



Testimony to the City Council Governmental Operations Committee on Authorizing the Creation of Legal Defense Funds

January 14, 2019

Good morning Chair Cabrera and members of the Governmental Operations committee. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization which advocates for open and accountable government.

Reinvent Albany supports authorizing the creation of legal defense funds with meaningful restrictions on donations to the funds. We support this bill with amendments that will further strengthen it, as detailed in our testimony.

Our understanding is that under current state law, the city's Law Department represents and indemnifies public servants accused of civil violations of the law if they acted when carrying out their public duties and did not violate any agency rules or procedures. For criminal matters, the Law Department determines who to represent and indemnify.¹

Candidates or public servants can currently establish legal defense funds to provide for civil or criminal defense. Candidates may also use their private campaign funds to pay for legal defense for alleged civil violations.²

However, the Conflicts of Interest Board has issued [Advisory Opinion 2017-2](#) indicating contributions of more than \$50 are an illegal gift, except from family members or close friends. COIB's Advisory Opinion does not appear to apply to losing candidates who are not public servants. A statutory framework is needed for legal defense funds because it is not certain Advisory Opinion 2017-2 would apply in the future to public servants or elected officials if their circumstances are somewhat different.

¹ General Municipal Law, section 50-k(2) and (3).

² New York City Administrative Code 3-706(4).

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Despite these options for legal defense, situations have arisen in which candidates or public servants face criminal or civil charges without the government representing or indemnifying them, and are unable to raise enough money to defend themselves given the \$50 contribution limit indicated by Advisory Opinion 2017-2.

Most recently, the de Blasio Administration incurred millions in legal bills with the law firm Kramer, Levin, Naftalis and Frankel which represented the Administration in a federal investigation of a variety of campaign and government-related actions.³

We think the mayor's actions leading to the investigation were wrong. However, we believe anyone accused of a civil or criminal violation deserves a robust defense, and is innocent until proven guilty. It is problematic that elected officials and public servants can run up a substantial personal debt that can ruin them financially even when they are not found guilty of acting illegally.

We therefore support the creation of legal defense funds for elected officials and public servants which strike a reasonable balance between providing the accused with robust defense and the public interest in reducing conflict of interests and pay to play. To us, this means restricting contributions, particularly donations from those doing business with the city. This bill does that, and has several additional commendable provisions including:

- Legal defense funds can only be created if the public servant is not represented by the City.
- Legal defense funds cannot operate in perpetuity.
- Legal defense funds cannot accept any donations from corporations, limited liability companies or partnerships, anonymous sources, or subordinates of the trust's public servant beneficiaries.
- High-ranking city officials and policy makers may not solicit contributions for any legal defense fund, consistent with current city ethics laws.
- Public servants may not promise anything of value in exchange for donations to a legal defense fund in accordance with existing city ethics laws.
- Legal defense funds are barred from making expenditures on political consultants, personal expenditures on trustees or beneficiaries, legal expenses paid by the city, advertising expenses, or fines for violations of the law.
- Donations are disclosed quarterly to the COIB and on its website of all donors of \$100 or more to the legal trust and all expenditures by the trust.

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<http://www.gothamgazette.com/?id=6841:conflicts-of-interest-board-opinion-could-limit-mayor-s-legal-defense-fund>

- The COIB is charged with auditing the legal defense trusts, and may conduct investigations of them.

Reinvent Albany Recommendations

While the bill has many provisions we support, we recommend the following amendments:

1. The contribution limit should be lowered from \$5,000 per donor to \$3,500. \$3,500 is the maximum campaign contribution to nonparticipating candidates running for city office passed by the voters in 2018. Contributions above \$3,500 are believed to be corrupting or create the appearance of corruption in the campaign context. They should not be higher for legal defense funds, particularly because donors may also give a maximum donation to campaign funds.
2. Disclosures to the COIB of donations and expenditures should be made available to the public in a machine readable format in the city's Open Data portal.
3. Bundlers for legal defense funds should be disclosed as they are for campaigns.
4. Candidates who have legal defense funds should be barred from using their campaign funds for defense of civil charges.

Reinvent Albany also does not oppose public servants raising campaign funds directly when there are meaningful limits on contributions and bundlers are disclosed. We think having another person make the ask for donations while the beneficiary is present or is aware of it anyway is a meaningless distinction not worth making. Similarly, we are not opposed to donors doing business with the city making a \$400 contribution in exchange for a lower overall contribution limit of \$3,500 or a lower combined limit on how much donors can donate to a legal trust fund and a candidate's campaign committee.

We also note this bill enables trusts to be established for multiple beneficiaries. We believe the Council should explore the idea of creating one trust for all officeholders and pool contributions to it as a form of insurance for any officeholder who would need to access it. This would ensure the accused have a robust legal defense and make more tenuous any connections between donors and the beneficiary. We have not researched this and are unaware of any examples, but believe this is consistent with Council's goal of allowing for a strong defense while avoiding creating a new avenue for undue influence.

Thank you and I welcome any questions you may have.