



# New York City Campaign Finance Board

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## URGENT: ISSUE BRIEF

**TO:** Interested parties  
**DATE:** December 2012  
**SUBJECT:** NYC Campaign Finance Program Under Attack

The City Council is planning to consider legislation that would permit unions and corporations to spend unlimited sums of money in close coordination with candidates. If enacted, the bill would open a gaping loophole in a system routinely praised as a national model for reform. Yet there has been no public discussion of this proposal or its significant impacts.

**NYC's system works because it has common-sense limits on campaign funding.** New York City's campaign finance system emphasizes the role of the individual, decreasing the role of big-money special interests by matching small contributions with public funds. Helping to minimize the possibility or perception of corruption, the system sets reasonable limits on contributions. Candidates who seek matching funds must also limit their overall spending. An activity undertaken by an outside group in coordination with a campaign is counted as both a contribution and an expenditure.

**The bill would eviscerate those limits.** The legislation redefines what counts as a contribution, creating a new exemption that would allow unions and corporations to spend without limits in coordination with candidates on campaign efforts aimed at members or stockholders.

**The bill would allow unions and corporations to operate above the law—like Super PACs do.** Apparent coordination between candidates and Super PACs made a mockery of the federal system during the 2012 elections. In a system like ours with public matching funds and spending caps, outside groups can exercise a much greater influence on elections if they are allowed to spend unlimited amounts in open coordination with candidates. Yet the Council is considering legislation that would make the City's system operate more like the flawed federal model.

**A change of this magnitude has never before been proposed this late in the four-year election cycle.** After each citywide election the CFB recommends changes to the City's

Campaign Finance Act, based on its expertise and experience running the City's campaign finance system. The CFB and the City Council have a long history of collaborating between elections to enact many of these recommended reforms. It is simply unprecedented to introduce a proposal this significant, barely nine months before votes will be cast in a mayoral election, without consulting the agency that administers the law.

### **What is coordination?**

NYC's campaign finance system sets reasonable limits on contributions and expenditures. Under those limits, contributions of goods or services must be counted the same as money. More than two decades of CFB practice has held that a candidate must account for spending by outside groups on campaign-related goods or services when they are made in coordination with his or her campaign.

In the 23-year history of the Campaign Finance Program, only a small handful of campaigns have been assessed violations stemming from coordination with outside groups. No campaign better illustrates the CFB's consistent approach to coordinated activity than Annabel Palma's 2003 run for City Council in District 18. Palma participated in the matching funds program, and her campaign accepted nearly \$94,000 in public funds.

Local 1199 SEIU supplemented Palma's own campaign with a shadow campaign of its own, providing benefits far above and beyond what is allowed by the contribution limits. For instance:

- Local 1199 was a vendor to Palma's campaign for certain phone banking services, literature production and distribution, and Election Day work, but also claimed to have provided more of these same services to the campaign as "independent" expenditures.
- The union produced and printed mailings and literature advocating her election that were virtually identical to materials produced by the campaign.
- The union managed and conducted an extensive get-out-the-vote drive with union personnel—run out of the Palma campaign office.
- The union provided a "mobile office" camper and a sound truck to promote Palma's candidacy; both worked out of space rented by the Palma campaign.

None of these items were reported as in-kind contributions. The closely coordinated effort provided the campaign with benefits well in excess of the contribution limit.

After a thorough audit, the Palma campaign was penalized for accepting and failing to report these over-the-limit in-kind contributions. Yet if the legislation under

consideration were enacted, this sort of close coordination between candidates and unions or other outside groups could become the norm.

### **What would the bill do?**

As drafted, the bill redefines “contribution” to exclude any spending by unions, corporations, or other groups for goods and services when they are targeted to members or stockholders and their families – which would allow unlimited contributions of such goods and services, including staff and other professional resources, phone banks, flyers, and mass mailings.

This change creates an obvious loophole in New York City’s limits on contributions and spending. By allowing unlimited coordination outside the system, the bill grants certain candidates a distinct competitive advantage at the expense of those who lack ties to labor or corporate interests.

Certain mass mailings – those that expressly support a candidate – could still be counted as in-kind contributions if they are found to be made in coordination with a campaign. But the bill practically requires a campaign or an outside group to openly admit they have coordinated before a finding of coordination can be made.

The New York City Charter defines an independent expenditure as one which the candidate has not “authorized, requested, suggested, fostered or cooperated.” In the absence of a clear acknowledgment of coordination, CFB rules list certain factors to help the Board determine whether a particular expenditure is *not* independent, including the relationships between the spender and the candidate, the existence of common vendors and/or staff, shared space, and others.

Instead, the bill sets an absurdly high standard to meet the definition of “coordinated” for the purposes of membership communications: when the candidate *controls, expressly requests, expressly authorizes, or is knowingly and materially involved in decisions regarding the communication.*

Under the bill, if neither party to the transaction admits to coordinating, no further inquiry is possible. This re-definition of coordination effectively places all spending aimed at members outside the limits of the campaign finance program.

### **Why copy one of the worst features of the federal system?**

In the 2012 presidential election, apparent coordination between candidates, Super PACs, and other groups shredded the limits on direct contributions meant to discourage corruption. Partisan gridlock has rendered the Federal Election Commission (FEC) unable to take a hard line on coordination. The resulting enforcement vacuum empowered outside groups and mega-donors to an extent unparalleled in recent history.

Cabinet members and staffers for the presidential campaigns raised funds for Super PACs. On more than one occasion, a campaign and its associated Super PAC released nearly identical TV commercials on the same day. Karl Rove, who ran his own Super PAC, discussed campaign strategy with Mitt Romney's staff at a private retreat for Romney donors. Yet *none* of these activities constituted coordination, according to the FEC. The bill would replicate this part of the federal system in New York City, starting the City's system down a slippery slope towards dysfunction.

### **Why now?**

With a primary election for mayor only nine months away, why would the Council consider a change to the law that would dramatically expand the power of outside spending by unions and corporations in City elections?

New York City's progressive and successful campaign finance system has always put the interests of the individual voter ahead of the special interests. We need to keep it that way. It's time to put the brakes on this legislation and sound the alarm.

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