Public Citizen ● Common Cause ● Public Campaign
Democracy 21 ● Center for Civic Responsibility

April 28, 2005

RE: Safe-TEA Act of 2005 and the Corzine pay-to-play amendment

Dear Senator:

Next week you will be considering the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005" (Safe-TEA Act). Public Citizen, Common Cause, Democracy 21, Public Campaign and the Center for Civic Responsibility urge the Senate to adopt the Corzine "pay-to-play" amendment to the bill respecting states' rights to address the problem of corruption in government contracting.

Sen. Jon Corzine's amendment proposes that a sentence be included in the Safe-TEA Act, as was done in the House version of the bill, allowing states to implement a very narrow and limited reform of government contracting procedures: restricting potential government contractors from making large campaign contributions while negotiating a government contract to those responsible for awarding the contract.

Known as "pay-to-play," many state and local governments are being burdened by the all-too-common practice of a business entity making campaign contributions to a public official with the hope of gaining a lucrative government contract. This practice of attempting to skew the awarding of government contracts in favor of large campaign contributors has taken a serious toll on public confidence in state and local governments across the nation.

Last year, two governors in one week – Gov. George Ryan of Illinois (once considered for a Nobel Peace Prize) and Gov. John Rowland of Connecticut – lost their careers in public service due to pay-to-play scandals. A trial is currently underway in the City of Philadelphia concerning corruption charges in the awarding of government contracts with some members of Mayor John Street's administration. Similar scandals have recently racked California, Hawaii, New Jersey, and the City of Los Angeles.

Unfortunately, the Federal Highway Administration (FHWA) has decided to make it difficult, if not impossible, for states to address this serious problem. For example, the FWHA has decided to punish New Jersey for reforming its contracting system by withholding federal highway funds from the state. We believe you will agree with us that this federal intervention is unjustified and counterproductive. That is why we urge you to support language that makes clear that states have the right to ensure that their contracting procedures conform to the highest ethical standards and offer the best value for taxpayers.

New Jersey Gov. Richard Codey reluctantly suspended the state's pay-to-play rules for competitive bid contracts pending the outcome of a court challenge to the FHWA decision. [*New Jersey v. Mineta*] "This is a temporary measure forced on us by the federal government," Codey said. "I am not happy about it. In making this necessary, the federal government is dead wrong, but I cannot jeopardize nearly $1 billion in federal transportation funds."[1]

[1] Tom Hester, "Governor eases pay to play rules," *Trenton Times* (Jan. 27, 2005) at 1.

The FHWA has placed itself in the odd position of imposing its preference for a disclosure-only regime on states and localities that have decided a stronger pay-to-play policy is necessary to address their problems of corruption in government contracting. As the FHWA memorandum opines: "…the disclosure of lobbying and political contribution efforts for the year preceding a contract bid is a reasonable means to meet the DOT's Common Rule requirement that the city assure that its contract award system performs without conflict of interest. This is distinct from a provision that actually excludes those making otherwise legal contributions from competing for a contract."[2]

Many state, local and non-governmental jurisdictions strongly disagree with the FHWA: *disclosure is necessary but not sufficient to end actual or apparent corruption in government contracting*. Instead, New Jersey and four other states, the federal government and the Securities and Exchange Commission, along with dozens of local jurisdictions, have opted for a narrowly-tailored system of contribution restrictions on government contractors, in addition to disclosure requirements, as a more effective means to curtail pay-to-play abuses.

Sen. Corzine has introduced the pay-to-play protection amendment before you this week, which would add to the Safe-TEA Act: "Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign."

Pay-to-play restrictions are far from draconian measures. They are a narrow remedy that focus exclusively on a specific problem. Pay-to-play restrictions are easy for the business community to live with – the SEC's Rule G-37 championed by former SEC Chair Arthur Levitt, which served as a role model for New Jersey's pay-to-play policy, has *not* resulted in draining the pool of bond bidders – and pay-to-play restrictions are limited in scope and constitutional.

The Federal Highway Administration may believe it knows better than the states how to address their problems of actual and perceived corruption in government contracting, but the FHWA has not yet had to suffer the consequences of corruption scandals that the states have faced. The Senate should join the House and include this amendment to the Safe-TEA Act of 2005 allowing the states the authority to assure their citizens that contracts are awarded on merit.

For more information, please contact Craig Holman, Public Citizen, at 202-454-5182.

Respectfully Submitted,

Public Citizen
215 Pennsylvania Avenue, SE
Washington, D.C. 20003

Public Campaign
1320 19th Street, NW
Washington, D.C. 20036

Democracy 21
1825 Eye Street, NW
Washington, D.C. 20006

Common Cause
1250 Connecticut Avenue, NW
Washington, D.C. 20036

Center for Civic Responsibility
450 Main Street
Metuchen, NJ 08840

[2] Federal Highway Administration, Memorandum, "New Jersey E.O. 134" (Nov. 18, 2004) at 4.