

**Statement of Irvin B. Nathan
Attorney General for the District of Columbia**

Before the

**Committee on Government Operations
Kenyan McDuffie, Chair**

Regarding Bills 20-3, 20-25, 20-28, 20-37, and 20-43



**Office of the Attorney General for the
District of Columbia**

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**John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 120
Washington, D.C.**

INTRODUCTION AND OVERVIEW

Good afternoon, Chairperson McDuffie, and Members and staff of the Committee on Government Operations. I am Irv Nathan, Attorney General for the District of Columbia. On behalf of the Executive Branch of the District, I am pleased to testify before the Committee today regarding the Mayor's proposed legislation to preserve and protect the integrity of our elections process.

Amid criminal convictions and allegations of misconduct that have damaged public confidence in the District's electoral system, this administration made clear last year that campaign finance reform should be a high priority for the District's government. Towards that goal, the Mayor in the spring of 2012 tasked my office with recommending a series of campaign-finance reforms, based on a careful assessment of current law, best practices in States and major cities that have recently revised their campaign-finance laws, and the informed perspective of individuals and groups with expertise in this area.

Our recommendations, as adopted by the Mayor, aim to balance two important principles. On the one hand, candidates need to raise enough funds to get their messages out and fully inform the electorate. On the other hand, that electorate must be assured that the process is fair, open, and free of even the appearance of corruption. As directed by the Mayor, I outlined his proposals in testimony before this Committee in June 2012. We released draft legislation for public comment in August 2012, and after giving careful consideration to the comments we received, we submitted a revised draft bill to the Council in September. We regret that, despite a hearing, this Committee did not mark up or vote on the bill in 2012. Reflecting the priority he places on this legislation, the Mayor again submitted proposed legislation to this Council at the

beginning of this session in January. Chairman McDuffie, we commend you as the new Chair and the Committee for moving forward on this issue early this year.

The Mayor's bill, the "Comprehensive Campaign Finance Reform Amendment Act of 2012," [Bill 20-3] contains a systematic, carefully balanced series of reforms, based on the best practices of other jurisdictions and on a thorough assessment of the perceived vulnerabilities in the District's current campaign-finance law. We urge the Committee to approve it and send it to the full Council for a vote.

In today's hearing, this Committee's focus is on the questions of: (1) What appropriate restrictions should be placed on campaign contributions from Limited Liability Companies and their owners / officers? ; (2) What reforms are necessary to address the related issue of aggregated contributions (sometimes referred to as "bundling")? ; and (3) What, if any, restrictions should be placed on money-order contributions? We agree that these are important issues, which the Mayor's proposed legislation addresses directly and in the context of comprehensive reform. They are part of his effort to provide legislation that that will prohibit the evasion of campaign contribution limits. Effective limits are meaningless if one can contribute through an unlimited number of LLCs, or use multiple money orders to evade the \$25 per person limit on cash contributions.

The Mayor's bill addresses these concerns, along with other related weaknesses in the current law that, we submit, should be considered as a unified package to deal with a series of related problems. Accordingly, today, I will briefly address the core proposals in the Mayor's bill, emphasizing the provisions that address this Committee's stated areas of focus for today's hearing, and in the process, I will discuss both the other aspects of the Mayor's bill and the other bills that are before the Committee today. The other bills reflect commendable focus by the

members of the Council on these issues, but are either piecemeal approaches or would not be necessary if the Council adopted the Mayor's comprehensive bill. I look forward to this Committee's discussion and to answering any questions that you may have.

I. AGGREGATED CONTRIBUTIONS

Contribution limits combat corruption by preventing any one person or company from wielding or appearing to wield undue influence over elected officials and candidates.

Unfortunately, loopholes in the current law let some individuals and companies dodge those limits. The Mayor's bill addresses this problem by preventing multiple contributions through various controlled entities, barring registered lobbyists from bundling contributions, enhancing disclosure, and strengthening enforcement.

A. Preventing Multiple Contributions

The Mayor's bill prevents individuals and companies from using inactive corporations, corporate subsidiaries, affiliates or limited liability companies, to evade statutory limits on contributions and expenditures. Any individual or company that makes political contributions would be required to identify any entities they control and any entities that are controlling them. So, for instance, if a corporation wants to contribute to a candidate's campaign, it would have to disclose to the campaign all of its officers, directors, or controlling shareholders, as well as any subsidiary or parent companies. The candidate's campaign, in turn, must disclose that information to the Office of Campaign Finance. This gives the public more information about where political contributions are coming from. It is also important because, under our bill, any contributions made by those who control a corporation or by the subsidiaries of a corporation, would be treated as contributions by that corporation, and vice versa. If, for example, an individual who exercises control over the financial affairs of the corporation contributes the

maximum amount to a candidate's campaign, that corporation would not be allowed to make any additional contributions to the campaign. This prevents people and companies from using LLC's, or any other corporate entity, to evade contribution limits. We believe this is a more targeted and more balanced approach than simply banning corporate contributions, as Bill 20-25 would do. We note that Bill 20-37 incorporates the Mayor's "related party" definition but uses the attribution provision found in the 2012 version of our legislation. Upon further study and after receiving comments from the ACLU and others, the administration in the 2013 legislation narrowed this provision to more narrowly tailor the ban to emphasize the concept of control of the entity, and thus further strengthen it against any First Amendment vulnerability.¹ The attribution provision in the Mayor's bill would be enforceable because a corporate contribution would have to be accompanied by a statement by the corporation reflecting its controlling parties. Any false statements made in these forms would be punishable by a felony prosecution. Both the campaign and the Office of Campaign Finance would be able to use computer technology to cross-reference the names of controlling shareholders and thus to enforce the maximum limits and eliminate evasions through corporate forms.

B. Barring Bundling

The use of LLCs and subsidiaries is not the only type of aggregation that evades at least the spirit of contribution limits. Another type of evasion via aggregation occurs when a lobbyist gathers contributions from multiple sources and presents those contributions in one "lump sum" to a candidate or political party, a practice known in some quarters as "bundling." By taking credit for a large sum of contributions, lobbyists can create the appearance, deserved or not, of having influence with, or undue access to, officeholders. To avoid even the appearance of

¹ The provision in the 2012 legislation stated, "For the purposes of determining applicable contribution limits pursuant to this title, contributions attributable to an entity shall include any contributions made by a related party."

inappropriate influence or access, the Mayor's bill bars registered lobbyists from forwarding or arranging to forward contributions from other people to elected public officials, candidates for elected office, political parties, or political committees. The bill also ensures that when anyone who is not a lobbyist bundles significant amounts of money for a campaign, the public is fully informed. Each committee affiliated with a candidate must disclose the names of any contributors who have bundled more than \$15,000 for the campaign.

C. Money Orders

Currently, cash contributions and money-order contributions are subject to two different rules. While a person can only contribute up to \$25 in cash to any candidate, he or she could make money-order contributions all the way up to (and possibly beyond) the total contribution limit. We do not think this is a sensible system. Most methods of payment, like checks, can be traced with relative ease, so a person who wants to write a check to their favored candidate should be able to do so up to the maximum amount. Cash and money orders, on the other hand, are much more difficult to track. Allowing people to give hundreds or thousands of dollars in money orders significantly impairs efforts to inform the public about where each candidate's money is coming from. For this reason, the Mayor's bill, like Bill 20-25, changes the current law by limiting money-order contributions to \$25, the same limit that applies to cash contributions. Accordingly, we respectfully disagree with the proposals in Bills 20-28 and 20-43 which would generally allow money-order contributions to be higher than cash contribution limits. We would not object if cash and money order limits were made the same in the area of \$100.

D. Disclosure and Accountability

Prohibiting people from exploiting loopholes in the law to evade contribution limits is an important step, but it is not enough. When the source and amounts of contributions are made public promptly, it is easier for the Office of Campaign Finance to identify those who are attempting to evade contribution limits, and easier for the public to be informed about the sources of each candidate's funding, a key step in restoring and maintaining public confidence in the process.

The Mayor's bill enhances existing disclosure requirements in a number of important ways. It requires electronic filing and disclosure, which promotes transparency, accountability, and timely release of important information. All contributions in the last 30 days before an election would have to be disclosed to the Office of Campaign Finance within 24 hours, and made viewable on the Office's website shortly thereafter. Further, when someone runs an ad supporting or opposing a candidate, initiative, referendum, or recall, that ad would have to include a statement disclosing its sponsor.

The Mayor's bill also refines existing disclosure rules by tailoring disclosure requirements to the type of filer, which promotes disclosure while adhering to First Amendment principles. Under current law, committees that do not coordinate their activities with a candidate's campaign are treated just like those that do. Under the Mayor's bill, committees that coordinate with a candidate's campaign would face all of the disclosure requirements they currently do, along with some new ones. Our bill would require these committees to identify any persons or corporations that exercise control over them, along with any subsidiaries, officers, or directors of each corporate contributor. Committees that do not coordinate with a candidate's campaign would face less rigorous requirements, but they would still need to disclose the names

and addresses of their officers, along with the sources and amounts of any contributions they receive, any contributions they make, and any expenditures they make.

The Mayor's disclosure reforms also promote accountability by giving candidates a degree of responsibility for what their committees do. If a candidate files documents with the Director of Campaign Finance, that candidate would have to swear or affirm, under penalty of perjury, that he or she has used all reasonable diligence to ensure that the candidate and his or her committees are in compliance with the law, and that his or her political committees have made their contributors aware of the rules. We believe that requiring candidates to make such a statement under oath will meaningfully incentivize compliance, and promote a culture of accountability.

E. Enforcement

Prohibiting people from evading contribution limits, and making sure the public knows where each candidate's funds are coming from, are vital to effective campaign finance reform. The rules will only deter people, however, if would-be violators believe they will be caught and punished when they violate the law. For that reason, the Mayor's bill strengthens enforcement mechanisms in two important ways. First of all, it enhances the current civil and criminal penalties for violating the law, giving people a stronger disincentive to do so. Second, it gives the Office of the Attorney General authority to prosecute certain violations as misdemeanor offenses, providing, for the first time ever, some local government criminal enforcement of this important set of local laws to complement the U.S. Attorney's well-recognized enforcement authority for the most serious and felony offenses. When would-be offenders know that they could face prosecution by either our office or the U.S. Attorney, they are less likely to ignore the

rules. We also help people comply with the rules by providing incentives to rely on advisory opinions they seek and receive from the Office of Campaign Finance.

While the Committee has decided to focus on a subset of campaign finance issues today, I want to emphasize that the Mayor's legislation is comprehensive in scope and also addresses pay-to-play restrictions, which I understand will be discussed at a future hearing. The national experts at Public Citizen have said that if the Council has the wisdom and courage to adopt the Mayor's proposed bill, its pay-to-play rules will be "among the strongest in the nation," and we urge the Council promptly to move forward on all of the components of the Mayor's bill. In short, the pay-to-play prohibitions would preclude any government contractor or bidder for a government contract to donate to the campaign of any official who may have any role in the awarding of the contract or grant. Among the prohibited recipients would be Members of the Council or candidates for the Council, as long as the Council has a role in the approval of the contract in question.

One matter that none of the legislation addresses, but the Committee should promptly address, is the appropriate campaign contribution limit for the elected Attorney General. As you know, the first primary elections for the District's Attorney General will take place in April 2014, with the general election in November 2014 and the elected Attorney General assuming office in January 2015. As it stands, the District's campaign contribution law does not address the contribution limits for this newly elective office.² We recommend that the Committee cap the contribution at \$1,500, the same for the Chairman of the Council, another citywide office but with less responsibility than the Mayor. This policy choice would be consistent with the choice made by the Council and the voters in 2010 to set the rate of compensation for the elected Attorney General equal to that of the Chair.

² See D.C. Official Code § 1-1163.33.

CONCLUSION

The reforms in the Mayor's proposed bill can dramatically improve the District's electoral system by increasing transparency and combating both actual and perceived corruption. We look forward to a continued dialogue with this Committee over the next months, and to working with the Council to enact bold, comprehensive and systemic reforms to the District's campaign finance system. Thank you. I would be pleased to answer any questions the Committee may have.