Contracting at Hartsfield-Jackson Airport: The Need for Pay-to-Play Reform in Atlanta

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The city of Atlanta has for decades battled a governance problem. While striving to be recognized as an international city, a Mecca for business, and a destination for conventioneers and tourists, it has at times struggled to overcome its association with provincialism, institutionalized corruption and cronyism.

This struggle has been nowhere more apparent than with city contracts given to close associates, family members, and political contributors of Atlanta municipal government officials. Exhibit A: Hartsfield-Jackson Atlanta International Airport. The history of ethical lapses and breaches of public faith with regard to Atlanta Airport contracting is unfortunately quite long, and puts Atlanta in the same league as other large cities with similar patterns of corruption, i.e. Chicago, Newark, New York, Detroit, Los Angeles, and Miami.

A March 3, 2002, investigation by *The Atlanta Journal Constitution* found that friends of former mayors Bill Campbell and Maynard Jackson had received "the vast majority" of contracts awarded by the Atlanta Airport. In at least 80 of the 100 contracts reviewed during the investigation, one or more partners had a relationship with one or both former mayors. Most were campaign contributors.

The investigation also found that city officials had repeatedly blocked new bids when contracts held by the ex-mayors' friends expired. Some contracts had not been rebid since 1981. The paper also found that airport business had been steered to friends and associates of former mayors through the city's affirmative action program. The researchers characterized the relationships as a "culture of patronage."

Two years ago, Common Cause of Georgia stated in unequivocal terms: "People can either contribute freely to the campaigns of candidates, or they can qualify to receive contract work with the City of Atlanta. They cannot do both."[1] The Common Cause position was that only small donations would be allowed from political contributors seeking city contracts. That would upend the patronage system in Atlanta, and as Common Cause maintains, taxpayers would be the beneficiary.

Others contend there is a First Amendment issue with such restrictions – equating "free speech" with political donations. Or, as an Atlanta law firm's "Pay-to-Play Blog" has criticized Common Cause's position: "Restricting contribution amounts in this manner would undoubtedly chill the making of political contributions for City of Atlanta elections altogether, as any person or entity with any potential interest in any City contract in the future could not make contributions without the fear of being locked out of all future business."[2]

It's not exceptional in almost any major city in the nation for vendors to make campaign contributions – some jurisdictions accept some restraint on Pay-to-Play, while others

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[1] Common Cause, Nov. 2, 2009.

[2] Pay-to-Play Blog, Sept. 24, 2009.

gush huge amounts of insider financial favors. Unfortunately, there is a fine line between acceptable and legal practices – and corruption, where politicians demand money and favors beyond legal limits from those seeking government contractors. In 2010 – eight years after the AJC's investigation into the "culture of patronage" – there is little change in Atlanta. Indeed, a federal judge in a case involving the Atlanta airport decreed that the city's patronage practices were "evil."

The scandals and insider dealings brought to light over the last three decades are a virtual timeline of the modern era of Hartsfield-Jackson Airport. A few highlights of the hit parade:

- **Video arcade in the main terminal, 1980.** Tollie Hartsfield, William B. Hartsfield's second wife, opened a video arcade in the airport's main terminal. One of her partners was Maynard Jackson's ex-wife, Burnella "Bunnie" Jackson Ransom. The arcade operated for about two years and went out of business. "Why those two people got that contract is a mystery, and I don't know to this day," said George A. Berry, Hartsfield's general manager from 1978 to 1983. [3]

- **Retail concessions, 1989-1994.** In 1989, David Franklin bought 5 percent of W.H. Smith newsstand franchise at Hartsfield, his first business deal at the airport. It was three years after his divorce from Shirley Franklin, and it was during her tenure as Mayor Andrew Young's second-in-command. In 1989, David Franklin was a member of the Atlanta Fulton County Stadium Authority. While on the authority, he met Ed Elson, who owned newsstands at Hartsfield and Chicago's O'Hare Airport. Elson took Franklin under his wing, and when Elson sold his company to the British-owned W.H. Smith, Franklin became its local minority subcontractor. "If anyone has helped me in business, it's Elson. It's not my ex-wife," David Franklin said. David Franklin continued to own 15 retail outlets at airports around the country. [4] The AJC said in 2008, when David Franklin died, "his work was deemed a conflict of interest by some critics when his former wife was elected mayor in 2001. At that point, he claimed 'veto power' in Shirley Franklin's administration. The mayor strongly rejected his assertion that he was an influential adviser." The two of the couple's children worked at David Franklin's concessions at the airport.[5]

- **Politicians and vendors found guilty of federal bribery charges, 1993/1994**. A former Atlanta councilman and a powerful businessman at Hartsfield International Airport were convicted on bribery, conspiracy and fraud charges after a three-week trial that raised legal and political issues. A federal court jury convicted Ira Jackson, a former airport commissioner and councilman influential in overseeing the airport, on 83 counts of mail fraud, 43 counts of accepting bribes and four counts of tax evasion. The violations were

[3] Atlanta Business Chronicle, November 5, 2001.

[4] Ibid

[5] Atlanta Journal Constitution, Sept. 8, 2008.

part of a scheme in which Jackson illegally received more than $1 million, in addition to bribes, from an airport business to provide favorable treatment to airport businesses he regulated. Also convicted of 83 mail fraud charges and 1 conspiracy count was Dan Paradies, who operates gift shops at Hartsfield and 43 other airports around the country. The case centered on a program for encouraging minority-owned businesses at the airport. While that program has received praise for years, the charges in this case seemed to show the program as having been corrupted into a scheme to benefit white businessmen, politically connected blacks and black political leaders.[6]

- **Food concessions, Jackmont Hospitality Inc., 1994.** In 1994, Maynard Jackson and his daughter, Brooke, founded Jackmont Hospitality Inc., a food service company that operated a T.G.I. Friday's at Hartsfield's Concourse B. The term "Jackmont" stands for "Jackson's Mountain."[7] Noteworthy, Jackson's third term as mayor had been rocked by scandal at the Atlanta airport. Upon leaving office, Jackson became a player at the airport via Jackmont.[8]

- **Airport consultants collect fees as much as $800 million, 2002.** Atlanta's mayor in 2002, Bill Campbell, collected $800 million in fees at the massive airport expansion. Those fees are more than twice the cost of similar fees at other national airports, including San Francisco. The Atlanta consultants including a truck hauling firm that had totaled up 29 city contracts in a decade, construction executives who gave Campbell a luxury car, and a poker buddy of the mayor who received more than $20 million from city contracts.[9]

- **Dirt-hauling contract, Ronnie Thornton, 1997-2001.** In 2001, the airport was at the center of a controversy over the proposed $350 million contract to build Hartsfield's fifth runway. C.R. "Ronnie" Thornton, a Clayton County businessman, admitted in federal court Oct. 18 that he improperly raised $130,000 for campaign contributions. Thornton, a one-time city contractor and former lawman, testified that then-Mayor Bill Campbell knew about illegal contributions to his 1997 campaign. Thornton testified about his efforts to win favor from Campbell for his plan to sell earth to then-Hartsfield Airport for its fifth runway.[10]

- **Indoor advertising contract, Billy Corey, July 2010.** A federal jury awarded $17.5 million in damages to an Atlanta businessman who claimed the City of Atlanta and Hartsfield-Jackson International Airport illegally steered a lucrative indoor advertising contract to a competitor with deep political connections. Businessman Billy Corey

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[6] The New York Times, January 24, 1994.

[7] Atlanta Business Chronicle, November 5, 2001.

[8] Associated Press, June, 2003.

[9] AJC, March 31, 2002.

[10] AJC, Feb. 21, 2006. And, WSB Radio, Feb. 22, 2006.

charged the city violated his rights and its own bidding rules in awarding the contract to Clear Channel and Barbara Fouch, its minority partner, whose business interests at the airport go back to 1981. “It [the contact] has been in the same hands for 30 years. That is what this fight is all about,” said Corey said to the Atlanta Journal-Constitution. “After getting into this thing, I saw how corrupt [the process] was.” Federal District Judge Charles Pannell Jr. sternly rejected an appeal by Atlanta officials in the Corey case. Pannell cited a “decades-long pattern” by the city to “shut out ‘outsiders’ ” from winning contracts at the airport. The judge stated there was an “evil motive” on the part of the Atlanta officials in their three decades of cronyism.[11]

How Corey rocked the city

Although Atlanta has faced numerous scandals at the airport, none have been as systemic as the Billy Corey case. The litigation wasn’t merely a troublesome contract – rather Corey claimed the entire apparatus of insider vendor was tainted by minority programs, who received lucrative rewards for doing little more than assuring the major vendors or locking in city deals.

As part of its minority participation in contracting program, the city of Atlanta utilizes “disadvantaged business enterprises,” or, DBEs to judge the quality and impact of contract proposals. When an airport or other entity like a hospital has a large project, companies must submit bids that are reviewed and eventually selected. Project owners get credit if their proposals include DBEs in the mix. DBEs ostensibly are small companies run by minorities or women, often certified as such.

In the Corey case mentioned above, Corey accused Fouch of being an extension of Clear Channel, a huge national broadcasting and outdoor advertising company. She rented office space from Clear Channel and had no employees in Atlanta. Corey argued that if the city officials investigated Fouch's business, they would' realize her DBE was a sham. Other accusation such as Fouch doesn't meet the other requirements of a DBE, as she is fairly wealthy and left the net worth portion of the DBE application blank.[12]

For example, during testimony by Angela Gittens, a former executive director of the airport, the Corey case revealed that she had been instructed by former Mayor Bill Campbell not to put the advertising contract at the airport up for competitive bids because Fouch was a “friend.” This was one more example of the cronyism that has plagued Atlanta contracting for years, going all the way back to the Hartsfield Administration.

"There's been a great deal of cronyism, no-bid contracts, contracts that expired and not rebid for years and I'm not surprised at the result," the AJC said in an interview with Emmet Bondurant, a prominent lawyer and a national board member of Common Cause.

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[11] AJC, July 26, 2010. And, AJC July 28, 2010.

[12] Lawyers.com

Bondurant said the Corey case highlights the need for a pay-to-play law in Georgia, similar to what other state and city governments have adopted in recent years.[13]

The new Hartsfield/Jackson manager, Louis Miller, who has been on the job for only a few months, will oversee the next round of expansion and management. He does not have a contract, a concern that he will have no leverage to push back on city hall insiders.

The administrations of former Mayor Shirley Franklin and current Mayor Kasim Reed defended the favoritism that Judge Pannell condemned. Ultimately, Reed made a strategic decision to end the city's portion of the lawsuit for $3.9 million, although Clear Channel and Fouch will continue to appeal. By ending the city's involvement, contracting at the airport will not be under cloud.[14]

Prior to the settlement, a recent editorial in the AJC by Common Cause Georgia board member Jon Sinton noted, "with that praise comes a justified expectation by taxpayers that Reed make a clean and public break with the city's tawdry record of corrupt contract practices at the airport. He should insure that politics and cronyism are banned from the selection process."[15]

It's a national problem

The city of Atlanta is not unique. State and local governments across the country have dealt with scandals and conflicts of interest that threaten public confidence in the democratic process. Too often it has simply been too tempting to award contracts to companies who have given money to the campaigns or special projects of government officials. The fact is, when companies who do business with governments are allowed to make political contributions to those public officials, there is a potential to poison the well. Potential contractors come to believe that they must contribute money to the campaigns of public officials – sometimes big money – to be in line to benefit when contracts are handed out. This is the heart of pay-to-play.

Solutions to this problem should seek to build walls between lawmakers and the private interests that seek to buy their votes, by enacting specific pay-to-play laws. Given the broad array of companies that do business with state and local governments, this is a difficult challenge, but it is critical to the task of severing the connection between big money and politics.

The solution is not simply better enforcement of current law, or even merely more transparency for more transactions between officials and interested parties. Those are important elements, of course, but the root of the problem is the system itself – a system

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[13] AJC, July 26, 2010.

[14] AJC, April 23, 2011.

[15] Sinton, Jon. AJC, March 7, 2011.

that has been nurtured and protected by the handful of interests who for decades have benefited the most, usually at the expense of the average taxpayer. Simply put, we need reforms that eliminate the temptation to award public, taxpayer-financed projects to those who have made campaign donations.

Reforms such as these would end the pervasive conflicts of interest in the current system, open the door to more citizens in the electoral process by encouraging small donations, and restore a measure of confidence in the integrity of our institutions and the people who serve them. Common Cause has a research center with information on the issue of pay-to-play. City Ethics, a nonprofit organization dedicated to local government ethics around the country has also posted a series of articles and links on the issue.

The problems of pay-to-play are at least as old as 1299 when a Florentine company prevailed on the British Crown to partner a silver mine. America has a rich heritage of pay for play, cronyism, insider dealings and out-and-out corruption. There appears to be momentum by state and local officials to address the problems head-on. As more and more money pours into the political process, the integrity of government contracting has become particularly suspect. Well-targeted pay-to-play restrictions can be very useful in fostering fair and open competition in the contracting process and in eliminating the appearance of buying government contracts through campaign contributions. Approximately 20 states have such laws in place, along with numerous local jurisdictions.

The state and local efforts are based, in large part, on rules adopted more than 15 years ago by the Municipal Securities Rulemaking Board, which restricts the political contributions of municipal securities dealers. The Securities and Exchange Commission in 2010 adopted a similar regulation that will apply to contributions from investment advisors beginning this year.

In general, the new state and local laws are designed to combat both corruption and the appearance of corruption in the awarding of government contracts. Although the details vary considerably, a typical statute will:

- Require a prospective contractor to disclose certain political contributions in the course of seeking a contract; and
- Prohibit the company from receiving a contract if contributions of a certain amount have been made to or solicited for particular candidates and committees during a specified time period.

Federal law has long included a prohibition on political contributions by federal government contractors. What sets these new state and local laws apart is their application not just to corporate contributions but also to PAC and personal contributions by those affiliated with a potential contractor. Furthermore, some have a “lookback” provision for contributions made long before a contract has been posted or sought.

States wrangle over ethics laws

Some notable examples follow:

- **Colorado.** On Nov. 4, 2008, Colorado voters approved Amendment 54, an amendment to Colorado's constitution that places restrictions on political contributions by certain government contractors. The Colorado Department of Personnel and Administration advises that the Amendment 54 is applicable to all "sole source government contracts," including modifications to existing contracts, entered into on or after Dec. 31, 2008. The law requires "sole source government contracts" to include a clause that would prevent contract holders from making, causing or inducing contributions to any state or local political party or candidate during the term of the contract and for two years thereafter. In addition, persons who make or cause to be made any contribution to influence a ballot issue are prohibited from entering into a sole source government contract relating to that ballot issue.

- **Illinois.** In 2008, the Illinois governor and General Assembly enacted separate pay-to-play requirements. The governor established new restrictions on campaign contributions and solicitations by Illinois State contractors, bidders, and their affiliates. The policies contain new registration and reporting requirements for state vendors and bidders, as well as additional contribution and solicitation restrictions on Illinois contractors, bidders and affiliates. The governor prohibits a business entity with more than $50,000 in contracts and/or bids with a state agency (including the state retirement systems) from soliciting or making contributions to certain state officers, candidates for state office, and political parties.

- **New Jersey**. After scandals in New Jersey, the legislature passed tougher pay-to-play laws placing new restrictions on contributions by for-profit entities that have or are seeking New Jersey government contracts. These restrictions apply to contracts at the state, county, and municipal levels of government. When awarded a contract, state contractors must complete both a certification verifying compliance with the pay-to-play restrictions and a report listing all contributions made during the preceding four years to a New Jersey continuing political action committee, or PAC. The New Jersey Division of Purchase and Property will soon release a permanent certification form, but has already issued an interim certification form to be used temporarily. Under a separate, pre-existing statute, state contractors may have additional disclosure requirements. For example, contractors may be required to report contributions made during the prior twelve months to certain state and local political candidates and committees as well as information about the various contracts they have with the state.

- **Connecticut.** In 2005, in response to major statewide scandals, Connecticut lawmakers banned lobbyists, state contractors, and prospective state contractors from making contributions to legislative and statewide offices. In December 2008,

a U.S. District Court judge upheld that ban on contributions from lobbyists and contractors doing work with the state government.

- **Other states**. South Carolina prohibits government contractors from making campaign contributions to those responsible for issuing the contract. West Virginia bans campaign contributions to any state candidate, party or political committee from those seeking a government contract beginning at negotiation of the contract through its termination. Until recently, Ohio had the most stringent pay-to-play restriction. In Ohio, persons seeking a government contract – including owners of more than 20 percent of the business, decision making officers of the business, their spouses and dependents – are prohibited from making campaign contributions of $1,000 or more in the previous two years to officeholders of an executive agency having "ultimate responsibility" for awarding the contract.

All indications are that the pay-to-play reforms introduced in the last several years are having an effect. For example, political contributions from government contractors in New Jersey have declined nearly 40 percent in the five years since state law began requiring pay-to-play donations to be identified in annual reports. New Jersey officials have tallied that overall contributions to the two state parties and the four legislative leadership PACs were down 36 percent from 2005 levels, and fund-raising by county party committees dropped 28 percent. [16]

Few cities and counties heed the call

While many states have had admirable records in pay-for-play reform, many millions have been donated by businesses with government contracts in towns and counties that have not adopted their own pay-to-play laws. And when those contracts go to firms, and the firms' lawyers and lobbyists, that have funded the campaigns of the officials doing the hiring, there is good reason to suspect that taxpayers are getting fleeced.

For example, statewide legislation eliminating the giant loophole that the New Jersey legislature gave towns and counties — pay-to-play rules don't apply as long as the local contracts are awarded through a vague "fair and open" process — is still needed.

Pay-to-play means different things to different parties. Not everyone favors rushing in to enact sweeping restrictions. One of the best resources to is the "Pay-to-Play Law Blog," maintained by the law firm of McKenna Long & Aldridge (MLA). The law firm has a website, blog, Twitter account, Linked-In account and Facebook page – all dedicated to researching the impact of efforts to curb financial contributions from contractors doing business with municipal and county governments. MLA typically resists some reforms, as is likely for a corporate law firm. An analysis shows that the vast majority of the

[16] The Record, NJ, April 6, 2011.

"Pay-to-Play Blog" followers on Twitter and Facebook are lawyers and lobbyists. Nonetheless, more than anything, the blog is a significant resource, a leading online community for analyses of federal and state level pay-to-play regulations regarding lobbying, contributions and gifts.

Business as usual is standard among the battalions of lawyers, lobbyists and corporate executives who are doing the "pay" – campaign contributors. A prime example is Mayor Kasim Reed's campaign contribution report in 2009, which resulted in almost $3 million in donations. Corporate law firms were major contributors -- including 79 lawyers and staffers from the Holland & Knight firm, McKenna Long & Aldridge with 32 people, King & Spauding with 18. Plus many, many other lawyer firm names. By comparison, only "housewives" and "homemakers" had 52 names on the list.

None of those lawyers is necessarily a culprit. Most are the pillars of the legal establishment in Atlanta. Yet, they know how the game is played. They contribute massive amounts of money to politicians, as will as similar contributions from business executives and professional firms.

Unfortunately, the state of Georgia, and specifically the city of Atlanta, has shown little to no interest in implementing pay-to-play reform. This, in spite of decades-long favoritism and cronyism, federal corruption convictions, and multi-million dollar court awards to litigants that costs Atlanta and Georgia taxpayers.

The need for reform has been amply demonstrated over the years. Former Common Cause Georgia Executive Director Bill Bozarth told the Atlanta Journal Constitution in 2009: "Who gives money, almost without question, are people with some interest in gaining favor with the city."

The ordinance proposed in 2009 by Common Cause and other good government groups have proposed the city's procurement and contracting code to prohibit anyone with a city contract from donating more than $250 per election cycle to a candidate. Currently, any individuals and companies can give up to $3,600 in an election cycle and $1,200 if there is a general election run-off. Thus, single contributors potentially can donate a total of $4,800. Under the proposed ordinance, companies and individuals getting city contracts would have to provide affidavits agreeing to the restrictions.

Bozarth said his staff reviewed contributions in 2009 and found such donations endemic. They even found that the six City Council incumbents running unopposed that year still received donations from companies doing business with the city. "These are candidates who didn't even need the money," Bozarth said. "You especially have to ask what was the purpose of the money."

The citizens and taxpayers of Atlanta have so far been unsuccessful in getting victorious mayors or a majority of city council members to support such an ordinance. Atlanta city officials have steadfastly maintained that they "need" the money of contractors and other

service providers to be competitive in citywide elections, and that the money doesn't "buy" their vote anyway.

Of course, money is the issue. Yet, communities in states across the country, indeed virtually one-half of the states in the country, have mustered the courage, the resolve, and the interest in the community, to pass some manner of pay-to-play reform. But not Atlanta.

This June, Hartsfield-Jackson will award some of the most lucrative concessions contracts the airport has had to offer in years. The public jockeying has already begun. Just weeks ago, more than 500 people attended a meeting where the city pitched its process for selecting the future concessionaires. Many of them gathered in small groups before and after the meeting, apparently to talk about potential joint ventures. The meeting lasted more than three hours at the Georgia International Convention Center, located near the airport in College Park.

At stake is the privilege of being part of a marketplace with fewer than 200 new businesses in the closed-loop system of the world's busiest passenger airport – 89.3 million passengers in 2010. These contracts call for a complete makeover of all the bars, restaurants and other food businesses throughout the airport. The contracts also cover all the retail spaces in the new terminal.

The process (information on the airport concessionaire process can be found at here, here and here) for approving the concessions contracts and building the new shops and restaurants includes the following timeline and steps:

- June – Sealed proposals for various pieces of the contracts are due to the city by the 21st , 24th and 27th.
- July and August – Internal review of proposals.
- September – City Council and mayor are to authorize execution of leases.
- Spring 2012 – New terminal opens with its slate of concessionaires.
- By Winter 2012 – All the new food and beverage establishments are to be open.

Atlanta Mayor Kasim Reed has said he wants to make sure the process is fair, open, and transparent so everyone has the opportunity to propose to be at the airport. If Reed truly wants openness and transparency in the bidding process, and he wants Atlantans and Georgians to have confidence in city government, what is stopping him from embracing pay-to-play reform?

Mayor Reed even can make a stronger statement. Already, he has brought contracting directly to his office.[17] City council members and staff cannot broker deals – the buck stops at the mayor and his operatives. With that authority, Mayor Reed can make an executive decision to enact pay-for-play rules. We suggest the Common Cause program. But the mayor knows the score: there should be minimal contributions to those who are

[17] Ramage Report, Feb22, 2011

submitting bids from government agencies. Insider dealing, patronage and sham "disadvantaged" contractors need to cease in Atlanta.