

**New York City Campaign Finance Board –
Hearing on Disclosure of Independent Expenditures, March 10, 2011**

Opening Statement of Amy Loprest, Executive Director

Thank you Chairman Parkes, and thanks to all who have joined us to speak today. As Chairman Parkes mentioned, there is a disclosure gap as to spending by independent entities in city elections. In the past few years, we've seen a rise in third-party activity in city elections. We've all seen the unprecedented spending at the federal level, which is only expected to increase in 2012. Many states and jurisdictions have passed legislation to require disclosure of this activity, but an overwhelming majority of New York City residents have been left in the dark for the most part when it comes to independent spending.

I'd like to take this opportunity to briefly discuss some of the questions and issues we've been considering as we move to implement the disclosure of independent expenditures. After today's hearing, the Board will draft rules and make them available for a period of public comment. We will hold a second hearing once the rules are provided to the public and before they are adopted. We want to make the rulemaking process as transparent as possible and give the public, and especially the regulated community, an opportunity to express their suggestions and concerns.

Let me explain the new Charter requirement passed by voters last November. The disclosure required by the Charter includes spending by outside individuals or groups that support or oppose a candidate or municipal referendum. Persons or groups that make independent expenditures in excess of \$1,000 in city elections must report this activity to the CFB. In addition, any group that makes expenditures exceeding \$5,000 for a candidate must disclose the sources of its money. The Charter also requires that campaign literature and advertisements produced by third party actors include the name of the person or group which paid for them and gives the CFB enforcement powers for those entities which fail to disclose these independent expenditures.

The Board has circulated a brief paper outlining some issues to be considered. In addition to these issues, we will take the comments presented today and look at regulations from

other jurisdictions, before issuing a draft of our rules. I'd like to briefly review some of the issues the Board is contemplating and add what other jurisdictions have done, to provide some context before we hear from those testifying today.

The Charter broadly requires that certain independent spending be disclosed to the CFB and gives the agency enforcement powers. While the Charter defines an independent expenditure as an expense made in support or opposition to a candidate or municipal ballot proposal/referendum without cooperation or knowledge by a candidate, the Board must refine what the scope of regulated activity is. Should the requirements apply to communications containing express advocacy, "Vote for Candidate X" or "Don't vote for Candidate X", or also to those that refer to a clearly identified candidate (or ballot measure) shortly before an election? Additionally, should certain communications be exempt from the disclosure rules?

In addition to defining what constitutes an independent expenditure, the Board must consider what information an independent spender is required to disclose to the CFB about their funding sources and vendors once their spending hits the financial triggers established in the Charter. Timing is a crucial component of this new disclosure and the Board must consider within what timeframe this information should be reported and made available to the public. One important matter to note is that while many entities are currently required to make some disclosure to the state Board of Elections, this disclosure is not timely (it is often posted months after the election) nor does it in many cases explain what candidate or ballot initiative the expense supported or opposed. In addition, as we saw in the midterm elections, merely knowing the name of the person making the expenditure is not sufficient. Therefore, the Charter requires disclosure of the sources of funds. The Board's mandate is to provide real-time disclosure to the public, especially in the weeks and days before an election. Our challenge in developing these rules is to define the appropriate level of detail and timing for disclosure of the expenditure as well as the funding sources.

The financial thresholds will help keep those who need to make disclosure aware of when and what to report to the CFB. Any member of the public will be able to view this information on our website-- just as they can see who contributes to a given candidate and where that

candidate chooses to spend his or her funds. How independent expenditures are identified to the public is a crucial part of this new requirement. Materials created by third-party actors must clearly identify who has paid for them. The Board must consider what language is necessary to identify who has funded an advertisement or piece of literature. Part of the missing disclosure we saw in the 2009 elections were mailings produced by third-party actors that were almost indistinguishable from campaign literature. Voters could not tell who had paid for and sent these pieces and sometimes mistakenly believed it was campaign literature. This new disclosure mandate will provide the public with information-- not just disclosure by groups or individuals on our website, but also an explicit acknowledgement of an independent expenditure directly on the material that is produced.

Finally, the Board must consider how CFB staff can best conduct outreach and training to potential independent spenders and how to uncover violations of the disclosure rules. Our staff works with the city and state Boards of Elections to identify potential candidates and we train campaigns throughout the election. With this new mandate, a new regulated community comes under our purview and we want to ensure that all those impacted by this change are aware of the Board's requirements. We will create and administer trainings-- but need feedback from those attending on how best to conduct our outreach.

These are some of the issues that the Board is considering-- I know many of you will touch on these today and I hope additional issues and concerns are raised at today's meeting so they can be considered as the Board drafts proposed rules. The Board and agency staff take the rulemaking process seriously and we hope to hear from as many stakeholders and interested parties as possible as we implement this new, important mandate. The goal is to provide the public with as much information as possible about money being spent to influence the city's elections. We want to make rules that are manageable for third party actors, without compromising the quality of disclosure the public deserves. The CFB has a long history of engaging the public in discourse about its Charter mandates, and I thank you for coming here today.