



TESTIMONY  
of  
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before the  
NEW YORK CITY CAMPAIGN FINANCE BOARD  
hearing on  
INDEPENDENT EXPENDITURES  
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New York City

Thank you for the chance to comment today on the implementation of the new City Charter provisions on independent expenditures in City elections. It is to the Campaign Finance Board's credit that this hearing is being held prior to the CFB issuing draft rules, giving a greater chance for public input.

NYPIRG supported the ballot proposal that now requires that people or entities making more than \$1,000 in independent expenditures for a candidate or ballot proposal in a covered New York City election to disclose their spending. Entities that spend an aggregate of \$5,000 in a twelve-month period prior to the election are required to disclose spending and also contributors of a \$1,000 or more.

Requiring that these dollars be disclosed is essential to the health of our landmark campaign finance legislation, which places restrictions on spending by candidates who voluntarily agree to them. As the CFB wrote in its report on the 2009 elections: "In a voluntary system of public financing that includes spending limits, the impact of independent expenditures can be magnified."

In addition, it will provide valuable data on whether the City's campaign finance program needs to react to the growing role of independent expenditures. For example, the next City elections may show that more generous matching funds to candidates are needed to address independent expenditures.

We address below the questions raised by the Campaign Finance Board in its notice for this hearing. It is important to note that – in answering these questions – what's being required is the disclosure of independent spending, not its prohibition or limitation:

**1. Scope of regulated activity.** Should the requirements apply to communications containing express advocacy, or also to those that refer to a clearly identified candidate (or ballot measure) shortly before an election?

NYPIRG supports disclosure for both independent spenders who: 1) urge a “yes” or “no” for candidates and/or ballot measures any time in the election cycle; and 2) issue communications or conduct activities that refer to a “clearly identifiable” candidate within 60 days of a City election and/or ballot, even if the communication or activity stops short of urging of a positive or negative vote.

That is supported by the language of the new City Charter section 1052(a)(15)(a) on disclosing independent expenditures. These are defined as “one made in support of or in opposition to a candidate in a covered election or municipal ballot proposal or referendum” where “not authorized, suggested, fostered or cooperated in” by a candidate or political committee. The charter provision has no requirement that there be the “magic words” vote “yes” or “no.”

The Federal Elections Commission defines a "clearly identified candidate" as “one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state." (See 11 CFR 100.17)

NYPIRG suggests applying these rules to communications and to other electioneering activities, such as mailings, phone banks, “robocalls” and mass on-line communications.

• **Required information.** What information should an independent spender be required to disclose about itself, its funding sources, and its vendors? Within what timeframe should this information be reported to the Board?

The City Charter provision here gives the CFB authority to promulgate rules on the “information to be reported and disclosed.” Disclosure of qualified independent expenditure should be similar to that now required for candidates, including:

- the name and address of the individual, political committee or entity making the qualifying expenditure – and if a political committee, its members;
- the source of the funds used in the independent expenditures, including the names, addresses and employers of all entities and individual contributors of \$1,000 or more to the individual or entity making independent expenditures, as specified by the Charter provision for entities that spend an aggregate of \$5,000 in a twelve-month period;
- the amount of such contribution, the date it was made and whether in-kind or monetary;

- the total amount raised and spent during a reporting period, mirrors the timetable of current reporting by candidates, with quicker disclosures closer to the election;
- detailed expenditures, including the name of the payee/vendor receiving the independent expenditures, their address, for or against which candidate or ballot proposal the expenditure was made, the date the expenditure was made; the amount of the expenditure and the purpose or explanation of the expenditure, as now required for candidates' spending by the CFB, such as printing, advertising, personnel, and compliance; and
- possibly copies of printed literature and electronic advertising, as requested by the CFB to check whether the material(s) comply with charter requirements for disclosure of the individual or entity making the independent expenditure

• **Exemptions.** Should certain communications or actors be exempt from the disclosure rules?

We of course agree that expenditures by the media should be exempt. We also agree that just because an entity makes independent expenditures, its non-political contributions should not be disclosed.

At this time, NYPIRG is still reviewing the issue of whether to exempt from disclosure communications made by an entity with the members of that entity or treat them differently . We prefer to hear the positions of membership organizations on this issue, as well as review the language proposed by the CFB during the rulemaking process.

• **Disclaimer requirements.** Should the disclaimer/identifier on the face of the communication be subject to language, font size and placement requirements? Should certain communications be exempt from such requirements?

Legislative history – as contained in the Final Report of the 2010 Charter Revision Commission – would support the CFB requiring that “identifiers” be “prominently” displayed.

On page 13 of that report, the Charter Commission wrote that in the past:

“ ... entities making independent expenditures are not required to identify themselves or key funding sources in advertising materials, which can lead to confusion for members of the public. Requiring that expenditures of this nature be reported to CFB, and that those making significant expenditures be identified in advertising materials, would provide critical information and context for members of the public and help them to evaluate advertising messages aimed at influencing their votes.”

The Board could promulgate specific rules on such items as wording and font size. Alternatively, it could suggest wording and font size, rather regulate specifics. A post-election audit would inform future action on this score.

• **Outreach.** How can the Board best conduct outreach and training to potential independent spenders once the independent expenditure rules are approved?

NYPIRG recommends the following steps to educate voters and the relevant public about the new independent expenditure provisions:

- post information prominently on web site and in the 2013 Voter Guide;
- send an informational mailing to the following individuals or entities where the CFB has addresses:
  - o vendors in the 2009 and 2013 election cycles, including political consultants;
  - o election lawyers that have appeared before the Board and members of Election Law Committees at city bar associations;
  - o all political action committees registering with the Board and with the Board of Elections;
  - o employee or labor organizations in the City of New York;
  - o contributors in 2009 and 2013 campaigns of more than a \$1,000;
  - o political parties active in the City of New York;
  - o political committees registered with the State of New York;
  - o groups or individuals that submitted a statement to the 2009 Voter Guide expressing views on ballot proposals; and
- include it in training and briefings of campaigns and mention the new rules for independent expenditures.

All these materials should stress the CFB will be holding specific briefings and training on complying with the rules on independent expenditures.