New York City Campaign Finance Board
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May 21, 2015

Federal Election Commission
Attn: Amy L. Rothstein, Assistant General Counsel
999 E Street, NW
Washington, D.C. 20463

Re: Rulemaking Petition: Federal Contractors

Dear Ms. Rothstein:

Thank you for the opportunity to comment on Public Citizen's rulemaking petition to change Commission regulations affecting the ban on contributions by federal government contractors. The New York City Campaign Finance Board (CFB) wholeheartedly supports Public Citizen's proposal to update the language of 11 C.F.R. § 115 to provide for a more comprehensive assessment of whether nominally separate entities of the same corporate family constitute a single contractor subject to the restrictions against campaign contributions from federal contractors. I write to support the proposed rulemaking and to offer perspective based on our approach to similar situations in New York City elections.

The CFB is a non-partisan, independent city agency established in 1988 to administer New York City's Campaign Finance Program. Established in response to a series of corruption scandals in the mid-1980s, the Board's mission is to restrict the influence of money on electoral campaigns and enhance the role of New York City residents in elections. The Board is committed to providing comprehensive campaign finance information to the public and reducing the potential for actual or perceived corruption.

The CFB has recognized the need to evaluate the often complex and interconnected relationships between affiliated entities since the earliest days of its inception. For this purpose, it established four basic factors to evaluate whether persons or entities constitute a "single source" for the purposes of contribution limits. The core elements of these factors are still in place today as codified in CFB Rule 1-04(h), which reads in relevant part:

> A "single source" includes any person, persons in combination, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled, including every political committee established, maintained, or controlled by the same person, persons in combination, or entity....
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> **(1) General factors.** Factors for determining whether a person, persons in combination, or an entity establishes, maintains, or controls another entity include, but are not limited to:
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> (i) whether the person or entity makes decisions or establishes policy for the other entity, including determinations of the recipients of its contributions and the purposes of its expenditures;
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> (ii) whether the person or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the other entity;
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> (iii) whether contributions made by the person or entity and the other entity reflect a similar pattern; and
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> (iv) whether the person or entity knows of and has acquiesced in public representations by the other entity that it is acting on its behalf or under its direction.

For more than 25 years, the Board has rigorously applied these standards to meaningfully enforce limits on contribution sources and amounts.

Based on the record of the Federal Election Commission (FEC) in MUR 6726, the application of the CFB's approach would have likely resulted in a staff recommendation that the Board find that Chevron Corporation ("Chevron Corp.") and Chevron USA, Inc. ("Chevron USA") were a single entity for the purpose of the making of contributions.[1] Two factors in particular would have raised considerable doubt as to whether the two entities are in fact separate. First, it is likely that one entity "ha[d] the authority to hire, appoint, discipline,

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[1] Note, however, that since 1998 the New York City Campaign Finance Act (the "Act") bars contributions from corporations, such as Chevron Corp. and Chevron USA. *See* Administrative Code of the City of New York ("Admin. Code") §§ 3-703(1)(*l*) and 3-719(2)(b). The language in CFB Rule 1-04(h) pre-dates this ban and was regularly applied as described before the ban. The current Act and CFB Rules have separate provisions limiting the amount that natural persons doing business with the City of New York can contribute to candidates. *See* Admin. Code §§ 3-703(1-a), 3-719(2)(b); CFB Rule 1-04(c)(1).

discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the other entity." Chevron Corp. and Chevron USA shared the same CEO, making it extremely likely that such authority or at least influence existed. Further, the record hinted at an overlap in corporate directors and officers, further suggesting shared influence between the companies' decision and policy making.[2]

Second, it is also likely that Chevron Corp. or Chevron USA "kn[ew] of and ha[d] acquiesced in public representations by the other entity that it [was] acting on its behalf or under its direction." As Public Citizen notes in its petition for rulemaking, "…for all intents and purposes, there is only one Chevron being presented to the world. Actions taken by Chevron Corporation are done in the name of 'Chevron,' which will certainly lead to ramifications for the smaller subsidiary branches of 'Chevron' that are doing local business on the ground…."[3] The contention that Chevron Corp. and Chevron USA are separate entities would have been subject to significant scrutiny under the CFB's rubric, and very likely would have resulted in a recommendation that they be deemed a single entity.

The issue before the Commission has tremendous implications for upholding the spirit and intent of 2 U.S.C. § 441c (the "Pay-to-play Ban") and state and local efforts to prevent corruption. Federal, state, and local regulators have recognized the inherent risk of corruption when corporations try to exert influence in the political arena, particularly when they are in the business of vying for highly competitive and lucrative government contracts. The Pay-to-play Ban and other laws like it are at risk of being rendered unenforceable if corporations can skirt the law by creating nominal subsidiaries to make political contributions. Further, this practice is detrimental to public confidence in the government contracting system. The technicalities of corporate operating structures are meaningless to the general public, especially when the parent company is the public face of the company and disclosure of its political activity is prone to error and ambiguity. To the public, Chevron is Chevron. To create a complex web of subsidiaries with varying stakes in contracting misleads the public and undermines the Pay-to-play Ban's purpose of preventing actual and perceived corruption.

The CFB supports Public Citizen and urges the Commission to update the language of 11 C.F.R. § 115. For more than 25 years, the CFB has successfully upheld the integrity of campaign finance laws in New York City and is a model around the country. To determine if affiliated entities constitute a single source with respect to political contributions, the CFB employs

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[2] *See* MUR 6726, Notification to Public Citizen (March 11, 2014), at 6.

specific real-world factors, codified in its rules. The CFB encourages the FEC to undertake a rulemaking establishing robust and meaningful standards for applying the Pay-to-play Ban when dealing with affiliated entities. Strong anti-corruption laws and clear public disclosure of political activity are essential for a healthy democracy. Companies cannot be allowed to buy influence by simply splintering their corporate identities.

Thank you again for the opportunity to comment on this important issue. We applaud the effort to uphold the integrity of anti-corruption laws this proposed rulemaking represents.

Sincerely,

[redacted]

Amy M. Loprest [redacted]

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[3] Public Citizen Petition for Rulemaking (November 18, 2014), at 7.