ or proceeds of prohibited fundraising from any ~~lobbyist or~~ lobbying ~~firm~~entity registered to lobby the elected City office ~~for which~~ the candidate ~~is seeking election,~~seeks or the current elected City office~~, commission, department, bureau~~ or agency of the candidate or officer. No person ~~required by ordinance to be registered as a lobbyist or lobbying firm~~ shall make any contribution to or engage in prohibited fundraising on behalf of an ~~elective~~elected City officer or candidate for ~~elective~~elected City office, or to any of ~~his or her~~that individual's City controlled committees, if the ~~lobbyist or lobbying firm~~person is required by ordinance to be registered to lobby the elected City office ~~for which~~ the candidate ~~is seeking election,~~seeks or the current elected City office~~, commission, department, bureau~~ or agency of the candidate or officer.

(12) No elected City officer or candidate for elected City office, nor any of that individual's City controlled committees, shall solicit or accept any contribution or proceeds of prohibited fundraising from a person who the officer or candidate knows or has reason to know is a bidder, agent, or subcontractor for a contract

that is required by law to be approved by an elected City officer. No person who is a bidder, agent, or subcontractor for a contract that is required by law to be approved by an elected City officer shall make a contribution to or engage in prohibited fundraising on behalf of an elected City officer or any of his or her City controlled committees. This section shall not apply if the only approval required for the contract is technical oversight approval by the Mayor, the City Attorney, or the Controller. A person found by the Ethics Commission to have violated this section may not be selected as an agency contractor for four years following the date of the violation. The Ethics Commission shall adopt regulations concerning contributions and prohibited fundraising by bidders, agents, and subcontractors.

SEC. 609(e) Prohibition of Underwriter Gifts and Political Contributions.

(1) No underwriting firm which, within the prior 12 months, made one or more gifts totaling fifty dollars ($50) or more~~, or~~; made one or more political contributions totaling one hundred dollars ($100) or more~~,~~ to ~~the Mayor, the City Attorney, any member of the Council,~~ any member of the board of the department whose bonds are the subject of the sale~~,~~ or any other City official having the authority to make or participate in making decisions concerning the sale~~,~~; or made a political contribution to or engaged in prohibited fundraising on behalf of the Mayor, the City Attorney, or a member of the City Council shall be selected by the Council or by a department as the underwriter for a sale of Revenue Bonds where the selection of the underwriting firm is made on a basis other than by competitive bidding (referred to hereafter as "noncompetitive sale"). An underwriting firm seeking selection shall cause one of its officers to certify under oath that no such gifts or contributions were made and no such fundraising occurred. That certification shall be filed with the City Clerk prior to the date on which a selection is made. If the selected underwriting firm made any of the gifts or contributions or engaged in the prohibited fundraising specified above, but the certification was nevertheless made, the underwriting firm and any other person responsible for the error in the certification shall be subject to the penalties provided for violation of Section 470.

(2) No underwriting firm selected as the underwriter for a noncompetitive sale of Revenue Bonds shall make ~~one or more~~the gifts ~~totaling fifty dollars ($50) or more,~~ or ~~one or more~~ political contributions ~~totaling one hundred dollars ($100) or more, to any official~~or engage in the fundraising referenced in subsection (e)(1) during the 12 months after being so selected. Any person violating the provisions of this subsection shall be subject to the penalties provided for violations of Section 470.

(3) ~~A gift or contribution~~Gifts, contributions, and prohibited fundraising shall be ~~considered as having been made by~~attributable to an underwriting firm if ~~that gift or contribution was made~~ given or engaged in by the firm itself; by any other business entity related to the firm as a parent, subsidiary or other related business entity; by any political action committee controlled or primarily financed by the firm or by a business entity related to the firm as a parent, subsidiary or other related business entity; by the president, chairperson of the board, chief executive officer, or chief operating officer of the firm; by any vice president, assistant vice president or managing director employed in the public finance unit of the firm; by any other

employee of the firm who communicates with one or more City officers or employees for the purpose of influencing the City's selection of an underwriter for a particular bond issue; or by any person owning a 10% or greater investment in the firm.

(4) A contribution shall be considered as having been made to and prohibited fundraising shall be considered as having been engaged in on behalf of any of the officials referenced in subsection (e)(1) if it is made to or engaged in on behalf of the official or ~~to~~ any controlled committee of the official.

(5) "Prohibited fundraising" shall have the meaning set forth in Los Angeles Administrative Code section 24.16. Any other term used herein which is defined in the California Political Reform Act of 1974, as amended, or in the regulations of the California Fair Political Practices Commission, as amended, shall have the meaning set forth in those provisions.

(6) No provision of subsection (e) shall require any person to do or refrain from doing any act which would violate federal law.

Attachment G

Los Angeles Administrative Code

Amendments to implement a ban on contributions and fundraising by bidders and lobbying entities

DIVISION 24
CHAPTER 6—CONTRIBUTIONS AND FUNDRAISING BY BIDDERS

SEC. 24.15 Scope.

This chapter establishes the regulations required by Los Angeles City Charter section 470(c)(12) regarding contributions and fundraising by bidders.

SEC. 24.16 Definitions.

Terms not defined here are to be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1972 (California Government Code sections 81000 *et seq.*) and the regulations of the California Fair Political Practices Commission (California Code of Regulations, Title 2, sections 18109 *et seq.*).

(a) "Agency" means any department, bureau, office, board, or commission of the City and any other government agency that is required to adopt a conflict of interests code subject to City Council approval.

(b) "Agent" means the following persons associated with a bidder or subcontractor:

(1) Board chair;

(2) President;

(3) Chief executive officer;

(4) Chief financial officer;

(5) Chief operating officer;

(6) Individual who holds an ownership interest in the bidder or subcontractor of 20 percent or more; and

(7) Individual authorized in the bid or other response to a City invitation regarding a contract to represent the bidder or subcontractor before the City.

(c) "Bidder" means a person who has submitted a bid or other response to a City invitation regarding a contract.

(d) "City controlled committee" means any City committee controlled by an elected City officer or candidate for elected City office, including campaign, officeholder, legal defense fund, and ballot measure committees.

(e) "Contract" means an agreement, lease, franchise, permit, license, concession, or grant that is required by law to be approved by an elected City official. The term includes amendments, change orders, renewals, and extensions that are required by law to be approved by an elected City official.

(f) "Elected City official" means the Mayor, the City Attorney, the Controller, or a member of the City Council, whether the official is appointed or elected.

(g) "Fundraising event" means an event designed primarily for political fundraising, at which contributions for an elected City official, a candidate for elected City office, or a City controlled committee are solicited, delivered, or made.

(h) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, or any other organization or group of persons acting in concert.

(i) "Prohibited fundraising" means the following:

(1) Asking another person to make a contribution;

(2) Inviting a person to a fundraising event;

(3) Supplying names to be used for invitations to a fundraising event;

(4) Permitting one's signature, name, or official title to appear on a solicitation for contributions or an invitation to a fundraising event;

(5) Providing the use of one's home or business to hold a fundraising event;

(6) Paying for 20 percent or more of the costs of a fundraising event;

(7) Hiring another person to conduct a fundraising event;

(8) Delivering another person's contribution, either in person or by mail, in a manner that communicates the deliverer's identity to an elected City official, candidate for elected City office, or City controlled committee; or

(9) Acting as an agent or intermediary in connection with the making of a contribution.

(j) "Subcontractor" means a person who enters into an agreement with a bidder to perform a portion of the bidder's obligations under a contract.

SEC. 24.17 Restrictions on Contributions and Prohibited Fundraising by Bidders

(a) Bidders, subcontractors, and agents may not make contributions to or engage in prohibited fundraising on behalf of an elected City official, a candidate for elected City office, or a City controlled committee.

(b) An elected City official, candidate for elected City office, or City controlled committee may not solicit or accept contributions or the proceeds of prohibited fundraising from a person the elected City official, candidate for elected City office, or City controlled committee knows or has reason to know is a bidder, subcontractor, or agent.

(c) The prohibitions in subsections (a) and (b) begin on the date a bidder submits a bid or other response to a City invitation regarding a contract and ends on either of the following dates:

(1) If the bidder is not awarded the contract, on the date the contractor signs the contract.

(2) If the bidder is awarded the contract, 12 months after the date the bidder signs the contract.

(d) Every City invitation for bids or other responses regarding a contract must include notice of the prohibitions in this chapter and Los Angeles City Charter section 470(c)(12).

(e) A bidder must submit with the bid or other response to a City invitation regarding a contract the following documents, which must be maintained with the bid or response documents by the awarding authority:

(1) The identities of its agents;

(2) The identities of its subcontractors and its subcontractor's agents; and

(3) A form prescribed by the City Ethics Commission, on which the bidder certifies that the bidder understands, will comply with, and will notify its agents and subcontractors of the prohibitions in this section and Los Angeles City Charter section 470(c)(12).

(f) In addition to any other penalties that may apply, a person found to have violated this section or Los Angeles City Charter section 470(c)(12) may not be selected as a contractor for four years following the violation.

(g) When a person is found to have violated this section or Los Angeles City Charter section 470(c)(12), the City Ethics Commission must notify all agencies of the person's identity and the prohibition in subsection (f).