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September 3, 2019

Brian Aloia, Corporation Counsel
City of Hoboken
94 Washington Street
Hoboken, New Jersey 07030

Re: **Pay to Play Memorandum**

Dear Mr. Aloia:

This Firm has been tasked with the responsibility to determine whether or not the City of Hoboken's Political Contribution Ordinance ("the Ordinance") is constitutional and to analyze the enforceability and practical effect of these laws. The primary legal questions being: is the Ordinance, including Hoboken Municipal Code Sections §20A, §20C, and §20D, enforceable as written or does the Ordinance violate the State and/or Federal Constitution, due to the fact that contribution limits imposed by the municipal code fall below those imposed by the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. For the reasons more fully set forth below, if is my recommendation that the City consider repealing the Ordinance and utilizing the State Pay-to-Play regulations.

BACKGROUND

The New Jersey Campaign Contributions and Expenditures Reporting Act was enacted in the public interest to be the policy of the State to limit political contributions and to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office. The Act was also enacted to require the reporting of contributions that aid or promote the passage or defeat of a public question in any election and to require the reporting of all contributions received and expenditures made to provide political information on any candidate for public office, or on any public question. N.J.S.A. 19:44A-2.

Accessible public disclosure of money and other things of value given to a candidate for public office by an individual, another candidate, or a political committee, have proven to be the most effective means of fostering public awareness of and reducing public skepticism about the current system of financing elections for public office. N.J.S.A. 19:44A-2.1(a).

The State has a compelling interest in preventing the actual or appearance of corruption and in protecting public confidence in democratic institutions by requiring an individual who is considering whether to be a candidate for office to comply with the same laws that apply to any candidate for public office. N.J.S.A. 19:44A-2.1(d). It is, therefore, reasonable for the State to promote these compelling interests by requiring an individual who acts like a candidate to comply with the current limitations, prohibitions, and requirements on campaign contributions and the disclosure of the sources and amounts of contributions and expenditures. N.J.S.A. 19:44A-2.1(e). The current maximum contribution under the Act that a Union can make to an individual is $2,600.00 per election and the maximum that a Union can contribute to a municipal political party committee is $7,200.00. See "Attachment A."

The City of Hoboken sought to complement the goals of the New Jersey Campaign Contributions and Expenditures Reporting Act P.L. 1973, c 83 (N.J.S.A. 19:44A-1 et seq.), as amended by enacting local legislation in three (3) areas: Public Contracting Reform (§20A); Redevelopment Pay-to-Play (§20C); and Political Contribution Limits or "Anti-Wheeling" (§20D). I will address each section in turn.

ANALYSIS OF HOBOKEN MUNICIPAL CODE CHAPTER 20D "POLITICAL CONTRIBUTION LIMITS"

Foremost, I note that recently Joel Mestre, President of the Hoboken Municipal Supervisors Association, reached out to the Hoboken City Council alleging that the Ordinance violates the Constitution of the United States because the maximum contributions allowed fall below what is permitted by State statute, thereby undercutting any Union's ability to effectively advocate on behalf of its membership. Mr. Mestre has requested that the Council immediately amend its ordinances and adopt the State's campaign finance rules to avoid litigation and the attendant liability associated with same.

Section 20D was enacted to control the use of "wheeling." "Wheeling" is "political money laundering that serves the same purpose as giving money to individuals, who then fraudulently make contributions under their names. Often, both types of money laundering are done by the same individuals and entities who seek special benefits from the officials who are ultimately receiving the contributions." *https://www.cityethics.org/content/dealing-wheeling*.

Pursuant to §20D, no candidate or candidate committee for any Hoboken elective municipal office shall accept any monetary or in-kind contribution in excess of $500.00 per election, directly or indirectly from any "committee". Hoboken Municipal Code, §20D-4A. Committee is defined broadly as "Any political committee, continuing political committee,

political party committee, candidate committee, joint candidate committee or legislative leadership committee, as the terms are defined in N.J.S.A. 19:44A-1 et seq., and any PAC organized under §527 of the Internal Revenue Code." Id. Due to this broad definition, depending upon its structure, a union may be considered a political committee within the definition of the Ordinance.

Restrictions on campaign contributions raise potential legal issues under the First Amendment given that the Supreme Court has determined that contributions constitute political speech. Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the Supreme Court considered broad-based constitutional challenges to the Federal Election Campaign Act ("FECA"), as to the statutes' contribution and expenditure limits. As to the contribution limit, the Court upheld the provision recognizing that contribution limits, like expenditure limits, "implicate fundamental First Amendment interests," specifically the freedoms of "political expression" and "political association." Id. at 15, 23.

As to contribution limits, the Court discussed the effect of limitations on the size of contributions:

> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. Id. *at* 20-21

The Buckley Court recognized a "sufficiently important" governmental interest in "the prevention of corruption and the appearance of corruption" and the concern that large

contributions could be given "to secure a political *quid pro quo*." Id. at 25, 26. To be certain, the Court acknowledged that contribution limits "could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." Id. 21. The Court concluded that the federal law providing for a $1,000 limit on contributions to candidates would not have "any dramatic adverse effect on the funding of campaigns and political associations." Id. On the contrary, the Court found that the federal law contribution limits would "permit associations and candidates to aggregate large sums of money to promote effective advocacy." Id. at 22.

The Court however, afforded different degrees of First Amendment protection to contributions and expenditures finding that contribution limits are subject to more lenient review because they impose only a marginal restriction on speech, and will be upheld if the government can demonstrate that they are a "closely drawn" means of achieving a "sufficiently important" governmental interest. Id. at 24, 47. In contrast, expenditure limitations "represent substantial restraints on the quantity and diversity of political speech" because "virtually every means of communicating ideas in today's mass society requires the expenditure of money." Id. at 19. Independent expenditures have a "substantially diminished potential for abuse." Id. at 47.

In invalidating several expenditure limitations, the Court applied a strict scrutiny standard requiring that such limitations impose a substantial restraint on speech and therefore must be narrowly tailored to serve a compelling governmental interest. Id. 49-49, 57.

Cal.Med. Ass'n. v. FEC, 453 U.S. 182, 194-99 (1981), further defined and explained the holding in Buckley. In that case the Supreme Court upheld the federal law limiting contributions by an individual to a PAC to $5,000.00 per calendar year noting that in Buckley it had "upheld the various ceilings the Act placed on the contributions individuals and multicandidate political

committees could make to candidates and their political committees" because "such limitations served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained." Id. at 194-95. As to the limits on PAC contributions, the Court explained that the limitation was enacted "to prevent circumvention of the very limitations on contributions that this Court upheld in Buckley" noting that without such a limit, "an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channeling funds through a multicandidate political committee." Id. at 197-98.

Also instructive on the issue is Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 381-98 (2000), where the Supreme Court upheld Missouri state law limits on contributions to candidates ranging from $275 to $1,075. The principal issues in Nixon were whether Buckley is "authority for state limits on contributions to state political candidates and whether the federal limits approved in Buckley, with or without adjustment for inflation, define the scope of permissible state limitations today." Nixon, 528 U.S. at 381-82. The Court held Buckley "to be authority for comparable state regulation, which need not be pegged to Buckley's dollars." Id. at 382. In upholding the limits, the Nixon Court recognized the governmental interests of preventing actual and apparent corruption as sufficient justification for Missouri's contribution limits. Id. at 388-89 and upheld the limits.

In another challenge of state contribution limits the Court in Randall v. Sorrell, 548 U.S. 230 (2006) reviewed Vermont's limits on contributions to candidates for state office ranging from $200 to $400, depending on the office sought. Id. at 238. The Court once again examined whether the challenged "contribution limits prevent candidates from 'amassing the resources necessary for effective [campaign] advocacy;' whether they magnify the advantages of

incumbency to the point where they put challengers to a significant disadvantage; in a word, whether they are too low and too strict to survive First Amendment scrutiny." Id. at 248 (quoting Buckley, 424 U.S. at 21). The Court recognized the governmental interest in preventing corruption and the appearance of corruption but noted that the rationale "does not simply mean 'the lower the limit, the better.'" Id. "That is because contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability..."[a]s compared with the contribution limits upheld by the Court in the past, and with those in force in other States, [Vermont's] limits are sufficiently low as to generate suspicion that they are not closely drawn." Id. at 249. In striking down Vermont's contribution limits, the Court highlighted that Vermont's $400 limit on contributions to gubernatorial candidates was "well below the lowest limit" the Court had previously upheld—the $1,075 limit for candidates for Missouri state auditor upheld in Nixon, Id. at 250, the Court concluded that Vermont's contribution limits threatened "to inhibit effective advocacy by those who seek election, particularly challengers" and muted "the voice of political parties" and were thus unconstitutional. Id. at 261.

N.J.S.A. 40A:11-51 gives Hoboken the ability to issue contribution limits that are separate and distinct from those of the State in their "traditional" Pay-to-Play ordinances as follows:

> A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts therefrom to business entities that have made a contribution and limiting the contributions that the holders of a contract can make during the term of a contract. *Id*.

This provision further states that the provisions of the State Pay-to-Play act:

> [S]hall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Id.

To date, the constitutionality of the statute on First Amendment grounds has not been challenged. See Communication Workers v Christie, 413 N.J. Super. 229, 275 (App. Div. 2010)[1] However, this speaks only to traditional "Pay-to-Play" ordinances regulating contributions from vendors that seek to enter into contracts or have a current contract with a municipality and does not speak specifically to "anti-wheeling." The primary difference being that "anti-wheeling" ordinances regulate contributions from entities that do not have contracts with the municipality (and are typically not a "vendor" that would potentially provide services to a municipality). Additionally, "anti-wheeling" legislation essentially puts the onus on the candidate to not accept the donations, whereas more traditional Pay-to-Play regulations focus on the entity making the contribution and how that will impact their current or future ability to work with the municipality. Therefore in traditional Pay-to-Play regulations, an entity can make contributions up to the state limits, but this may inhibit their ability to have a contract with a municipality. In the "anti-wheeling" situation, the only result is that the entity is prohibited from making contribution up to the maximum allowed by the State and the candidate is prohibited from accepting.

Therefore although the State does not have any enabling legislation addressing "anti-wheeling" ordinances, in effect, the Ordinance is a local law setting forth restrictions on contributions. Since Buckley, the U.S. Supreme Court has consistently subjected contribution

[1] "With respect to the First Amendment and free speech infringement claims raised by appellants and without definitively deciding those issues here we refer to *Earle Asphalt*, supra, 401 N.J. Super. at 319-25, in which we sustained the constitutional validity of Chapter 51, in ruling upon an arguably-similar First Amendment and free speech challenge. Cf. *Citizens United v. Fed. Election Comm'n*, 558 U.S. ___, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)."

restrictions such as Hoboken Chapter 20D to intermediate, "closely drawn" scrutiny. See, e.g., Cal.Med, 453 U.S. at 194-99; Nixon, 528 U.S. at 381-98; and Randall, 548 U.S. at 238-69; see also McCutcheon v. FEC, 572 U.S. 185, 218 (2014) (applying closely drawn scrutiny to aggregate limit); FEC v. Beaumont, 539 U.S. 146, 161 (2003) (upholding federal corporate contribution ban under closely drawn standard). New Jersey courts "rely on federal constitutional principles in interpreting the free speech clause of the New Jersey Constitution." Karins v. City of Atlantic City, 152 N.J. 532, 547 (1998); N.J. Const. art. I, ¶ 6.

The current maximum contribution that a union can make to an individual pursuant to New Jersey State law is $2,600.00 per election and the maximum that a union can contribute to a municipal political party committee is $7,200.00. Buckley and its progeny make clear that limits on contributions to candidates are permissible if they are closely related to the governmental interest and so long as the limits are not so low as to prevent candidates and PACs from amassing the resources necessary for effective advocacy. See, e.g., Buckley, 424 U.S. at 20-29; CalMed, 453 U.S. at 194-99; Nixon, 528 U.S. at 381-98; and Randall, 548 U.S. at 238-69.

In essence, the letter from Mr. Mestre indicates that Hoboken unions believe the Hoboken contribution limitation prevents them from amassing the resources necessary for effective advocacy. The Nixon Court upheld state law limits on contributions to candidates ranging from $275 to $1,075 and found "'no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political associations, and thus no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy.'" 528 U.S. at 395-96 (quoting Buckley, 424 U.S. at 21). In contrast, a $400 contribution limitation by the State

of Vermont was viewed by the *Randall* Court as not being closely drawn to a legitimate government interest of preventing corruption. Randall, 548 U.S. at 249.

Hoboken's limit set forth in §20D lowers the permissible contribution of a union by $2,100.00 for an individual candidate and does not contain any statement or explanation within the ordinance as to the relationship between this amount and the legitimate governmental interest. Further, it is being alleged by entities within Hoboken that this limit is prohibiting them from effectively advocating for their interests. I opine that this extreme decrease in the permissible contribution amount has a strong possibility of being found as unconstitutionally low if challenged in that it prevents candidates and political committees from amassing the resources necessary for effective advocacy, and there appears to be no justification for the significant reduction or any close relationship between the governmental interests and the greatly reduced amount.

It should also be noted that New Jersey courts have invalidated an Executive Order seeking to apply Pay-to-Play restrictions to unions. See Commun. Workers of Am., AFL-CIO v. Christie, 994 A.2d 545, 571 (N.J. Super. App. Div. 2010). Although this Executive Order was invalidated for various reasons (and as indicated above did not address potential constitutional challenges), including separation of powers, ultimately the Court determined that as currently written, State laws do not support any interpretation of Pay-to-Play laws being applicable to labor unions. The Court indicated that if the State legislature wanted to create a Pay-to-Play law that would apply to labor unions it would "would require a significant overhaul of existing laws." Id. Although the facts in the above case differ, being that it was an Executive Order in question, by analogy, it could be argued that the City of Hoboken does not have the authority to create legislation which results in Pay-to-Play restrictions on unions outside of enabling legislation

from the State, as N.J.S.A. 40A:11-51 on its face does not apply to anything other than vendor contracts with municipalities (traditional "Pay-to-Play" laws).

Finally, enforceability of this specific provision of the Ordinance must also be considered. §20D-6 of the Ordinance indicates that the City Clerk of the City of Hoboken shall enforce it. §20D-7 sets forth penalties as follows:

> A. Any violation of this chapter shall be noncurable.
>
> B. Any candidate for Hoboken municipal elective office who receives a contribution which violates the provisions of this chapter shall refund the contribution within 30 days of becoming aware of the violation.
>
> C. Any candidate or committee that willfully and intentionally makes or receives any contribution in violation of this chapter shall be liable to a penalty equal to four times the amount of the contribution made.

There are various issues with these provisions. First, there is no explanation as to how the City Clerk would enforce the Ordinance and this is not in line with the duties of the City Clerk. It is not clear how the City Clerk would bring an action to enforce the Ordinance or what court would have jurisdiction. Further, §20D-7(B) does not define what "becoming aware" of the violation means or how someone could prove when the candidate "became aware" of the violation. Finally, it is also unclear where the "penalty equal to four times the amount of the contribution" would go if actually imposed by a court[2]. Due to these gaping holes in §20D -7C it is my understanding that it has not been enforced to date, leading to an unfair playing field within the political landscape. For example, a candidate who has accepted donations in contravention of the Ordinance has no consequences and would be able to utilize significant funds in the election, giving him or her an advantage over candidates attempting to abide by the Ordinance as written. Therefore this specific provision in the Ordinance merely sets forth

[2] As a previously unprocessed complaint made clear, this amount could easily equate to hundreds of thousands of dollars.

contribution limits that are either voluntarily followed or disregarded by candidates without consequence and without accomplishing the goal of "anti-wheeling" because of the inability to enforce.

ANALYSIS OF HOBOKEN'S REDEVELOPMENT PAY TO PLAY MUNICIPAL CODE –SECTION 20C- BANNING POLITICAL CONTRIBUTION

Hoboken's' Redevelopment Pay to Pay Reform §20C presents a complete ban for developers to make reportable contributions to:

> A candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Hoboken or any person serving in an elective municipal office in the City of Hoboken or to any Hoboken or Hudson County political committee or political party committee or to any continuing political committee or political action committee that engaged in the support of Hoboken municipal or Hudson County elections and/or Hoboken municipal or Hudson County candidates, candidate committee, joint candidate committees, political committees, political parties, political party committees (hereinafter "PAC")….
>
> *During the applicable time period which, for purposes of this section, shall be defined as the time period between the date that the property which is the subject of the redevelopment project has been included in a memorializing resolution adopted by the governing body directing the Planning Board to conduct a preliminary investigation to determine if the site is in need of redevelopment pursuant to and in accordance with the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the later of the termination of negotiations or rejection of any proposal or the termination of the redevelopment agreement.* Hoboken Redevelopment Pay to Pay Reform § 20C-2A.

The definition of a developer broadly includes owners, partners, majority shareholders, and their family members, as follows:

> As defined in N.J.S.A. 40A:12A-3, a "redeveloper" means: (i) an individual, including the individual's spouse and any child or children; or (ii) sole proprietorship, firm, corporation, partnership and any partner thereof, limited-liability company, limited-liability partnership and any partner thereof, business trust, organization, association, public body or any other legal commercial entity organized under the laws of the State of New Jersey or of any other state or foreign jurisdiction, including any principal; or (iii) any individual, partner, principal, stakeholder or other entity which owns or control 10% or more of the profits, assets, equity, stock, ownership or income interest in a person or entity, as defined in (i) or (ii) above, and any determination of percentage, ownership or

> control will combine the individual's interest with those of the individual's spouse and child or children; or (iv) all partners or officers of such an entity, in the aggregate, and their spouses and child or children; (v) any subsidiary directly or indirectly controlled by the redeveloper, as the term is defined herein; and (vi) any political organization organized under Section 527 of the Internal Revenue Code (26 U.S.C. § 527) that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund or political party committee; that shall enter into or propose to enter into an agreement with the City of Hoboken or any redevelopment agency of the City of Hoboken or any other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project within the City of Hoboken.

The contribution and disclosure requirement also applies to consultants that provide professional services to the developer including the lobbying and negotiation of the development agreement. See Section 20C-5. So for example, any attorney, planner, or engineer working on the redevelopment project is subject to the same requirements.

The law governing contribution limits and/or bans as to contractors and other professional services also follows Buckley v. Valeo, 424 U.S. 1 (1976) and its progeny and have been upheld if the government can demonstrate that the limitation or ban is a "closely drawn" means of achieving a "sufficiently important" governmental interest being the prevention of corruption and the appearance of corruption. Id. at 24, 47; Cal.Med. Ass'n., 453 U.S. at 194-5; See Fed. Election Comm'n v. Beaumont, 539 U.S. 146, 161-63, 123 S.Ct. 2200, 156 L.Ed.2d 179 (2003) (applying the closely drawn standard in upholding a federal law banning campaign contributions made by corporations). That being said there is also no legislative authorization for municipal redevelopment "Pay-to-Play" ordinances. Redevelopment designations and redevelopment agreements have never before been viewed as public contracts, nor have they been subject to public bidding laws.

The closely drawn standard can be applied by analogy to Hoboken's Redevelopment Pay-to-Play law in the absence of specific case law on the topic. It should be noted that the relevant time period, as indicated above, which covers the time period from the time that a preliminary investigation is authorized until the termination of a redevelopment is extremely broad and extensive. This time period could span years or even decades. Taken in conjunction, the broad definition of a redeveloper and the broad time period during which the Ordinance applies demonstrates that the Ordinance is not closely drawn to prevent corruption or the appearance of corruption. For example, the current version of the ordinance would prevent a redeveloper from entering into a redevelopment agreement in 2020, if said redeveloper's adult child made any reportable donation to a Hoboken elected official in 2010 (the year the property was approved for an investigation). Although there is a slight chance that the redeveloper's child made a donation ten years prior to the redevelopment agreement with the intention that said donation would give his father to have preferential treatment in the future, it is just as likely (if not more likely) that said grown child made the donation in support of his own political speech and did not have any idea of the future redevelopment agreement. It is also very likely that the political landscape would have changed significantly during that period of time. Therefore, it is my opinion that these regulations are not closely related to preventing corruption at the time a redevelopment agreement is entered. Instead, these regulations serve to completely prohibit individuals and their families from participating in the political process if there is any possibility that they may enter into a redevelopment agreement in Hoboken at any point in the future. It also has the effect of prohibiting any professional (traffic engineer, architect, planner, attorney, etc.) that may in the future be contacted by a builder to work on a Hoboken redevelopment project from participating in the political process by way of donation so as to not lose the

potential to work. This makes even less sense in practice given that many individuals do not know where a redevelopment area will be established or that they will end up having property to redevelopment in said area.

ANLAYSIS OF HOBOKEN'S PAY-TO-PLAY REGULATIONS FOR TRADITIONAL VENDORS (SECTION 20A)

As discussed above, N.J.S.A. 40A:11-51 gives Hoboken the ability to issue contribution limits that are separate and distinct from those of the State in their "traditional" Pay-to-Play ordinances. See Schroeder v. County of A., 112 A.3d 613, 623 (N.J. Super. L. Div. 2014). Hoboken Code Section 20A "Professional Service Contracts" differs significantly from the State's Pay-to-Play laws which apply to municipalities in the absence of the municipality developing their own, stricter regulations.

To summarize the main differences, the state regulations only apply to contracts with an aggregate value of over $17,500.00. Hoboken's Pay-to-Play law applies to all professional services contracts regardless of the amount, therefore all professional service contracts, even those below $17,500.00 and below the City's purchasing limit (in Hoboken's case, $40,000.00), must be awarded on the basis of qualification based, competitive negotiation (a "fair and open process") unless this requirement is waived by the City Council. Additionally, the state laws only place restrictions on contracts awarded through a non-fair and open process (i.e. simply selecting a vendor without advertising the position or evaluating other submissions). Pursuant to the state law, for any contract awarded following a "fair and open" public process, contributions of the successful vendor are not restricted.

Therefore it is permissible for Hoboken to establish regulations that differ from the State's regulations. That being said, it does not appear that these regulations are closely drawn to

the goal of "transparency" in the public contracting process. Pursuant to the State's Pay-to-Play laws, any contract that is awarded pursuant to a fair and open process is not subject to political contributions limits. The rationale is that the contract opportunity is open to any entity to apply and the entire process is transparent to the public, including the advertisement for the contract, the applicants, and the municipality's ultimate determination to award the contract. Therefore, the public will be aware if the municipal officials are awarding contracts only to their political donors and may take this into consideration in the democratic process. If a municipality chooses to forgo this public process and award a "non-fair and open" contract, in that case, the entity must not have made a contribution to a municipal entity within a certain period and during the term of the contract. Hoboken's ordinance eliminates this structure (which was determined at the State level to be an appropriate balance of encouraging transparency with a minimum effect on political speech) without any analysis establishing a close relationship between the additional regulations and the goal of promoting transparency and eliminating corruption and/or the appearance of corruption.

CONCLUSION

- **Section 20D ("Political Contribution Limits")** – This section serves to regulate contributions from "Committees" which includes various political committees including unions in some cases, reducing the permitted contributions from $2,600 to $500.00. Although the law does allow for regulations on contributions, they must be "closely related" to the governmental interest and must not be so small so as to prevent effective advocacy. In this case, there is no indication of a close relationship between the stated goal and the large decrease from the State law and it has been indicated by local unions that this amount is not sufficient for them to effectively advocate. Further, the

enforcement and penalty provisions of this section are incomplete and nonsensical, making it impossible to enforce and therefore creating an uneven playing field between those willing to disregard the law as written and those attempting to abide by the law. In this manner, the Ordinance as currently written is not accomplishing the stated goal and should be repealed.

- **Section 20C ("Redevelopment Pay-to-Play")** – Section 20C attempts to regulate contributions from redevelopers in order to prevent corruption or the appearance of corruption. However, there is no State law addressing the regulation of municipal Redevelopment contracts and they are not equivalent to vendor contracts and are not subject to public contracting laws. The restrictions set forth in this section are also not closely related to the stated purpose, particularly due to the broad definition of redeveloper and extensive time period covered. Therefore, I also recommend repealing this section.
- **Section 20A ("Public Contracting Reform")** – Although State law does specifically give the City the ability to create a local Pay-to-Play ordinance for public contracts that is more stringent than the State, Hoboken's law is unnecessarily convoluted and the additional regulations are not closely related to the goal of transparency in the public contracting process. Therefore, I would recommend utilizing the State Pay-to-Play regulations in place of this section.

For the reasons stated above, I recommend that the City consider repealing Municipal Code Sections §20A, §20C, and §20D and utilizing the State Pay-to-Play regulations. Although I do not foresee any issues, after following the State's regulations for a period of time the City

can address any concerns particular to Hoboken by way of future legislation. I trust this is responsive to your inquiry, but if you have any further questions please feel free to call me.

Very truly yours,

HUNT, HAMLIN & RIDLEY

Raymond L. Hamlin /s/
RAYMOND L. HAMLIN