CLC
ADVANCING DEMOCRACY THROUGH LAW

October 18, 2018

By Electronic Mail (judiciary@dccouncil.us)

Council of the District of Columbia
Committee on the Judiciary & Public Safety
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Re: In Support of B22-0107 the "Campaign Finance Reform Amendment Act of 2018"

Dear Chairman Allen and Members of the Committee:

On behalf of the Campaign Legal Center (CLC), we are submitting this letter in support of the Campaign Finance Reform Amendment Act of 2018, B22-0107.[1] This comprehensive bill would make a number of meaningful improvements to the District's campaign finance laws, including: reducing the opportunities for pay-to-play transactions by prohibiting certain contractors from contributing to District candidates; ensuring that independent expenditures are truly independent of candidates through meaningful coordination limitations; and placing the administration and enforcement of the District's campaign finance laws in the hands of an independent board with substantive expertise. CLC commends the Committee for this comprehensive approach to reducing the disproportionate influence of money on the District's governance.

The Council's consideration of this legislation comes at an important time. The reforms in this bill will bolster the District's recently enacted Fair Elections program by furthering its goals to "amplify the voices of everyday voters, and reign

[1] The Campaign Legal Center is a nonpartisan, nonprofit organization that works to implement and defend effective campaign finance, lobbying, and ethics laws. Since the organization's founding in 2002, CLC has participated in every major U.S. Supreme Court campaign finance case as well as numerous other federal and state court cases. Our work promotes every voter's right to meaningfully participate in the democratic process and to know the true sources of money spent to influence elections.

in the outsized influence of wealthy and corporate contributors in District elections."[2] Moreover, the District's public financing program will enable candidates to run viable campaigns without the financial backing of corporate interests. The Campaign Finance Reform Amendment Act of 2018 builds upon the Fair Elections Amendment Act of 2018 and is an important next step in making the District's government more inclusive and responsive to the needs of District residents.

I. Courts have recognized that contractors' campaign contributions present a heightened risk of corruption.

In July 2017, CLC provided written and oral testimony to this Committee in support of B22-0008 the "Campaign Finance Transparency and Accountability Amendment Act of 2017" and B22-0051 the "Comprehensive Campaign Finance Reform Act."[3] We would be happy to provide any additional analysis that might be helpful to the Committee.

As addressed in our July 2017 testimony, we would like to highlight that the contractor contribution ban under consideration is constitutionally sound. In the context of government contracting, courts have long recognized that a contractor's campaign contributions, or other forms of personal or campaign support, to officials with authority over contracts raise heightened corruption concerns. Indeed, Congress has prohibited federal contractors and prospective contractors from making political contributions to federal candidates for more than seventy-five years.[4] A growing number of states and localities similarly have taken steps to restrict political contributions from government contractors. At least seventeen states have limits or prohibitions on campaign contributions from current and/or prospective government contractors or licensees.[5] Various municipalities, including New York City and Los Angeles, also have pay-to-play restrictions on the books.[6]

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[2] Council of the District of Columbia, Committee on the Judiciary & Public Safety, Report on B22-0192, the "Fair Elections Amendment Act of 2017", at 2 (Dec. 13, 2017), available at http://lims.dccouncil.us/Download/37693/B22-0192-CommitteeReport1.pdf; Fair Elections Amendment Act of 2018 (D.C. Act 22-278).

[3] Campaign Legal Center Testimony in Support of B22-0008 the "Campaign Finance Transparency and Accountability Amendment Act of 2017" and B22-0051 the "Comprehensive Campaign Finance Reform Act," July 24, 2017, available at https://campaignlegal.org/sites/default/files/CLC%20Testimony%20in%20Support%20of%20Pay%20to%20Play%20Bills.pdf.

[4] *See Wagner v. FEC*, 793 F.3d 1, 3 (D.C. Cir. 2015) (en banc).

[5] Cal. Gov't Code § 84308(d); Conn. Gen. Stat. § 9-612(f)(1)-(2); Haw. Rev. Stat. § 11-355; 30 Ill. Comp. Stat. 500/50-37; Ind. Code §§ 4-30-3-19.5 to -19.7; Ky. Rev. Stat. Ann. § 121.330; La. Rev. Stat. Ann. §§ 18:1505.2(L), 27:261(D); Mich. Comp. Laws § 432.207b; Neb. Rev. Stat. §§ 9-803, 49-1476.01; N.J. Stat. Ann. § 19:44A-20.13 to -20.14; N.M. Stat. Ann. § 13-1-191.1(E)-(F); Ohio Rev. Code § 3517.13(I) to (Z); 53 Pa. Cons. Stat. § 895.704-A(a); S.C. Code Ann. § 8-13-1342; Vt. Stat. Ann. tit. 32, § 109(B); Va. Code Ann. § 2.2-3104.01 (amended by Va. Acts 2013, Ch. 583 (eff. July 1, 2014)); W. Va. Code § 3-8-12(d).

[6] N.Y.C. Admin. Code §§ 3-702(18), 3-703(1-a)-(1-b); L.A., Cal., City Charter § 470(c)(12).

Courts have approved reasonable restrictions on the campaign-related spending of entities doing business with the government. In fact, the constitutionality of the federal contractor contribution ban — which bars contractors from contributing "directly or indirectly" to federal candidates, political parties or PACs — was upheld unanimously by the en banc D.C. Circuit.[7] The court recognized two governmental interests sufficient to justify the ban: preventing the actuality and appearance of corruption,[8] and preventing "interference with merit-based public administration" to ensure that contracting "depend[s] upon meritorious performance rather than political service."[9]

The Second Circuit has upheld similar laws, including New York City's regulation of contributions from entities "doing business" with the city.[10] That upheld law is expansive, covering persons who have received or are seeking contracts, franchises, concessions, grants, pension fund investment contracts, economic development agreements, or land use actions with the city.[11] In upholding New York City's law, the Second Circuit recognized the city's limits on contractor contributions served anti-corruption interests "even where there is no actual corruption, because the perception of corruption, or of opportunities for corruption, threatens the public's faith in democracy."[12]

Thus, courts have firmly established that restrictions on campaign contributions from government contractors are justified by compelling governmental interests. Like the federal contractor prohibition and New York City's law, the Campaign Finance Reform Amendment Act of 2018 would help to prevent corruption and ensure merit-based administration of District business by proscribing a current or prospective "covered contractor" from making campaign contributions to benefit a city official who approves or oversees the contractor's dealings with city government. The legislation is closely drawn in furtherance of these interests as the restriction would apply only to a contractor's contributions to support District officials involved with the contract, and it would only encompass contractors seeking or holding city contracts valued at $250,000 or more. Because it advances critical government interests in an appropriately tailored manner, this legislation clearly satisfies the

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[7] *See Wagner*, 793 F.3d at 34.

[8] *Id*. at 3.

[9] *Id*. at 8-9.

[10] *Ognibene v. Parkes*, 671 F.3d 174 (2d Cir. 2011); *see also Green Party of Conn. v. Garfield,* 616 F. 3d 189 (2d Cir. 2010) (upholding Connecticut's ban on contributions by contractors and their principals).

[11] *Ognibene*, 671 F.3d at 179.

[12] *Id.* at 186. Further, the court explained that "to require evidence of actual scandals for contribution limits would conflate the interest in preventing actual corruption with the separate interest in preventing apparent corruption. In other words, if every case of apparent corruption required a showing of actual corruption, then the former would simply be a subset of the latter, and the prevention of actual corruption would be the only legitimate state interest for contribution limits." *Id.* at 188.

constitutional standard that courts have applied to regulation of campaign contributions by government contractors.

II. Conclusion

For these reasons, the Campaign Legal Center supports the Campaign Finance Reform Amendment Act of 2018, and we urge the Committee to take favorable action on this important piece of legislation.

Sincerely,

/s/
Adav Noti
Senior Director of Trial Litigation & Strategy

/s/
Catherine Hinckley Kelley
Director of Policy & State Programs