



October 25, 2024

Submitted electronically to Rules@nyccfb.info

Joseph Gallagher
Interim General Counsel
Campaign Finance Board
100 Church Street, 12th Floor
New York, NY 10007

Dear Mr. Gallagher,

Campaign Legal Center (CLC) respectfully submits this letter to the New York City Campaign Finance Board (Board) to supplement our previous comments in support of the Board's rulemaking.¹ These supplemental comments address questions that were recently raised with respect to the Board's process for withholding public funds payments when candidates participating in the matching funds program (Program) fail to respond to Board inquiries.²

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court cases. Our work promotes every American's right to an accountable and transparent democratic system.

CLC supports the Board's proposed amendments (Proposed Rule) to clarify its rules regarding a participating candidate's eligibility to receive public funds payments. We recommend providing additional guidance and clarity for candidates

¹ Campaign Legal Ctr., *CLC Comments to New York City Campaign Finance Board* (Sept. 27, 2024), available at <https://campaignlegal.org/document/clc-comments-new-york-city-campaign-finance-board>.

² See, e.g., Dan Krauth, *New York City Mayor Eric Adams' campaign funds called into question*, ABC7 (Oct. 3, 2024) <https://abc7ny.com/post/nyc-mayor-eric-adams-campaign-funds-called-question-amid-federal-indictment/15389383/>; see also Brigid Birgin, *Mayor Adams' 2021 campaign stopped replying to NYC watchdog. It still got public funds.*, GOTHAMIST (June 14, 2024) <https://gothamist.com/news/mayor-adams-2021-campaign-stopped-replying-to-nyc-watchdog-it-still-got-public-funds>.

and Board staff regarding a participating candidate's eligibility to receive public funds when the candidate fails to respond to Board requests for additional information. We have included proposed text for the final rule based on our recommendation.

Publicly financed candidates should be required to respond to Board requests within timelines specified by Board staff.

We support the Board's approach to clarifying the mandatory and discretionary bases for withholding public funds from participating candidates who fail to adhere to the requirements of the Program. In concert with the Board's conditions for candidates participating in the Program and detailed disclosure requirements, these rules ensure responsible stewardship of public dollars and preserve the public's confidence in public financing.

Under current rules, the Board may, in the course of the Board's audit process or an investigation, make a preliminary determination that a candidate is ineligible to receive public funds payments under specified conditions. These conditions include, for example, a candidate's failure to submit required campaign finance disclosure statements³ and a candidate's failure "to provide the Board, upon its request, documents or records required" to verify a candidate's campaign activity.⁴ Under the Proposed Rule, a participating candidate who meets one of the specified conditions is automatically—rather than at the Board's discretion—deemed ineligible for public funds payments.⁵ The Proposed Rule also retains the Board's ability to discretionarily withhold public funds payments from participating candidates "if there is reason to believe that the candidate has" violated other provisions of the New York City Campaign Finance Act or Board rules.⁶

CLC recommends providing additional guidance with respect to participating candidates who fail to respond to Board requests for information under Section 3-01(d)(i)(A)(2) of the Proposed Rule. Specifically, we recommend that the final rule specify that participating candidates must respond to Board inquiries within timelines prescribed by Board staff. Further, we recommend the final rule make explicit that a participating candidate may continue to receive public funds payments after sufficiently responding to Board requests.

Adopting this approach would align with the New York State Public Campaign Financing Board's rules for candidates participating in the state program. Specifically, those rules generally require participating candidates to

³ 52 R.N.Y.C. § 3-01(d)(i)(A).

⁴ *Id.* § 3-01(d)(i)(B). Other circumstances under which the Board may determine, at its discretion, that a candidate is ineligible for public funds payments include the failure by a candidate to timely attend compliance training and submitting incomplete or inaccurate disclosure statements. *See id.* § 3-01(d)(i) and (ii).

⁵ Proposed Rule § 3-01(d)(i).

⁶ Proposed Rule § 3-01(d)(i)(B).

respond to requests for documentation within 10 days.⁷ In addition to fines for failing to provide adequate and timely documentation, a participating candidate who fails to respond to such requests is suspended from participating in the state public financing program until the candidate provides the requested documents or an “adequate explanation of why they cannot be provided.”⁸

Incorporating a timeline for candidate responses to Board requests into the final rule would ensure that Board staff and participating candidates have clear guidelines for assessing compliance with this important Program requirement, while also allowing Board staff to set reasonable timelines for candidate responses that comply with current law. Moreover, amending the Proposed Rule to specify how candidates may restore their eligibility for public funds would help ensure participating candidates are not unduly penalized (i.e., denied further public funds payments) in the heat of an election for minor or innocuous delays in responding to Board inquiries.

Recommended full text for final rule:

§ 3-01. Candidates must demonstrate eligibility.

...

(A) Mandatory ineligibility. Prior to the election, public funds will not be paid to a candidate if:

...

(2) the candidate fails to provide to the Board, upon its request and within the time prescribed by the Board, documents or records required by Chapter 4 of these rules, or other information that verifies campaign activity. The Board may resume public funds payments to the candidate once the candidate provides the requested documents, records, or other information requested by the Board, or the candidate provides an adequate explanation of why they cannot be provided;

We respectfully urge the Board to adopt the Proposed Rule and incorporate our recommendation. We would be happy to answer questions or provide additional

⁷ New York Comp. Codes R. & Regs. tit. 9, § 6221.46(g)(2)(i); *see also* D.C. Code § 1-1163.32c(a)(2)(F) (requiring participating candidates to “respond to all inquiries of the Board and the Director of Campaign Finance *in a timely manner*.” (emphasis added)). The New York State Public Campaign Financing Board’s rules also require an expedited response—within two days—in the 30 days prior to an election and post-election. New York Comp. Codes R. & Regs. tit. 9, § 6221.46(g)(2)(i).

⁸ *Id.* § 6221.46(g)(2)(ii).

information to assist the Board in promulgating the final rule. Thank you for your time and consideration.

Respectfully submitted,

/s/

Aaron McKean

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