



**Statement of Karl A. Racine
Attorney General for the District of Columbia**

Before the

**Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chairperson**

Public Hearing

**Bill 22-8, the "Campaign Finance Transparency and Accountability
Amendment Act of 2017"**

July 10, 2017

9:30 am

Room 500

John A. Wilson Building

1350 Pennsylvania Avenue, NW

Washington, District of Columbia 20004

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Karl A. Racine, and I have the privilege of serving as the Attorney General for the District of Columbia. I am pleased to be here to discuss the important issue of campaign finance reform, and specifically to testify in favor of Bill 22-8, the "Campaign Finance Transparency and Accountability Amendment Act of 2017." I also support the goals and objectives of each of the other bills on the agenda today, and should the Committee choose to move forward with any of them, the Office of the Attorney General ("OAG") stands ready to assist you and the Council prior to mark-up. Before I testify on Bill 22-8, however, I want to touch briefly on why immediate action on these bills is so crucial to the sanctity our elections and the integrity of our government.

On October 12, 2016, OAG partnered with Georgetown University Law Center to host a forum titled *Campaign Finance in the District of Columbia*. We were honored to be joined by elected officials, campaign finance experts, and members of the public. The comments and questions at this event made clear that there is an overwhelming perception among District residents that big money exerts an undue influence on government decision-makers -- to the detriment of residents' needs and concerns. These perceptions have been heightened as a result of the recently released report entitled "Findings and Recommendations of Mary M. Cheh on the Department of General Services Contracting and Personnel Management." This thorough report highlights the appearance of pay-to-play politics in our city. As Councilmember Cheh recommended in her report:

The Council should consider amending campaign finance laws to regulate campaign contributions by contractors...even the mere impression of favoritism for particular contractors or vendors by government staff can chill competition for government contracts.

To be clear, the perception that politically connected developers and contractors get unfair advantages due to campaign contributions is nothing new.¹ OAG does not propose that this perception is specific to any particular administration or agency; rather, this is a structural concern that requires serious study and thoughtful action by our policymakers. The first step is immediate action on the bills before the Council today.

Campaign Finance Transparency and Accountability Amendment Act of 2017

One of the most significant changes since District residents voted overwhelmingly to create an independent OAG is that the Attorney General has a statutory mandate to uphold the public interest. In accord with this mandate, on January 5, 2017, I introduced Bill 22-8, the “Campaign Finance Transparency and Accountability Amendment Act of 2017.” This legislation proposes to strengthen three major pillars of the District’s campaign-finance law: 1) ending the practice and perception of pay-to-play politics; 2) making political donations transparent; and 3) creating a “bright line” between candidates and Political Action Committees (PACs). The proposal also includes other provisions that tighten the District’s campaign-finance laws.

¹ Editorial Board, “Ending pay-to-play in D.C.,” Washington Post, October 28, 2013

Pay-to-Play

“Pay-to-play politics” is a term that many District political observers have used lately. It is generally used to describe a culture in which donations to politicians garner something of value in return – including financial benefits, access to politicians, and undue influence in our politics. Under current law, donors to District political campaigns can still receive major financial benefits from the District government. The public is often skeptical about whether large contracts have been entered into in the best interests of the District and not as favors to campaign donors; and businesses wonder whether those who do not contribute to political campaigns can compete on a level playing field with large campaign donors. This campaign-finance bill addresses this perceived problem by preventing donors from engaging in large business contracts, major grants, and receiving significant tax breaks with the District for two years.

Creating a “Bright Line” Between Candidates and PACs

The Supreme Court’s rulings make clear that, as long as someone is working with a campaign, their spending can be subjected to sensible regulations, like dollar limits. Under current District law, there is a lot of activity that individuals, corporations, and PACs can engage in that isn’t regulated – even though they are actually working with a campaign. Our proposal would ensure that when someone works with a campaign, they cannot claim to be independent, and are subject to all the regulations that help keep our elections clean and transparent.

Making Political Donations Transparent

The Supreme Court has said that the government cannot limit the independent expenditures of an individual or a corporation – that is, spending to support or oppose a candidate without actually working with that candidate’s campaign. But the government can place important disclosure requirements on this kind of spending to make sure the public knows who is donating the money to support it.

Under current District law, anonymous donors are able to give unlimited amounts of money to an organization in order to make independent expenditures, as long as that organization doesn’t have electioneering as its principal purpose. That is a significant loophole in our disclosure laws. The effect is that the fundamental principle that campaign donations be open and transparent is circumvented. District residents are left in the dark about where funds are coming from to support our elections, and this runs counter to every other policy governing campaign finance. The legislation addresses this problem by making sure that *all* organizations -- not just primarily political ones -- that make independent expenditures above a certain threshold have to identify anyone who has donated more than \$200 towards those expenditures.

Other Provisions

This legislation would amend current law concerning PACs to bring the District into compliance with controlling First Amendment case law. By law, PACs can make both campaign contributions and independent expenditures. Based on the D.C. Circuit’s decision in *EMILY’s List v. FEC*, if an organization like a PAC makes both contributions and independent

expenditures, the Council has the power to limit donations to any PAC account that is used to make campaign contributions. However, if the PAC creates an account that is used only for independent expenditures, the First Amendment forbids the Council from restricting how much money people can contribute into that expenditure-only account. Unfortunately, District law does not make this distinction. It restricts *all* contributions to a PAC, even contributions that are specifically going to an expenditure-only account. The bill would fix this First Amendment problem while ensuring that our campaign finance laws are as strong as they can be.

The bill would also ensure that members of boards and commissions appointed by District government officials go through the same rigorous ethics training that District government employees undergo.

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Before I conclude, I want to express my profound appreciation to the Committee on the Judiciary and Public Safety for holding this important hearing so early in Council Period 22. I also want to thank the good-government advocates and the District residents that have taken time to attend this vitally important hearing. It will take all of us working together to fundamentally improve our election and campaign finance system. I want to note that on June 29, 2017, this Committee held a hearing on Bill 22-192, the “Fair Elections Act of 2017.” This bill proposes to create a public financing system for candidates for elected office. As my letter to the Committee expressed, I am in favor of public financing and Bill 22-192. A Brennan Center for Justice and New York University Law School study found that donor diversity and participation are greatly

increased in local city races due to their public financing system.² This is the type of fundamental reform that we should implement in the District. I pledge to work with the Mayor, Council, and all relevant stakeholders to ensure we achieve a workable, legally sufficient, and readily understandable bill should the Committee move forward with Bill 22-192.

Conclusion

I greatly appreciate the opportunity to testify. As I have noted, OAG is in full support of the policies surrounding each of the bills the Committee is considering today. It is vital that the District address these issues, and OAG stands ready to assist the Council with any legislation it sees fit to pursue. I am pleased to answer any questions that members may have.

² Brennan Center for Justice, “Donor Diversity through Public Matching Funds,” New York University School of Law (2012).