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MEMORANDUM

TO: **Spencer Overton**
Principal Deputy Attorney General
Office of Legal Policy, U.S. Department of Justice

FROM: **Craig Holman, Public Citizen**

DATE: **January 13, 2010**

RE: Case record on pay-to-play restrictions strengthening the competitive bidding process for highway contracts

Nine states, the Securities Exchange Commission and several local jurisdictions currently restrict government contractors from making campaign contributions to those responsible for issuing government contracts, known as "pay-to-play" restrictions (*see* Appendix A).[1] The objective of pay-to-play policies is to reduce corruption and favoritism in the awarding of government contracts and thereby enhance fair and competitive bidding for taxpayer-funded projects. Since pay-to-play restrictions are narrowly tailored to apply to a specific class of persons (government contractors), this anti-corruption policy should be viewed as government contracting reform rather than campaign finance reform.

Jurisdictions that have adopted pay-to-play restrictions have done so in response to the actual or perceived awarding of contracts by government officials based on favoritism to campaign contributors rather than merit or cost effectiveness. As documented below, such contracting scandals frequently have cost taxpayers dearly in the form of a "hidden tax" – through rigging the pool of potential contract bidders, inflating bids on contracts, issuing contracts for unnecessary work, and/or inefficiency and waste in awarding contracts to businesses not qualified to do the job.

As former U.S. Attorney Christopher Christie (now New Jersey governor) described the situation of campaign contributors routinely winning government contracts in New Jersey, which led to that state's pay-to-play law: "Contracts are being given for work that isn't needed. Or second, contracts are given to people who aren't qualified to do the job, so the job isn't done right and they have to come back and do the work again."[2]

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[1] The federal government also prohibits campaign contributions from government contractors [2 U.S.C. 441c(a)(1)]. However, because businesses may make campaign contributions through PACs, the ban on campaign contributions under this provision applies exclusively to individuals who constitute sole proprietors of government contracts, including contracts for federal highway projects.

[2] Associated Press, "Officials' Crimes Cost N.J., Taxpayers," *Trenton Times* (August 19, 2003).

This memorandum develops a case record where available of the cost to taxpayers of pay-to-play abuses in government contracting and demonstrates that pay-to-play restrictions have strengthened the competitive bidding process. Particularly in states and localities that have a history of corruption in government contracting, pay-to-play restrictions have saved taxpayer's money and, as shown in New Jersey, even increased the pool of competitive bidders for government highway contracts.

In two unusual instances, the Federal Highway Administration (FHWA) speculated that state pay-to-play policies may inhibit competitive bidding for federal highway projects and thus run afoul of federal law. FHWA withheld federal highway funds originally from the state of New Jersey and more recently Illinois, until those states exempted federal highway projects from their pay-to-play restrictions. The speculations of the FHWA are unwarranted, and the actions taken by the federal agency renew the prospects of unfair advantage and reduced competition for government contracts in those states and needlessly risking taxpayer funds for dishonest or substandard services.

A. Federal Highway Law and the 1986 Attorney General's Opinion Regarding Competitive Bidding

Federal law governing the letting of highway contracts requires that states employ a competitive bidding process in awarding highway contracts (unless some other process can be demonstrated as more cost effective). Specifically, 23 U.S.C. 112 reads in part:

> "(b) Bidding Requirements. -
> (1) In general. - Subject to paragraph (2), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State highway department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications."

In 1986, the Attorney General issued an appropriate opinion that a New York City ordinance unnecessarily restricted the potential pool of government contractors in violation of federal law.[3] New York City imposed a political burden on potential contractors, requiring them to certify that they had not done business in South Africa in order to qualify for government contracts.

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[3] 10 U.S. Op. Off. Legal Counsel 101 (1986).

The 1986 Attorney General's opinion is a valid interpretation of federal law that political or other extraneous requirements should not be imposed by states because they unduly restrict the competitive bidding process.

In response to a history of undue influence peddling in its procurement process, the state of New Jersey implemented Executive Order #134 on October 14, 2004, restricting campaign contributions from government contractors to those who are responsible for awarding the contracts. Many years later, in 2009, Illinois also implemented a pay-to-play law following the efforts of former Gov. Rod Blagojevich to award a highway contract and other government contracts in exchange for campaign contributions.

Citing the 1986 Attorney General opinion, FHWA determined that these anti-corruption government contracting procedures would have a comparable effect of reducing the pool of potential bidders for highway contracts as the anti-Apartheid certification program, and that such an action would not be cost effective under 23 U.S.C. 112.[4] The letter from Norman Stoner of the FHWA to the Illinois Department of Transportation, for example, reads: "These provisions are not consistent with the economical and efficient use of Federal-aid funds. They limit the pool of potential bidders and impose requirements unrelated to the qualifications of contractors to perform the work in a competent and responsible manner."[5]

Consequently, FHWA forced both New Jersey and Illinois to exempt federally-funded highway contracts from their pay-to-play laws.

As shown below, FHWA's determination that pay-to-play laws are in any way similar to the anti-Apartheid certification program is misguided. Pay-to-play laws are government *contracting procedures* designed to ensure fair and competitive bidding. The anti-Apartheid certification program was a *political restriction* designed to promote racial equality in South Africa.

Furthermore, the state pay-to-play laws in New Jersey, Illinois and other jurisdictions are specifically intended to:

- **Ensure that government contracts are awarded based on merit.**
- **Promote a robust and fair competitive bidding process.**
- **Reduce the waste of taxpayer dollars involved in awarding government contracts based on favoritism and campaign contributions.**

These purposes are consistent with the economical and efficient use of federal-aid funds and relate to the qualifications of contractors to perform their work in a competent and responsible manner.

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[4] Dennis Merida, U.S. Secretary of Transportation, Letter to John Lettiere, Commissioner of New Jersey's Department of Transportation (January 6, 2005).

[5] Norman R. Stoner, Division Administrator, Federal Highway Administration, Letter to Milton P. Sees, Illinois Department of Transportation (Dec. 2, 2008).

B. Origins of Pay-to-Play Laws and the Cost of Pay-to-Play Abuses in the Bond Markets

In 1994, the Municipal Securities Rulemaking Board (MSRB) adopted Rule G-37, creating one of the first effective pay-to-play restrictions in the nation. The Securities Exchange Commission (SEC), at the strong urging of then-Chairman Arthur Levitt, approved rule G–37 after concluding that pay to play practices harm municipal securities markets at the cost to investors and taxpayers. An analysis by the SEC that prompted the pay-to-play restriction found that campaign contributions from bond dealers to municipal officials responsible for awarding municipal securities government contracts cost taxpayers dearly by "fostering a selection process that excludes those firms that do not make contributions, causes less qualified underwriters to be retained, and undermines equitable practices in the municipal securities industry."[6]

Simply put, Rule G–37 prohibits a broker-dealer from engaging in municipal securities business with a municipal issuer for two years after making a political contribution to an elected official of the issuer who can influence the selection of the broker-dealer. The rule also prohibits a broker-dealer from providing or seeking to provide underwriting services to a government if the firm or any of its ''municipal finance professionals'' solicit contributions for a candidate or an elected official of that government, or if they solicit payments to political parties where the firm is providing or seeking to provide services to a government client. Rule G-37 has since served as a model for subsequent state and local pay-to-play restrictions.

Rule G-37 was promptly challenged in court by William B. Blount, a party official in Alabama and a securities dealer. In *Blount v. SEC*[7], a federal court of appeals upheld the pay-to-play restriction in its entirety and the Supreme Court denied cert upon appeal. In a separate case in 2009, Blount pleaded guilty to conspiracy and bribery in attempting to secure municipal bond contracts and agreed to forfeit $1 million to the SEC.[8]

Rule G-37 has long become an established and widely accepted restriction on campaign contributions from municipal securities dealers. Recently, the SEC has sought to expand the scope of Rule G-37 in light of similar pay-to-play abuses in the management of public pension plans in California, New York and several other states. According to the SEC Notice of Proposed Rulemaking: "we were increasingly concerned that the very success of the rule may have caused

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[6] Securities Exchange Commission, In the Matter of Self-Regulatory organizations: Order Approving Proposed Rule Change by MSRB Relating to Political Contributions and Prohibitions on Municipal Securities Business, Exchange Act Release No. 33868 (April 7, 1994) at Section V.

[7] Blount v. SEC, 61 F.3d 938 (1994).

[8] Ken Doyle, "J.P. Morgan to Pay $75 Million, Forfeit $647 Million Over Alleged Role in Muni Scam," *BNA Money & Politics Report* (Nov. 5, 2009).

pay-to-play practices to migrate to an area not covered by the MSRB rules – the management of public pension plans."[9]

Most of the public funds managed by investment advisers pay for state and municipal pension plans. These pension plans have over $2.2 trillion of assets. The management of these funds significantly affects publicly held companies and the securities markets. But most significantly, their management affects taxpayers and the beneficiaries of these funds, including the millions of present and future state and municipal retirees who rely on the funds for their pensions and other benefits. According to the SEC, pay-to-play practices undermine the fairness of the selection process when advisers seeking to do business with the governments of states and municipalities make political contributions to elected officials or candidates, hoping to influence the selection process. In other cases, political contributions may be solicited from advisers, or it is simply understood that only contributors will be considered for selection.

Recently, an investigation in New York by State Attorney General Andrew Cuomo has confirmed the harm of pay-to-play abuses in the management of that state's pension fund and is propelling a New York state pay-to-play law as well as the nationwide rule change proposed by the SEC. An ongoing investigation surrounding the state's $116.5 billion Common Retirement Fund has resulted in a 123-count indictment and four guilty pleas thus far.[10]

Two top advisers to Alan G. Hevesi, the former state comptroller, Hank Morris and David Loglisci, were charged of turning the state pension fund into a scheme for political donations and for taking tens of millions of dollars in kickbacks for themselves. "The indictment charges crimes that go beyond the grossest manifestation of pay to play," Cuomo said. Morris pocketed $30 million in pension-related fees over four years from companies that won business with the fund. According to the indictment, companies that wouldn't pay often didn't get business.[11]

The investigation's findings prompted New York legislators to draft the Taxpayers' Reform for Upholding Security and Transparency Act (T.R.U.S.T.) which, among other things, prohibits campaign contributions from those seeking to do business with the state pension system. The New York scandal and similar pay-to-play scandals with other state pension funds is propelling the SEC proposal to broaden Rule G-37 nationwide.

C. Pay-to-Play Abuses at the State Level Undermine Competitive Bidding and Are Costly to Taxpayers

Just as pay-to-play abuses in the securities and pension businesses have been costly to taxpayers, pay-to-play abuses for standard government contracts have also been expensive and wasteful of taxpayer dollars.

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[9] Securities Exchange Commission, Notice of Proposed Rulemaking: Political Contributions by Certain Investors, 17 CFR Part 275 (Aug. 3, 2009).

[10] State of New York Office of the Attorney General, "Cuomo Announces Legislation to Reform State Pension Fund," Press Release (Oct. 8, 2009).

[11] Kenneth Lovett and Melissa Grace, "Consultant Hank Morris, Hevesi Aide David Loglisci Get Corruption Charges in $35 M Pension Scheme," *New York Daily News* (Mar. 19, 2009).

An early study conducted by Dr. Roland Zullo at the University of Michigan's Institute of Labor and Industrial Relations supports the idea that campaign contributions serve to undermine the bidding process. [12] The study examined public-private expenditures for highway and building projects in the state of Wisconsin from 1991-2000 as well as construction records from the Department of Transportation and Department of Administration. The findings uncovered a strong correlation between the magnitude of state highway construction projects and the magnitude of donations, supporting the perception that unregulated campaign giving allows a select few to dominate government contracting and therefore undermine the competitive bidding process.

New Jersey has an unfortunate history of contractors attempting to influence the government contracting process through campaign contributions. The Parsons scandal is perhaps the most sensational and documented. Parsons Infrastructure & Technology Group, Inc. set out a "campaign strategy" to win a $392 million government contract by using campaign contributions and contract lobbying to influence the Request for Proposal (RFP) and rig the competitive bidding process.

In August 1998, the State of New Jersey awarded a contract to Parsons Infrastructure & Technology Group Inc., to privatize automobile inspections. The seven-year, $392 million deal – won by Parsons Infrastructure without competition – called for the firm to develop and maintain a motor vehicle inspection program to meet vehicle exhaust emission standards. The program went into operation on December 13, 1999. Within weeks, the system broke down. Questions lingered concerning the process by which the contract had been written, and how and why Parsons Infrastructure had emerged as the lone bidder.

According to a state investigative report, months before Parsons Infrastructure emerged as the sole bidder, company executives met privately and exclusively with state officials to discuss substantive matters related to the design and timing of the state's RFP. Before and after the issuance of the RFP, Parsons Infrastructure received exclusive information that gave it a head start on the deployment of corporate resources for a bid submission. Once the contract was awarded, a pattern was established in which the state repeatedly granted waivers to Parsons Infrastructure with regard to implementation benchmarks and penalties governing nonperformance – the same stringent timeline and penalties that, in some cases, had caused other firms to decide against submitting competing bids.[13]

The New Jersey State Commission of Investigation, charged with examining the scandal, found that during the years bracketing the contract award, substantial sums were contributed to candidates and political committees in New Jersey by entities that make up the Parsons corporate family. In a number of instances, the chief Trenton lobbyist for Parsons served as a fund-raising middleman, personally soliciting corporate donations and passing them to select politicians, and

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[12] Roland Zullo, Campaign Donations and Public-Private Contracts: Wisconsin 1991-2000 (January 2003).

[13] State of New Jersey, Commission of Investigation, N.J. Enhanced Motor Vehicle Inspection Contract (March 2002).

working with Parsons Infrastructure executives to develop the campaign strategy for the contract.[14]

In the end, the Commission found that Parsons had tainted the competitive bidding process through access to state officials gained in part by more than a half million dollars in campaign contributions, was ill-equipped to manage the government contract, and that the "Parsons boondoggle" cost taxpayers another $200 million after being awarded the contract. Parsons also frivolously spent millions in federal and state dollars on hiring sub-contractors who were not needed.[15]

Massachusetts has fallen victim to a Parsons scandal of its own when it made the decision in 1985 to hire Betchel/Parsons Binckerhoff to undertake the construction of Boston's notorious "Big Dig." The Big Dig was nation's costliest public works project in history with a final price tag estimated to be around $22 billion. In 2000, multiple investigations were launched into the "Big Dig" at all levels of government and by the media. One investigation uncovered that Bechtel along with its subcontractors and lobbyists had contributed about $225,000 to the campaign funds of Massachusetts congressional delegates and the state's top elected officeholders since construction began. Not surprisingly some of those same elected officials played a role in helping Bechtel avoid much deserved scrutiny.[16] Massachusetts does not currently have pay-to-play laws on their books leaving them vulnerable to future scandals.

Illinois has been the home for scandal after scandal when it comes to government contracts and campaign contributions. Former Gov. George Ryan of Illinois, once rumored to be in the running for a Nobel Peace Prize, went to prison for issuing state contracts in exchange for financial contributions and gifts over a period of 10 years. Impeached Gov. Rod Blagojevich continued the corrupt selling of government contracts with even more astounding pay-to-play scandals – for example, that he offered a highway contractor additional government funding for a project in exchange for campaign contributions.[17] Even with fairly detailed procedural guidelines developed by FHWA for awarding highway contracts, this pay-to-play scandal went entirely unnoticed by FHWA officials.

In just one of the complaints against Blagojevich, out of the initial 78-page criminal complaint filed against the former Illinois governor, a clear picture emerges of substantial costs to the public and business interests through the pay-to-play corruption. The complaint reads in part:

> "In response to questions posed by agents, Individual A has described efforts by ROD BLAGOJEVICH and Fundraiser A to obtain campaign

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[14] Id.

[15] Id.

[16] Lewis, Raphael. Murphy, Sean P. "Lobbying Translates into Clout" *Boston Globe.* (11 February 2003);Lewis, Raphael. "AG Took Donations from Big Dig Firms Contributions Totaled $35,000" *Boston Globe* (30 December 2004.)

[17] Natasha Korecki & Abdon M. Pallasch, "Illinois Governor Rod Blagojevich Taken into Federal Custody," *Chicago Sun-Times* (Dec. 9, 2009), *available at* http://www.suntimes.com/news/metro/blagojevich/1321300,rod-blagojevich-illinoisgovernor-custody-120908.article.

> contributions from state contractors by the end of the year. Specifically, Individual A advised that ROD BLAGOJEVICH is seeking a total of approximately $2.5 million in campaign contributions by the end of the year, principally from or through individuals identified on a list maintained by Friends of Blagojevich. The FBI has obtained a copy of that list, which identifies individuals and entities targeted for campaign contributions, as well as amounts sought from those individuals and entities. A comparison of the names and entities on that list with information available from public sources and FBI investigative files reflects that numerous of the individuals and entities on that list have state contracts or have received public benefits conferred by ROD BLAGOJEVICH, such as appointments to positions in state government."[18]

Pay-to-play corruption can even be pricey at the local level. One study in Cook County, Illinois, for example, found that in 2008 the county had issued 11 specialty contracts worth $11.8 million. All the contracts were awarded to campaign contributors. Three of the contracts had only one bidder and five were awarded to higher bidders based on special contractor qualifications.[19]

Connecticut's former Gov. Rowland resigned in 2004 following accusations that he had improperly received over $100,000 worth of gifts and campaign contributions from state contractors in exchange for coveted state contracts. Unfortunately for the state of Connecticut he is not the only public official in recent history to resign because of scandal. In the last five years in that state almost a half dozen high profile public officials have been arrested and have either pleaded guilty or been convicted for charges that include: bribery, conspiracy, extortion, and money laundering. Connecticut eventually followed in the footsteps of the Securities Exchange Commission, New Jersey and Illinois by enacting one of the nation's strongest pay-to-play laws in 2005, which recently survived a court challenge *in toto*.[20]

It is difficult to put a price tag on how much these pay-to-play abuses cost local, state and federal taxpayers, but the sheer scope of government officials directing contracts to campaign contributors strongly suggests the cost is huge. Part of the difficulty of pinning down the cost of corruption is its clandestine nature – corrupt officials do not want their activities, and their cost to taxpayers, known. Nevertheless, it is reasonable to assume that pay-to-play abuse in government contracting costs taxpayers through waste, inefficiency, inflated bids, poor service and the discouragement of honest bidders in the government contracting process.

D. Pay-to-Play Laws Have No Discernible Effect on Competition for Highway Contracts

New Jersey's pay-to-play law has had no discernible effect on competition for contracts awarded by the state Department of Transportation. In fact, competition tends to be greater for highway contracts in which campaign contributions are not allowed to be a consideration in awarding the

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[18] Criminal Complaint, United States v. Rod Blagojevich and John Harris, U.S. District Court, Northern District of Illinois (December 2008) available at: http://www.justice.gov/usao/iln/pr/chicago/2008/pr1209_01a.pdf

[19] Rob Olmstead, "In Cook Co., Contracts, Campaign Donations Intertwined," *Daily Herald* (July 6, 2009).

[20] Conn. Gen Stat. §9-612

contracts than for FHWA-financed contracts in which campaign contributions may be factor. Competition generally is more robust under the pay-to-play restriction both in absolute numbers of bidders, and in average numbers of bidders per contract, than under FHWA-financed contracts.

Given the constraints imposed on the state by FHWA, New Jersey decided to classify contracts issued by the Department of Transportation as either federally-funded contracts, in which bidders may make campaign contributions to those responsible for awarding the contracts, or 100% state-funded contracts, in which bidders may not make such campaign contributions. This classification policy was implemented in 2005. Due to the fact that Illinois only recently enacted its pay-to-play law, there are no comparable data for Illinois.

As shown in Tables 1 and 2 below, the total number of bidders, and average number of bidders per contract, is usually more robust for state contracts than for FHWA-financed contracts, at least until FY 2009 when the federal stimulus program began to take effect. From FY 2005[21] through FY 2008, there were 1,171 bidders for state contracts, averaging 4.32 bidders per contract. Conversely over the same time period, there were 625 bidders for FHWA-financed contracts, averaging 4.14 bidders per contract. More so, the total number of bidders and competitiveness per contract continues to grow each fiscal year. Clearly, there has been no detrimental impact on the level of competition for highway contracts from the state's pay-to-play law.

FY 2009 skews the typical pattern of competition for highway contracts somewhat because that is the year in which the federal stimulus program began to take effect. Nevertheless, the bidding competition for both state and federal contracts remains robust.

Table 1:
Total Number of Bidders for Federal and State Highway Contracts

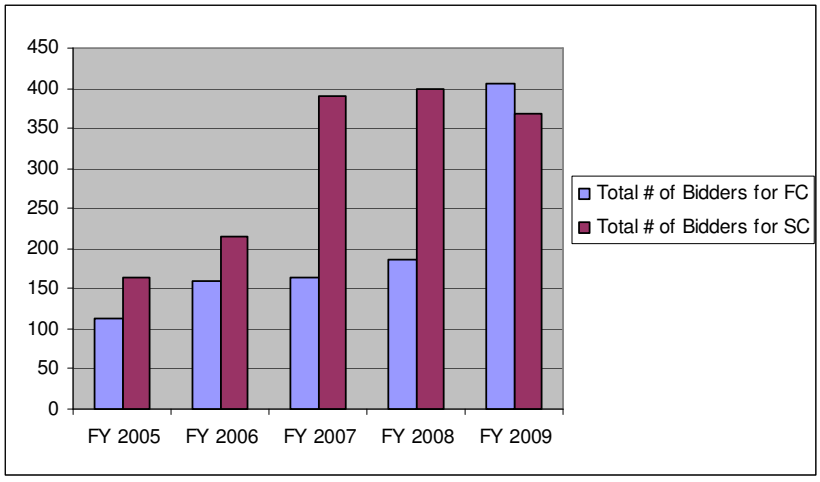
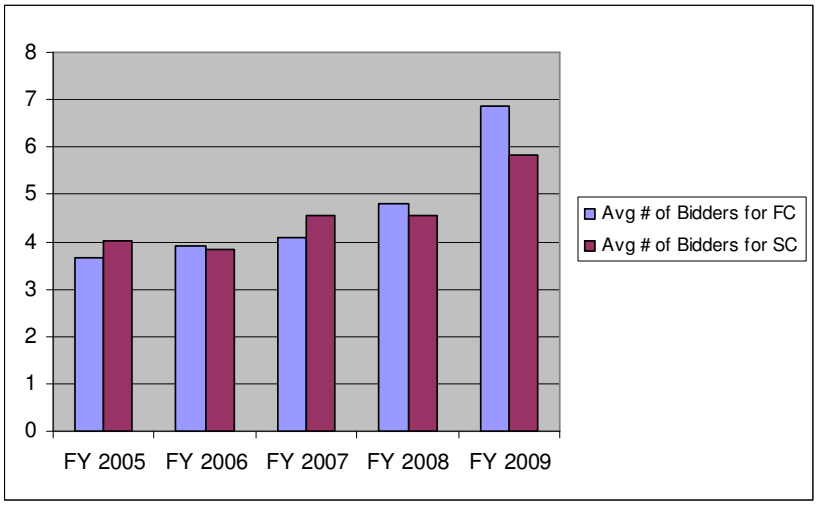


Table 2
Average Number of Bidders for Federal and State Contracts

[21] The classification policy of highway contracts in New Jersey began in January 2005, so the figures for FY 2005 comprise only half the actual fiscal year.



While the levels of competition are not impacted by the state's pay-to-play law, the integrity of the competitive process has been greatly enhanced. It probably comes as a relief to many state contractors that they no longer have to provide campaign contributions to those responsible for awarding the contracts in order to curry favor in the bidding process. For state contracts, potential bidders no longer feel compelled to donate to the incumbent governor or to party officials. Competition for contracts now focuses on the merits of the contractors and the quality of the bids.

The dramatic surge in stimulus money for highway contracts in FY 2009, however, raises a red flag. There is no comparable restriction on the influence of campaign contributions in the bidding process for FHWA-financed contracts. In the last few months of FY 2009, nearly all highway contracts issued by New Jersey were financed in whole or in part by FHWA. With the number and dollar value of these contracts significantly larger than in previous years, the potential for corruption and undue influence peddling through campaign contributions is returning.

New Jersey's pay-to-play laws as demonstrated have had no clear discernable effect on competition. The laws have in turn sought to strengthen the competitive bidding process by removing an extraneous factor demonstrated in some states to have undermined the bidding process – campaign contributions.

E. Conclusion: The Attorney General Should Clarify that Pay-to-Play Laws Constitute Government Contracting Reforms that Are Consistent with the Competitive Bidding Requirements of 23 U.S.C. 112

In a stunning setback to the effort to clean up New Jersey's contracting procedures, Dennis Merida, Administrator of the New Jersey Division of FHWA, intervened to block the state's contracting law. According to FHWA, New Jersey's pay-to-play policy of divorcing campaign money from government contracts is neither "cost effective" nor an "emergency circumstance" and thus, the FHWA contended, failed to conform to federal contracting standards.[22] Equally

[22] Federal Highway Administration, Memorandum: "New Jersey E.O. #134" (Nov. 18, 2004).

stunning is FHWA's recent intervention in Illinois, which follows sensational allegations of pay-to-play corruption leveled against the state's last two governors, including a scandal involving highway projects. As one Illinois legislator said during floor debate to exempt federal highway funds from the state's new pay-to-play law:

> *"We would be ineligible for that federal-funding component without language exempting those contracts … we're simply precluded from putting additional restrictions on these road contracts over and above those which the federal government have. I don't think it is a just outcome; I don't think it's such a logical outcome, especially in light of our history here."*[23]

FHWA's decision in both instances relies upon two factors: (1) a federal statutory requirement that highway contracts are issued "by competitive bidding, unless the State highway department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists" and (2) a 1986 Attorney General opinion that declared a New York City ordinance requiring government contractors to certify they have not done business in South Africa in violation of the federal statute on competitive bidding.

Pay-to-play restrictions have nothing in common with the anti-Apartheid certification program and should not be treated as unduly limiting the pool of competitive bidders for highway contracts. Pay-to-play restrictions are government contract reforms designed to ensure that competitive bidding is fair and open; pay-to-play laws are not political objectives extraneous to the contracting process.

More importantly, states and other jurisdictions that have adopted these contracting reforms have done so in response to a demonstrated history of government contracts being awarded on the basis of favoritism and campaign contributions, rather than on the basis of merit. In jurisdictions where pay-to-play corruption is a serious problem, there is extensive documentation that:

- Campaign contributors have been provided inside information to rig the bidding process;
- Contract specifications have been designed to favor specific campaign contributors;
- Potential honest contractors have been discouraged from joining the bidding process; and
- Contractors who make campaign contributions have been rewarded with subsequent amendments to, and continuations of, their contracts.

In many instances, pay-to-play corruption has been very costly to local, state and federal taxpayers and business interests. The cost of pay-to-play corruption has been documented to come in many forms, including:

- Contracts awarded under inflated bids, due to a rigged bidding process;
- Projects awarded to government contractors not qualified or equipped to perform the job which then must be redone at taxpayer expense;
- Contracts for unnecessary work issued to reward campaign contributors;

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[23] Illinois Rep. John Fritchey, 95th General Assembly, Transcription Debate, 301st Legislative Day (Jan. 12, 2009).

- Extraneous expenses, such as the costs associated with buying favoritism in the contracting process or exorbitant salaries and bonuses, passed onto taxpayers; and
- Costly new conditions or extensions added to contracts already awarded to favored contractors.

The Attorney General should issue a supplementary opinion clarifying that pay-to-play corruption undermines the competitive bidding process for highway contracts and can be costly to taxpayers and businesses. Furthermore, in jurisdictions with a history of corruption in government contracting, pay-to-play restrictions on campaign contributions from government contractors can strengthen the competitive bidding process and help ensure economical and efficient use of federal-aid funds.

State pay-to-play laws are complementary of, not contrary to, federal law and enhanced competition in government contracting.