

**Testimony to the 2018 NYC Charter Revision Commission
on Disclosure of and Limiting Contributions to City-Affiliated Nonprofits
Public Hearing #3**

May 3, 2018

Queens Library at Flushing, Queens, NY

Good evening Chair Perales and members of the Charter Revision Commission. I am Alex Camarda, the Senior Policy Advisor for Reinvent Albany. Reinvent Albany advocates for transparency and accountability in State government, and are leading champions for transparency in New York City government, particularly the Freedom of Information Law and open data.

At the Commission's first hearing in Staten Island, Reinvent Albany testified that among the fastest growing areas of undue influence (or the perception of it) in city government is donors who contribute to city-affiliated nonprofit organizations and do business with the city.

In our previous testimony at the first charter commission hearing, we called for more transparency of these donations and to restrict their size.

In tonight's testimony we'd like to provide more specific recommendations on this topic:

1. Limit contributions to *all* nonprofits affiliated with elected officials.

Under Local Law 181 of 2016, donations to nonprofits affiliated with elected officials are limited to \$400, but only if the nonprofits spends 10 percent or more of their annual budget on public-facing communications featuring the elected official. The NYC Conflicts of Interest Board (COIB) has issued rules on the affiliation of nonprofits with elected officials, Title 53 Chapter 3-03.¹ We believe

¹ "Affiliated" is defined in COIB Rules, Title 53, Chapter 3-03.

§3-03 Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, in determining whether a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council, or an agent or appointee of such a person, exercises control over a non-profit entity, the Board will consider the totality of the circumstances, including:

- (a) whether the organization was created by such an elected official or the official's agent, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;

donations should be limited even if the public facing communications do not feature the elected official. However, we believe the limit could be higher than the \$400 doing business limit, but we do not have a specific number to recommend. We also believe donations should be restricted to the lower limit for 180 days after a donor has ceased doing business with the city and is removed from the doing business database.

- 2. Restrict donations by those doing business with the city to city agencies, public authorities, public benefit corporations and local development corporations.** Local Law 181 of 2016 only limits contributions to nonprofits affiliated with elected officials who spend 10 percent of their budgets on name or image of the elected official. It does not restrict donors doing business with the city from making contributions directly to government entities. A donor can give unlimited sums to an agency even while bidding on a contract or seeking a favorable determination on a matter before the agency.

- 3. Publish as open data the exact amount of all donations by donors doing business with the city to nonprofits affiliated with elected officials, and to all government entities (city agencies, public authorities, public benefit corporations and local development corporations).** Donations should be made known to the public in a machine readable, tabular dataset in the city's Open Data Portal. Currently, donations to government entities and nonprofits are made available to the public in a 500-plus page PDF every six months in broad ranges showing the dollar amount. Local Law 181 of 2016 requires the exact dollar amount of contributions to nonprofits affiliated with elected officials, along with additional identifying information, be made public beginning in January 2019. However, Local Law 181 does not require disclosure of the exact dollar value of contributions to city agencies, public authorities, public benefit corporations, local development corporations, and city-affiliated nonprofits not affiliated with elected officials.

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- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
 - (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
 - (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
 - (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; and
 - (g) the purpose of the organization.

- 4. Require “volunteers” doing major policy work or senior level appointments for the city to follow city ethics laws.** The city has, in some instances, utilized people who are not on the city payroll to do policy work or assist in choosing senior officials while they are also fundraising for nonprofits affiliated with elected officials. We do not oppose per diem or unpaid volunteers serving on city boards, task forces and commissions, much like the members of this commission. But they should not also be fundraising simultaneously for nonprofits affiliated with elected officials. If they do they should follow city ethics laws in some form.

Even if the city was to implement Reinvent Albany’s recommendations, certain nonprofits may still not be subject to lower contribution limits. It is not clear if The Police Foundation, for example, is considered “affiliated” with an elected official under the Conflicts of Interest Board’s rules (see footnote 1 on page 1-2) because none of its board members are part of the NYPD. Numerous companies that make donations to The Police Foundation have subsequently won NYPD contracts and most of the Foundation’s spending is on the NYPD.²

Our recommendations also leave untouched nonprofits which do not do business with the city but rely significantly on city funding and who may have board members who personally make donations to city government or elected officials’ campaigns. This is the case with many social service nonprofits.

We have not been able to identify a solution to these challenging scenarios. These nonprofits are not as clearly affiliated with government even while they are connected to government. There is also a need to balance the good work nonprofits do on behalf of the city with curbing the perception of or actual undue influence on government decision making.

At subsequent Commission hearings, we will make recommendations on improving the city’s campaign finance and voting systems.

Thank you for the opportunity to testify tonight. I welcome any questions you may have.

² See: Nahmias, Laura, “Police foundation remains a blind spot in NYPD contracting process, critics say,” Politico. July 13, 2017. Available at: <https://www.politico.com/states/new-york/city-hall/story/2017/07/13/police-foundation-remains-a-blind-spot-in-nypd-contracting-process-critics-say-113361>