
NEW YORK CITY CAMPAIGN FINANCE BOARD

Public Hearing

March 10, 2011

11:00 a.m.

B E F O R E:

Joseph P. Parkes, S.J., Chair

BOARD MEMBERS:

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2 MR. PARKES: Good morning. My name is
3 Joe Parkes and I serve as Chair of the New
4 York City Campaign Finance Board. We'd like
5 to welcome all of you to this hearing on
6 disclosure of independent expenditures in
7 City elections. I want to extend the thanks
8 of my fellow Board members and all of the
9 staff here at CFB, to all of you who have
10 joined us to discuss this important issue.

11 In November, New York City voters
12 approved amending The City Charter to require
13 the disclosure of independent spending in
14 City elections. It is now our charge, the
15 New York City Campaign Finance Board's
16 charge, to implement this new requirement,
17 and that is why we are gathered here today to
18 receive input from the public.

19 Since its inception in 1988, the New
20 York City Campaign Finance Board has provided
21 disclosure of campaign finances to the
22 public. In the past, this has met robust,
23 comprehensive disclosure of all fundraising
24 by candidates running for Mayor, Public
25 Advocate, Comptroller, Borough President and

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2 City Council. Spending by outside groups to
3 affect city elections has long been hidden
4 from the public, however.

5 In any public campaign financing
6 program, independent expenditures represent a
7 distinct dilemma. Candidates who join the
8 program and agree to limit their spending can
9 be opposed by independent expenditure
10 committees without limits. New Yorkers, by
11 overwhelmingly approving the Charter change
12 requiring disclosure of independent
13 expenditures have demanded more information
14 about people and entities spending money to
15 influence their elections.

16 Since the Supreme Court's January 2010
17 Citizens United decision, much media
18 attention has focused on the topic of outside
19 spending in the political process. While the
20 decision affirmed the right to engage in
21 independent political activity, the court
22 importantly upheld the role of disclosure.
23 In the majority opinion, Justice Anthony
24 Kennedy wrote that, "Prompt disclosure of
25 expenditures can provide shareholders and

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2 citizens with the information needed to hold
3 corporations and elected officials
4 accountable for their positions and
5 supporters."

6 Disclosure of funds spent to influence
7 elections is crucial to a healthy democracy.
8 This need is even more apparent after the
9 record-breaking spending by independent
10 actors in the 2010 Mid-term Elections.
11 Nearly half of the \$300 million in
12 independent spending not affiliated with one
13 the political parties escaped disclosure
14 completely. Media reports during and after
15 the election highlighted the influx in
16 stealth spending and the wide gaps in
17 disclosure.

18 Many states still have no regulation on
19 actual electioneering communications which
20 means voters in those states are often
21 unaware of who is behind advertisements and
22 literature before they go to the polls,
23 whether it be corporations, trade
24 associations, unions, wealthy individuals or
25 other interest groups.

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2 Even before Citizens United, we saw an
3 unprecedented rise in activity by third-party
4 actors in the 2009 City Elections. Thus far,
5 information about third-party spending at the
6 local level has not been available to the
7 public. Our disclosure gap means the details
8 have been hidden, the full extent and
9 monetary value of the activity meant to
10 support a specific candidate has been
11 unknowable.

12 New Yorkers have now spoken and they've
13 asked for better and timelier disclosure to
14 make election spending more transparent. It
15 is our job now to implement rules to make to
16 this disclosure useful to the public and
17 manageable to those who must disclose. There
18 are many complex issues to be considered, and
19 we've worked to reach out to a variety of
20 stakeholders as we enter the rule-making
21 process.

22 I look forward to beginning the
23 conversation on the issue today and thank all
24 of you who have joined us for adding to this
25 very important dialogue. I also wanted to

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2 welcome those joining us on the Internet.
3 For the first time today, the Board will be
4 streaming video of our hearing on our
5 website. Viewers can access the live video
6 during the hearing and the video -- and by
7 the way, those of future Board meetings and
8 hearings also -- will be archived on our
9 site.

10 To begin these proceedings, I would like
11 to introduce our Executive Director Amy
12 Loprest who will add flesh to the outline
13 I've drawn here today and also substance and
14 expand on some of the issues the Board will
15 consider in the rule-making process. Amy.

16 MS. LOPREST: Thank you, Chairman
17 Parkes, and thanks to all of who have joined
18 us to speak today. As Chairman Parkes
19 mentioned, there is a disclosure gap as to
20 spending by independent entities in City
21 elections. In the past few years, we've seen
22 a rise in third-party activity in City
23 elections. We've all seen the unprecedented
24 spending at the federal level, which it is
25 only expected to increase in 2012.

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2 Many states and jurisdictions have
3 passed legislation to require disclosure of
4 this activity, but an overwhelming majority
5 of New York City residents have been left in
6 the dark for the most part when it comes to
7 independent spending.

8 I'd like to use this opportunity to
9 briefly discuss some of the questions and
10 issues we've been considering as we move to
11 implement the disclosure of independent
12 expenditures. After today's hearing, the
13 Board will draft rules and make them
14 available for a period of public comment. We
15 will hold a second hearing once the rules are
16 provided to the public and before they are
17 adopted. We want to make the rule-making
18 process as transparent as possible and give
19 the public and especially the regulated
20 community an opportunity to express their
21 suggestions and concerns.

22 Let me explain the new Charter
23 requirement passed by voters last November.
24 The disclosure required by the Charter
25 includes spending by outside individuals or

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1
2 groups that support or oppose a candidate or
3 municipal referendum. Persons or groups that
4 make independent expenditures in excess of
5 \$1,000 in City elections must report this
6 activity to the CFB. In addition, any group
7 that makes expenditures exceeding \$5,000 for
8 a candidate must disclose the sources of its
9 money.

10 The Charter also requires that campaign
11 literature and advertisements produced by
12 third-party actors include the name of the
13 person or group which paid for them and gives
14 the CFB enforcement powers for those entities
15 which failed to disclose these independent
16 expenditures.

17 The Board has circulated a brief paper
18 outlining some issues to be considered. In
19 addition to these issues, we will take the
20 comments presented today and look at
21 regulations from other jurisdictions before
22 issuing a draft of our rules.

23 I'd like to briefly review some of the
24 issues the Board is contemplating and add
25 what other jurisdictions have done to provide

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1
2 some context before we hear from those
3 testifying today. The Charter broadly
4 requires that certain independent spending be
5 disclosed to the CFB and gives the agency's
6 enforcement powers. While the Charter
7 defines an independent expenditure as an
8 expense made in support or opposition to a
9 candidate or municipal ballot proposal
10 referendum without cooperation or knowledge
11 by a candidate, the Board must refine the
12 scope of regulated activity; should the
13 requirements apply to communications
14 containing express advocacy such as "Vote for
15 Candidate X" or "Don't vote for Candidate X"
16 or also to those that refer to a clearly
17 identified candidate or ballot measure
18 shortly before an election; additionally,
19 should certain communications be exempt from
20 the disclosure rules?

21 In addition to defining what constitutes
22 an independent expenditure, the Board must
23 consider what information an independent
24 spender is required to disclose to the CFB
25 about their funding sources and vendors once

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2 their spending hits the financial triggers
3 established in the Charter.

4 Timing is a crucial component of this
5 new disclosure and the Board must consider
6 within what time frame this information
7 should be reported and made available to the
8 public. One important matter to note is that
9 while many entities are currently required to
10 make some disclosure to the State Board of
11 Elections, this disclosure is not timely, it
12 is often posted months after the election,
13 nor does it in many cases explain what
14 candidate or ballot initiative the expense
15 supported or opposed. In addition, as we saw
16 in the Midterm Elections, merely knowing the
17 name of the person making the expenditure is
18 not sufficient. Therefore, the Charter
19 requires disclosure of the source of funds.

20 The Board's mandate is to provide real-
21 time disclosure to the public especially in
22 the weeks and days before an election. Our
23 challenge in developing these rules is to
24 define the appropriate level of detail and
25 timing for disclosure of the expenditure as

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2 well as the funding sources. The financial
3 thresholds will help keep those who need to
4 make disclosure aware of when and what to
5 report to the CFB. Any member of the public
6 will be able to view this information on our
7 website just as they can see who contributes
8 to a given candidate and where that candidate
9 chooses to spend his or her funds.

10 How independent expenditures are
11 identified to the public is a crucial part of
12 this new requirement. Materials created by
13 third-party actors must clearly identify who
14 paid for them. The Board must consider what
15 language is necessary to identify who funded
16 an advertisement or a piece of literature.
17 Part of the missing disclosure we saw in the
18 2009 Elections were mailings produced by
19 third-party actors that were almost
20 indistinguishable from campaign literature.
21 Voters could not tell who has paid for and
22 sent these pieces and sometimes mistakenly
23 believed it was a campaign literature.

24 This new disclosure mandate will provide
25 the public with information, not just

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2 disclosure by groups or individuals on our
3 website, but an explicit acknowledgement of
4 an independent expenditure directly on the
5 material that is produced.

6 Finally, the Board must consider how CFB
7 staff can best conduct outreach and training
8 to potential independent spenders and how to
9 uncover violations of disclosure rules. Our
10 staff works with the City and State Board of
11 Elections to identify potential candidates
12 and we train campaigns throughout the
13 election.

14 With this new mandate, a new regulated
15 community comes under our purview and we want
16 to ensure that all those impacted by this
17 change are aware of the Board's requirements.
18 We will create and administer trainings but
19 need feedback from those attending on how
20 best to conduct our outreach.

21 These are some of the issues that the
22 Board is considering. I know many of you
23 will touch on these today and I hope
24 additional issues and concerns are raised at
25 today's meeting so they can be considered as

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2 the Board drafts proposed rules. The Board
3 and the agency staff take the rule-making
4 process seriously and we hope to hear from as
5 many stakeholders and interested parties as
6 possible as we implement this new important
7 mandate.

8 The goal is to provide the public with
9 as much information as possible about money
10 being spent to influence the City's
11 elections. We want to make rules that are
12 manageable for third-party actors without
13 compromising the quality of disclosure the
14 public deserves. The CFB has a long history
15 of engaging the public in discourse about its
16 Charter mandates, and I thank you for coming
17 here today.

18 MR. PARKES: Thank you very much, Amy.
19 We'd also like to thank all those who
20 submitted statements in advance. I believe
21 there are copies of the statements outside
22 the room and everyone is invited to take
23 copies of those.

24 We've broken up the people who have come
25 to speak today into panels and I would like

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2 Amy to now please describe how we will
3 proceed.

4 MS. LOPREST: So, just, we have the
5 panels and I'll announce the panels, and we
6 have the written testimony for those who have
7 submitted it, so if you've submitted written
8 testimony, there's no need to read the entire
9 testimony, you can summarize your testimony.

10 Also we'll have the panel sit here, if
11 you could speak into the microphone because
12 we're webcasting this, but those microphones
13 have a little bit of reverb so if you sit too
14 close you'll hear it, so, you know, talk into
15 it but not, you know, too close.

16 Our first panel is Ciara Torres-
17 Spelliscy and Mark Ladov of the Brennan
18 Center for Justice and Gene Russianoff of the
19 New York Public Interest Research Group.

20 MS. TORRES-SPELLISCY: Good morning. My
21 name is Ciara Torres-Spelliscy. I am a
22 campaign finance attorney at the Brennan
23 Center, and we've recently -- is this on?
24 Let me talk louder.

25 Again, my name is Ciara Torres-

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2 Spelliscy. I am a campaign finance attorney
3 at the Brennan Center. We recently released
4 a report called Transparent Elections After
5 Citizens United, and I ask that a copy of it
6 be submitted to your record.

7 In a nutshell, I am here to tell you
8 that disclosure is a fully constitutional way
9 to regulate the role of money in politics.

10 It is easy to forget that there were two
11 parts of the Citizens United; Citizens United
12 famously allows for corporate and union
13 treasury funds to be used in politics on
14 political ads, but just as importantly,
15 Citizens United also endorsed full disclosure
16 and disclaimers on such political ads.

17 And we are faced with a bit of a
18 paradox. On the one hand, the 2010 Election
19 was notoriously dark, and speakers this
20 morning have already highlighted some of
21 those facts. Half of the spending in the
22 Federal Election, the outside spending, was
23 unattributable to its original source, and
24 that left American voters including New
25 Yorkers in the dark about who was spending in

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2 the last election.

3 At the same time, the same people who
4 brought you Citizens United brought a slew of
5 lawsuits all around the country challenging
6 disclosure laws from Maine to Hawaii, and
7 almost uniformly -- and I think the process
8 sort of missed this story -- almost
9 uniformly, those challenges to disclosure
10 laws were utter and abject failures. Lower
11 courts followed Citizens United, they
12 followed what the Supreme Court did and they
13 upheld state level disclosure laws nearly to
14 a case, there are some slight exceptions, but
15 disclosure is winning in the courts.

16 And, so, there is this sort of paradox.
17 On the one hand, you have political actors
18 who are increasingly dark. On the other
19 hand, you have the courts which are
20 pro-disclosure. And I think for your
21 purposes, this is good news for you because
22 this means that you have this change in the
23 Charter, you have the authority to promulgate
24 new rules requiring disclosure around those
25 who are spending in New York City elections

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2 and you have breathing room from the court on
3 this particular issue.

4 So, I'm going to turn this over to my
5 colleague Mark Ladov and he's going to put a
6 few more -- some meat on the bones that I've
7 laid out.

8 MR. LADOV: Thank you. So, as Ciara
9 points out, disclosure and disclaimer laws
10 are on firm constitutional ground, and so I'd
11 like to raise a couple of additional points
12 for the Board to consider as it moves forward
13 with drafting its proposed rules.

14 First of all, New York City should
15 require disclosure of electioneering
16 communications that refer to a clearly
17 identified candidate or a ballot measure
18 prior to an election.

19 The New York City Charter now defines
20 independent expenditures to include
21 expenditures made in support of or in
22 opposition to a candidate or ballot measure,
23 but when promulgating the rules to administer
24 this, the Board should not focus only on
25 "express advocacy," ads that include the

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2 magic words that Supreme Court announced in
3 Buckley's such as "vote for" or "vote
4 against," because in doing so creates an
5 enormous loophole for "sham issue ads" that
6 lack these magic words but that are clearly
7 meant to be understood by voters as
8 supporting or opposing a specific candidate.
9 Now, the Board should avoid this loophole.

10 The Board should also ensure that its
11 rules are easy to comply with by independent
12 spenders, and so, we recommend that the Board
13 adopt a bright-lined electioneering
14 communications definition, something that's
15 similar in structure to the Federal
16 Bipartisan Campaign Reform Act, also known as
17 BiCRA, also known as McCain-Feingold. Such a
18 definition would cover communications that
19 refer to clearly identified candidates and
20 that are targeted to the relevant electorate
21 during a specified time period before the
22 election.

23 Moreover, the Board should remember that
24 it can adapt BiCRA's requirement as necessary
25 to meet the particular needs of New York City

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2 elections, and this gets to what Ciara was
3 saying before, the courts have generally been
4 upholding disclosure laws, and so you should
5 sort of consider what are the particular
6 requirements that New York City has. So, for
7 example, the Board should require disclosure
8 for the types of media and communications
9 that are most common in City elections and
10 not be limited by BiCRA's definition of
11 electioneering communications as broadcast
12 ads.

13 In addition, the Board may wish to
14 expand on BiCRA's time frames which are
15 shorter before a primary than a general
16 election -- it's 30 days for a primary and 60
17 for a general -- given that many City
18 elections take place in party-dominant
19 districts where the primary vote may be as
20 important the as the general election.

21 So, the second point I'd like to make,
22 and this is what Ms. Loprest was mentioning
23 before, is that disclosure and disclaimer
24 laws need to provide voters with adequate
25 information about the underlying

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2 contributors. And this is necessary because
3 too often political spending is being made by
4 entities with uninformative or even
5 misleading names. To give one example, in a
6 recent Colorado ballot measure election, a
7 group called Littleton Neighbors Voting No
8 spent \$170,000 to defeat a zoning restriction
9 that would have prevented a new Wal-Mart from
10 coming to town. When the disclosure reports
11 for the group were filed, it was revealed
12 that Littleton Neighbors was exclusively
13 funded by Wal-Mart and it was not a
14 grassroots organization as it purported to
15 be. Adequate disclosure and disclaimer laws
16 are necessary so that voters can get that
17 information during the election and make an
18 informed decision when they go to the polls.

19 Now, the need for adequate disclosure is
20 even greater after Citizens United which now
21 allows any corporation to make unlimited
22 independent expenditures, this includes
23 501(c)(4) non-profit corporations that under
24 current law have no obligation to disclose
25 their contributors publicly at all even if

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2 those underlying contributors include
3 for-profit corporations. And as a result,
4 these non-profits can provide cover of the
5 true identity and intent of heavy spenders.
6 Again, to give a concrete example, after
7 Citizens United in the 2010 Midterms, we saw
8 at the federal level the emergence of
9 nationwide groups like the American Future
10 Fund, a Des Moines-based 501(c)(4) that spent
11 over \$9.6 million in the 2010 election
12 cycle. The American Future Fund attacked
13 candidates with misleading ads based on
14 conservative social issues, they ran a bunch
15 of these "Ground Zero Mosque Ads" around the
16 country, but news investigative reporting has
17 suggested that the organization was funded by
18 ethanol interests and that its real agenda
19 was to target democratic members sitting on
20 energy and agricultural policy committees.
21 Because the American Future Fund was
22 organized as a 501(c)(4) and there is
23 currently no adequate disclosure laws that
24 apply to it, we don't know the identities of
25 its funders and we may never know their true

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2 identity and intent.

3 So, one other thing that I would like to
4 add today that's not in our written testimony
5 but that's been brought to our attention by
6 some of the other people who will be
7 testifying today, we understand that there is
8 some concern that the Board might require
9 disclosure of internal communications within
10 a union or another type of organization,
11 internal communications between members. We
12 don't see anything in the Charter language or
13 the Board's white paper to suggest that that
14 will be the case, but we do want to emphasize
15 our agreement and that disclosure disclaimer
16 rules should be robust and should apply to
17 independent expenditures that target the
18 voters at large, but we don't think that they
19 should apply to member to member
20 communications within an association.

21 So, in conclusion, we want to urge the
22 Board to promulgate rules that fully enforce
23 both the letter and the spirit of New York
24 City's newly amended Charter. We appreciate
25 the opportunity to be here and look forward

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2 to working with you as you begin to draft
3 your proposed rules. So, thank you very
4 much.

5 MR. PARKES: Thank you, Mark.

6 MR. RUSSIANOFF: Good morning, Chairman
7 Parkes and the Board members and the Campaign
8 Finance Board staff. I'm Gene Russianoff
9 with the New York Public Interest Research
10 Group, and I hope I'm audible. I was going
11 to start by saying nice things about the
12 Board for holding this hearing, but in the
13 sake of interest of time, I'll skip that.

14 (Laughter)

15 MR. RUSSIANOFF: I have two general
16 points to make: One is in the history of the
17 Campaign Finance Program, there have been
18 major issues the Board has been willing to
19 attack and deal with that have made the
20 program relevant over time, so, whether it's
21 the debate program or the original 4-to-1
22 match or the doing business requirements, and
23 I think it's greatly to your credit that this
24 law is adapted and not become an artifact as
25 other campaign finance laws have.

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2 In addition, I think these independent
3 expenditure procedures will provide valuable
4 data on whether the City's Campaign Finance
5 program needs to react more of the growing
6 role of independent expenditures. For
7 example, the next City elections, it showed
8 that more generous matching funds to the
9 candidates are needed because of this.

10 So, I've addressed the questions or most
11 the questions that you put out in your white
12 paper and I'll just go through a couple of
13 our answers. You asked should the
14 requirements apply to communications
15 containing express advocacy or also those
16 that refer to a clearly identified
17 candidate. I haven't thought through the
18 constitutional scheme, but, you know, it
19 seems to me you could do both. You could
20 require disclosure of literature during the
21 election cycle that said "vote yes or no" or
22 "for or against." And then in the 60 days
23 that run up to the primary to the general
24 election, you could target those
25 communications that go to a clearly

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2 identified candidate, and that's pretty
3 direct how to define that, it's been in the
4 law for quite a while now. The Federal
5 Elections Commission defines a clearly
6 identified candidate as when whose name,
7 nickname, photograph or drawing appears or
8 whose identity is apparent through an
9 ambiguous reference, such as "Your
10 Congressman" or through an unambiguous
11 reference to his or her status like "the
12 Democratic Presidential Nominee." So, that's
13 one way we thought of cutting the issue.

14 What information should be required,
15 what information should an independent
16 spender be required to disclose about itself
17 and its funding sources and its vendors? You
18 have a lot of authority under The City
19 Charter provision that was passed last fall
20 and I've listed in my testimony some of the
21 information, it overlaps with what you've
22 already included, and I think, you know, I
23 would highlight two things: One is that it
24 should include detailed expenditures
25 including the name of the payee or vendor

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2 receiving the independent expenditure, their
3 address, for or against which candidate or
4 ballot proposal the expenditure was made, the
5 date the expenditure was made, the amount of
6 the expenditure and the purpose or
7 explanation of the expenditure such as now
8 required for candidates' spending by the CFB
9 such as printing, advertising, personnel.

10 Then, I don't know if this would have to
11 be voluntary or you have authority under the
12 law or if it's wise public policy, but you
13 could require copies of the printed
14 literature and electronic advertisements to
15 make sure that it's complying with your rules
16 and regulations regarding wording identifying
17 who is paying for the ad.

18 Should certain communications or actors
19 be exempt from the disclosure rules? We would
20 of course exempt the media. We also agree
21 that because an entity made any independent
22 expenditures its non-political contributions
23 should not be disclosed.

24 And at this time, on the tough issue of
25 member communications, we're going to punt,

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2 and I look forward to both the Board's rule-
3 making on this and the testimony by the
4 people, I find it a complex issue and a
5 challenging one.

6 Let's see if there's anything else I
7 want to highlight. You know, there are two
8 ways to deal with the issue of identifying
9 people; actually specifying the wording and
10 saying, "Paid for by Citizens for X," or
11 doing a safe harbor provision where you say,
12 "These are the suggested ways of doing it.
13 If you do it this way, you're likely not to
14 run afoul of the problem," and the question
15 really is how much you want to regulate in
16 this area and how much is needed to be
17 regulated.

18 And then on the last page of testimony,
19 I have a whole series of suggestions for
20 outreach. I think it will be really
21 challenging. You know, for finding the
22 candidates is pretty simple now for you
23 folks, you know where to go, you know how to
24 do it. This is a whole new universe, and so,
25 I won't go through it but we have a number of

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2 detailed suggestions.

3 And that's my testimony.

4 MR. PARKES: Thank you very much. Thank
5 you Ciara and Mark and Gene. We would now
6 like to open it up for questions from Board
7 members of the panelists.

8 MR. DAVIS: First I would like to say to
9 Brennan Center representatives, I did read
10 the report and it's really superb in terms of
11 very clearly setting forth sort of the issues
12 and the laws, so, congratulations on that.

13 I want to go to the point that you added
14 at the end on member to member contributions,
15 because, as indicated, it's one the tougher
16 issues. And I would like to know, because
17 it's not a secret who these unions have
18 endorsed, and we're talking about
19 communications that go to 30, 40, 50, 60, 70
20 -- maybe more -- thousand people, why is it
21 that you think shouldn't be covered?

22 MS. TORRES-SPELLISCY: One response is
23 just one from instinct, and that is the way
24 that the Federal law deals with this is they
25 exempt member communications from the

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2 definition both of expenditure and of
3 contribution. And so, the way I'm sort of
4 used to thinking about this is, "Oh, yeah, we
5 always exempt member to member," but, you
6 know, as you're saying, unions could be huge
7 and you could be talking to thousands and
8 thousands of people. So, I don't have a
9 perfect answer for you yet, but we'd love to
10 think about it more and submit some more
11 reasoned responses.

12 MR. PARKES: Questions, Mark?

13 MR. PIAZZA: I have a question for
14 Mr. Russianoff. Thank you, Mr. Chairman.
15 Mr. Russianoff, at the end of your remarks
16 you had mentioned that you believe that the
17 media should be exempted, how do you define
18 media?

19 MR. RUSSIANOFF: You asked a very tough
20 question, because obviously, you know,
21 exempting the New York Post or the New York
22 Times is pretty easy to do. What happens if
23 someone produces a newspaper which is
24 transparently an electioneering piece and it
25 doesn't look or feel like the media? So, how

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2 do you define that? I need to think some more
3 about it. But, you know, clearly a paper
4 that's affiliated with a candidate or paid
5 for by the campaign or through independent
6 expenditures, you know, there are a lot of
7 what you would think of as ersatz media, so.
8 But, you know, I would follow by the Brennan
9 Center in saying we need to think some more
10 about it.

11 MR. PIAZZA: I want to go through one
12 more issue. Beyond traditional media, how
13 would you handle bloggers for example?

14 MR. RUSSIANOFF: Well, again, I'd have
15 to think about it. You know, if it's being
16 run as an independent blog -- and I admit
17 freely that I'm sort of a not tackling the
18 word independent -- then, if it's an
19 independent, it's like regular media. And
20 you know, it's history, whether it existed
21 for a number of years before being used or
22 just popped up in the last few weeks before
23 the election. You know, I think those are
24 the kind of issues you'd have to grapple
25 with.

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2 MR. PIAZZA: Thank you.

3 MR. PARKES: Art?

4 MR. CHANG: Thank you very much for
5 being here. I want to ask a question sort of
6 extending along the lines about Mark phrased
7 about the impact of companies that for
8 instance engage in the social web, companies
9 that may have actual email lists or Twitter
10 handles for potentially tens of thousands or
11 millions of people where they could actually
12 geo-target, locate these folks, message them
13 at no or very, very little incremental costs.
14 I'd love to hear your thoughts about that and
15 to what extent you think that those kinds of
16 activities, you know, need to be considered
17 in this kind of a discussion.

18 MS. TORRES-SPELLISCY: Sure. Well, of
19 course most of the FECA, the Federal Election
20 Campaign Act, was written in the '70s and so
21 it did not account for, you know, email
22 handles and all of that good stuff you just
23 mentioned. The way that the exemption for
24 corporations was worded, it's basically aimed
25 at shareholders. So, if a company is

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2 communicating with their shareholders or with
3 their executives, then that's exempted from
4 the -- well, the preexisting corporate ban
5 and it's the exemption of member
6 communications from both the definition of
7 contributions and expenditures. But, as I
8 said, it was written in the 70s, so it had no
9 conception of what you're talking about. And
10 again, I would like to go back to my office
11 and sort of think that one through.

12 MR. LADOV: I will also go back to my
13 office.

14 MR. RUSSIANOFF: I'll go back to their
15 office.

16 (Laughter)

17 MR. DAVIS: What about "Get Out the
18 Vote" expenditures, should those be
19 reported? You know, they're not
20 advertisements, they're not -- do you think
21 those should be covered by these rules?

22 MS. TORRES-SPELLISCY: Yeah, again,
23 nonpartisan GOTV has also been exempted from
24 the definition of expenditure.

25 MR. DAVIS: Well, yeah. What about, you

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2 know, "Get Out the Vote" for specific
3 candidates?

4 MS. TORRES-SPELLISCY: Well, then I
5 would imagine that's an in-kind help to that
6 candidate and could be regulated under --

7 MR. DAVIS: You think that should be
8 covered then?

9 MR. LADOV: I think that we would
10 obviously want to think further, and I think
11 once there are some drafted rules we would be
12 able to kind of think through some of the
13 specifics.

14 But I would also imagine that part of
15 the issue of defining an independent
16 expenditures goes around issues of
17 coordination and things like that, and I
18 think that that's what part of the action
19 will be is on questions like that.

20 MS. LOPREST: I just have one more thing
21 for you to think about. When you're thinking
22 about the issue of member to member
23 communications, I guess it's whether or not
24 you would think that there would be a
25 difference, and it feels different, you know

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2 between an internal communication by an
3 organization, because you talked about
4 shareholder mailings versus a mailing that is
5 sent that it, you know, clearly identifies a
6 candidate, or, you know, for or against, that
7 is sent maybe just only sent to the members
8 of a union or, you know, the shareholders of
9 a corporation, but looks more look a piece of
10 campaign literature rather than an internal
11 newsletter or regular communication, whether
12 or not there should be any difference between
13 those two things.

14 MS. TORRES-SPELLISCY: Yeah, I don't
15 have a candid response to that either. I
16 apologize, I'm not being very helpful this
17 morning. But that is -- you're right, it
18 probably feels different if you always have a
19 newsletter that you sent to your shareholders
20 or you always have a newsletter that you send
21 to your union members versus something you
22 only send 10 before an election.

23 MR. RUSSIANOFF: And I would add that,
24 you know, my thinking is influenced by the
25 fact that post-Citizens United, all we really

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2 have is disclosure and so we're not talking
3 about a slippery slope in the regulations,
4 limitations, prohibitions. And, you know, I
5 think it puts burden on those who say our
6 communications should be sacrosanct. This
7 isn't like those cases, for example, from the
8 early part of the 20th Century on the
9 membership, people saying the membership of
10 the Communist Party or the NAACP where there
11 were associational rights at stake, I think
12 we're looking to inform the public about the
13 spending. You know, one way of thinking
14 about it maybe on a lesser level or a less
15 burdensome level of disclosure for member
16 communications than there are for express
17 advocacy and benefiting and targeted a
18 clearly identifiable person.

19 MR. DAVIS: This is something you
20 covered in your article, on this issue of the
21 ad or literature that doesn't contain the
22 magic words, so therefore it's what
23 electioneering. You know, the federal is 60
24 days before the general and 30 days before
25 the primary. How far, I mean, I'm not paying

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2 you for this legal opinion, so I can't hold
3 you to it, but how do you think you can push
4 that out and still meet constitutional
5 muster; do you have a sense?

6 MS. TORRES-SPELLISCY: We don't know. A
7 lot of the cases on how far out you can push
8 the electioneering definition were in lower
9 court cases before Citizens United. So,
10 there was this awkward period between
11 Wisconsin Right to Life in 2007 and Citizens
12 United in 2010, and during that awkward
13 period there were certain lower courts that
14 threw out electioneering communications
15 definitions, like there was one in Utah,
16 there was one in Florida, and one of the
17 things that did not sit well with those
18 particular courts is the electioneering
19 definition did not have a temporal time limit
20 on it. So, the question of how far out you
21 can push the time limit is an open question
22 of constitutional law. And in part, the only
23 way we will find out is by setting a time
24 limit that is different than the Federal time
25 limits and seeing what happens when they are

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2 challenged.

3 MR. RUSSIANOFF: We said 60 days in our
4 testimony in part because of the quick way we
5 hold elections, municipal elections, we tend
6 to elect in haste and then repent in
7 leisure. You know, my wife always worked on
8 campaigns and said nobody is paying any
9 attention before 60 before the primary, so,
10 you know, and we suggest maybe an express
11 advocacy standard for the rest of the
12 election cycle would cover some
13 communications.

14 MR. PARKES: Well, thank you very much,
15 Ciara, Mark and Gene, for getting us off to
16 such a great start this morning. And now Amy
17 will introduce the second panel.

18 MS. LOPREST: I just have one
19 announcement. If you hadn't signed up before
20 today, can you see Alona Kramer (ph) who is
21 standing here with the clipboard, and if you
22 would like to testify we'd be happy to hear
23 from you but we want to know who you are.

24 The next panel is actually only a single
25 person, Lawrence Laufer, who is a partner at

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2 Genova Burns and -- I'm not going to say
3 the --

4 MR. LAUFER: Giantomasi.

5 MS. LOPREST: They changed the name of
6 the firm so I was surprised.

7 MR. PARKES: Good morning, Larry.
8 Welcome.

9 MR. LAUFER: Good morning. Thank you
10 for inviting me today. I do want to
11 emphasize, as you know, I'm a lawyer, but I'm
12 here strictly in my personal capacity, I'm
13 not representing anyone.

14 Last year the Campaign Finance Board
15 advocated a Charter amendment to require
16 disclosure of independent expenditures in
17 city elections. The commission approved the
18 proposal and the voters ratified it into law.
19 Now we face a challenge in implementing this
20 new requirement.

21 I guess the focus of my testimony this
22 morning is to emphasize that this will not be
23 an easy exercise. I wish you well in
24 crafting the appropriate rules. And in
25 thinking about the challenge that you and

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2 your staff now face, I believe it's worth
3 recalling the lesson of King Midas: "Be
4 careful what you wish for."

5 Since this is a very big topic, as
6 you've identified in your briefing paper, I'm
7 limiting my remarks to just two questions
8 regarding scope and exemptions.

9 In turning to scope, obviously, the
10 starting point here is what the Charter
11 defines to be independent expenditures. The
12 Board is not drawing on a blank slate and it
13 is not writing legislation. And specifically
14 the Charter amendment directs the Board to
15 promulgate additional rules as it deems
16 necessary to -- and these are the key words
17 from my point of view -- implement,
18 administer, interpret and enforce the
19 independent expenditure requirement. In
20 other words, the Boards's rule-making needs
21 to answer the question of what activity is
22 subject to disclosure under the Charter
23 definition as enacted, not what activity
24 should be subject to disclosure as an
25 independent expenditure as a matter of public

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2 policy. The bottom line is the rule-making
3 will be primarily an exercise of
4 interpretation, not legislation.

5 Now, the Charter does contain a detailed
6 definition of the activity that is subject to
7 disclosure, that definition is not open-
8 ended. Also, for the most part, the language
9 is derived from state law and the Campaign
10 Finance Act definition of contribution, with
11 the key exception of the phrase "in support
12 or in opposition to," thus, to a significant
13 degree, prior interpretations of state and
14 city law should be taken into account of the
15 rule-making that reflects your interpretation
16 of the new definition.

17 Now, in construing the new phrase, the
18 CFB needs to decide whether that phrase
19 confirms, broadens or narrows the preexisting
20 meaning of independent expenditure under
21 state and city law. My own view is the new
22 phrase is somewhat clearer and certainly
23 narrower than the phrase is supplants. The
24 phrase that's being supplanted is, "In
25 connection with the nomination for election

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2 or election of any candidate." So, this is
3 relevant as to whether the definition
4 encompasses more than just express advocacy.

5 Second question: A failure to
6 communicate. The CFB briefing paper
7 describes the scope of regulated activity as
8 "expenditures for communications." Does this
9 mean the definition is presumed to exclude
10 expenditures for other purposes?

11 Now, on the one hand, the Charter
12 Commission reports, identifies its concern
13 is -- I'll just give you some phrases that it
14 uses -- independent advertising campaigns,
15 advertising materials, advertising messages
16 that quote "members of the public." So,
17 clearly at a minimum the definition covers
18 expenditures for advertising.

19 Then the report goes on to say that the
20 purpose of the amendment was to close a
21 disclosure gap, and I'm quoting from the
22 report, "Under existing law, the CFB has no
23 power to require disclosure related to
24 expenditures that are made independent of any
25 candidate but that are nevertheless with the

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2 express intent of influencing the outcome of
3 municipal elections and ballot proposals."
4 The report states that independent
5 expenditures have become increasingly
6 significant as part of election-related
7 spending and identifies minor political
8 parties, labor unions, political committees
9 and other third-party actors as sources of
10 independent spending in recent elections.

11 The reports that political committees
12 currently file with the Board of Elections
13 are according to the Charter Commission
14 narrower in scope and do not provide the
15 degree of transparency that the Commission's
16 proposal contemplates. So, according to the
17 Charter Commission, the amendment would
18 provide critical information and context for
19 members of the public and help them to
20 evaluate advertising messages aimed at
21 influencing their votes. So, from these
22 statements in the Charter Commission report,
23 one may discern that the definition was meant
24 to cover expenditures made with the express
25 intent of influencing the outcome of an

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2 election, specifically advertising messages
3 aimed at influencing votes.

4 If the disclosure is limited to
5 expenditures for advertising communications,
6 the definition would cover the same general
7 territory as federal law covers, both in the
8 case of independent expenditures and what
9 federal law describes as electioneering
10 communications. But if the definition is
11 limited to communications, then its
12 exemptions that are contained in the
13 definition, and these exemptions go to
14 non-compensated volunteers, use of real or
15 personal property, invitations, food,
16 beverages and unreimbursed travel, those
17 exemptions make little or no sense if the
18 definition was limited to communications.
19 Now, these exemptions that are in the law
20 derive from similar exemptions in state and
21 city law definition of contribution.
22 Although, in the preexisting definitions
23 those exemptions only modified the meaning of
24 contribution, they didn't modify the meaning
25 of independent expenditure.

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2 Now, the obvious implication of these
3 exemptions in the Charter definition is that
4 the new definition was designed to encompass
5 activities that are the inverse of the
6 exemptions. And for example, compensation to
7 non-volunteer personnel, invitations, food
8 and beverages not provided by individual
9 volunteers or exceeding 500 per volunteer or
10 travel expenses by non-volunteers and
11 volunteer travel expenses that are
12 reimbursed. So, did the Charter Commission
13 intend that such costs would be subject to
14 disclosure as independent expenditures only
15 if they were specifically incurred for the
16 purpose of producing or distributing an
17 advertisement?

18 On the other hand, could it be
19 understood more broadly as requiring the
20 disclosure of expenditures for such
21 activities such as internal administration,
22 legal compliance, fundraising, research, and
23 even the planning or preparation of
24 advertising that is never actually produced?
25 The CFB rule-making needs address that issue.

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2 Similarly, the Charter definition does
3 make clear that independent expenditures and
4 contributions are mutually exclusive, which
5 follows preexisting law, but that leaves open
6 the question of whether the terms were also
7 meant to be comprehensive of all expenditures
8 made by individuals and entities other than
9 City candidates and their authorized
10 committees. If that were the case, then the
11 CFB should conclude that the definition
12 covers more than just advertising
13 expenditures.

14 But then, again, why did the Charter
15 Commission choose the narrower phrase "in
16 support or opposition to" instead of the
17 broader "in connection with the election of
18 any candidate"? And I'm going return to the
19 question of comprehensiveness in a moment.

20 Third point: The test for
21 independence. Really, the heart of any
22 definition of independent expenditures is its
23 test for independence, and it's worth quoting
24 what the Charter says about that. What it
25 says is, "No candidate nor any agent or

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2 political committee authorized by a candidate
3 has authorized, requested, suggested,
4 fostered or cooperated in the activity."
5 Again, this phrase is drawn from pre-existing
6 law.

7 Now, Campaign Finance Board currently
8 has rules that implement the Campaign Finance
9 Act that include factors for determining
10 whether an expenditure is independent,
11 including rules that are specifically
12 addressed to independent spending by
13 political parties and by other candidates.
14 So, you may instinctively turn to your rule
15 108(f) to derive rules that now implement the
16 Charter amendment, but I think you should be
17 cautious, because the purpose of the rule
18 108(f) is quite different.

19 108(f) regulates candidate compliance.
20 It addresses when a campaign expenditure is
21 not independent. It's looking for bases for
22 determining that an expenditure is an in-kind
23 contribution. 108(f) doesn't shed any light
24 on whether an expenditure is in support or in
25 opposition to a candidate. For example, the

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2 third paragraph of that rule states, "An
3 expenditure for the purpose of promoting or
4 facilitating the nomination or election of a
5 candidate which is deemed not to be an
6 independent expenditure is a contribution."

7 Now, hypothetically, a person may form a
8 political committee for the sole purpose of
9 making independent expenditures to support a
10 particular candidate and then proceed to rent
11 office space, raise funds, hire staff. Now,
12 what if that committee, that hypothetical
13 committee, pulled the plug and ultimately
14 didn't engage in advertising? You may
15 determine that those kind of preparatory
16 costs for an aborted advertising campaign are
17 not the kind of spending that the Charter
18 amendment was intended to bring to light.

19 So, if so, would it be treated as an
20 independent expenditure under the new
21 disclosure requirement. Let's bring it back,
22 then, to your existing rule.

23 If you conclude it's not an independent
24 expenditure for purposes of disclosure, does
25 it really make any sense to automatically

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2 charge that kind of cost as an in-kind
3 contribution, as Rule 108(f)(3) would?

4 So, then, let's take this to the logical
5 conclusion. If the new rule-making accepts
6 that the definition of independent
7 expenditure in the Charter and that of
8 contribution in the Act taken together are
9 not comprehensive of all third-party
10 expenditures "made for the purpose of
11 promoting or facilitating the nomination or
12 election of a candidate," and by the way,
13 that's now the third term of art that's being
14 used, then perhaps you should be looking at
15 modifying or repealing your current Rule
16 108(f)(3).

17 My next to last topic, what about
18 candidates helping other candidates?
19 Confusion may also arise from the Charter
20 amendment's use of an indefinite article. As
21 I quoted before, there were two references to
22 the word "candidate" in the test for
23 independence. It's unclear whether that's
24 referring to one in the same person.
25 Further, the term "no candidate" is so broad

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1
2 as to suggest that if any candidate
3 authorized an expenditure, that expenditure
4 is not reportable under the Charter amendment
5 regardless of whether the expenditure was
6 made in support or opposition to a different
7 candidate.

8 So, two problems result: First, the
9 Board has long been concerned that one
10 candidate may make expenditures in support of
11 a second candidate and has set standards in
12 its rules for determining whether those
13 expenditures would be treated as independent
14 or in-kind contributions. Now, perhaps the
15 Charter Commission judged it would not be
16 necessary for candidate-authorized committees
17 to disclose independent expenditures in
18 support of a different candidate since this
19 information could instead be included in
20 their disclosure statements to the CFB under
21 the Act. The problem with this approach,
22 however, is that it overlooks authorized
23 committees of candidates for non-city offices
24 such as state legislators which may
25 independently spend to support or oppose City

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2 candidates.

3 These non-city candidate committees do
4 not file disclosures with the CFB. If this
5 is what the Commission intended, you still
6 have a potential disclosure gap under the
7 Charter amendment filled only by the more
8 oblique information that those committees are
9 filing under state law.

10 Greater mischief is possible by a
11 wealthy candidate. A candidate may use
12 personal funds to make large independent
13 expenditures in support or opposition to
14 other candidates and not be subject to
15 disclosure under the Charter definition since
16 such expenditures would have certainly been
17 authorized by a candidate. Thus, the
18 potential for an unresolved disclosure gap
19 grows, especially because the term
20 "candidate" isn't defined and could be
21 construed to include perspective candidates
22 who never even make it on the ballot.

23 Lastly, I want to turn to the question
24 of exemptions for specific categories of
25 speech. I believe the Commission didn't do

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2 the CFB any favor by omitting language from
3 the Charter in its report that would support
4 other exemptions from the definition of
5 expenditures. I think the clamor for
6 exemptions will be significant and the case
7 for exemptions may be compelling, but as an
8 administrative agency -- you're not a
9 legislature and you're not a court -- it
10 would be very understandable that you would
11 be reluctant to create exemptions.

12 So, let's look at a couple of
13 possibilities.

14 Old and new media: Newspapers endorse
15 candidates, this is express advocacy. The
16 Internet is filled with robust political
17 speech for and against candidates, much of it
18 by individuals not affiliated with
19 candidates' campaigns. The Charter and the
20 Commission report are silent on whether, if
21 ever, communications in such forums would be
22 subject to Charter disclosure requirements.

23 Now, the U.S. Supreme Court has accepted
24 statutory carve-outs from campaign finance
25 requirements for media companies and New York

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2 State law has one expressly exempting "any
3 newspaper or other publication issued at
4 regular intervals in respect to the ordinary
5 conduct of such business," but there is no
6 similar carve-out City law.

7 As a matter of constitutional law,
8 disclosure requirements are subject to
9 exacting scrutiny which requires a
10 substantial relation between the disclosure
11 requirement and its sufficiently important
12 governmental interest. The Charter amendment
13 doesn't include an exemption for media
14 companies or the Internet. Is there any
15 basis for concluding that the First Amendment
16 requires that such an exemption in either
17 case? If not, would the CFB attempt to
18 exempt either category be treated as beyond
19 the scope of the authority that was delegated
20 by the Charter.

21 Member communications: We heard
22 testimony on that issue already. I have a
23 few comments. Federal campaign finance law,
24 as we heard this morning, expressly exempts
25 from treatment as an expenditure of member

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2 communications. I spare you my reading of
3 the definition. The city and state laws do
4 not codify a comparable exemption. So, let's
5 take labor unions as an example.

6 There's an existing Campaign Finance
7 Board advisory opinion that says the Campaign
8 Finance Act makes no distinction between a
9 labor organization's communications to
10 members and to the general public. If,
11 moreover, the Charter definition is read to
12 extend to expenditures for purposes other
13 than communications, might the disclosure
14 requirement also cover a union's
15 pre-communication expenses such as the cost
16 of recruiting, training and deploying union
17 members who volunteer to work on various
18 campaign activities? There are at least two
19 arguments I believe in favor of exemption:
20 First, if the CFB feels compelled to derive
21 an exemption from media companies based on a
22 freedom of the press analysis under the First
23 Amendment, it would appear that freedom of
24 association provides a similarly compelling
25 constitutional concern in support of labor

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2 union communications with its members.

3 In addition, if -- the Charter
4 definition already exempts the value of
5 services provided without compensation by
6 individuals who volunteer a portion or all of
7 their time, in light of this current
8 exemption, I believe it would be difficult
9 for you to justify a distinction between the
10 treatment of the cost that an individual --
11 an individual -- in recruiting, training and
12 deploying other people in his or her social
13 network to volunteer their time supporting or
14 opposing the candidates and the cost that a
15 union incurs in doing precisely the same
16 thing.

17 Last point on exemptions concerning
18 political parties: U.S. Supreme Court has
19 recognized that parties have a First
20 Amendment Right to make independent
21 expenditures. Two courts in fact have struck
22 down on constitutional grounds, New York
23 statutory limits on parties spending in
24 primaries, which has opened the door to minor
25 parties playing a role in major party primary

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2 campaigns.

3 Now, as I mentioned, the Campaign
4 Finance Board already has rules in place that
5 are unique to political party expenditures.
6 These rules draw distinctions between generic
7 party activity and candidate-related
8 expenditures for purposes of determining
9 whether the Act's contribution limit is
10 applicable. If the Campaign Finance Board
11 now uses these same standards for
12 implementing the Charter disclosure
13 requirement, will there be instances where
14 the Board treats "generic party activity" as
15 a reportable independent expenditure?

16 For example, current rule describes
17 "training, compensating and providing
18 materials for poll watchers appointed by the
19 party" as activities that are not in-kind
20 contributions unless it is demonstrated, and
21 again I'm quoting, "that the candidate in
22 some way cooperated in the expenditure and
23 the expenditure was intended to benefit the
24 candidate." So, following this rule, if a
25 party funds a ballot's security operation

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2 with the intent of supporting or opposing
3 particular candidates without -- and I'm
4 emphasizing without the cooperation of any
5 candidate, the activity would appear to be
6 reportable as an independent expenditure
7 under the Charter Commission.

8 I think the party is going to take the
9 opposite view. If the activity does not
10 entail candidate-specific communications, the
11 party may just call it traditional party-
12 building function regardless of whether it
13 had the intent of supporting or opposing a
14 particular candidate. The party may then use
15 its housekeeping funds to pay these costs as,
16 and this is state election law, "ordinary
17 activities that are not for the express
18 purpose of promoting the candidacy of
19 specific candidates." And as we know, state
20 law exempts housekeeping funds from
21 contribution limits.

22 The Charter report can be read two ways
23 in support for blanket exemption for party
24 housekeeping expenditures since the new
25 disclosure requirement is directed to

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2 contributions to expenditures "made with the
3 express intent of influencing the outcome in
4 municipal elections." Such an exemption,
5 however, would be a departure from the CFB's
6 existing rules and potentially open bigger
7 vistas for party housekeeping expenditures
8 that would likewise not be treated as in-kind
9 contributions even when the activity is
10 coordinated with a candidate.

11 The blanket exemption would encourage
12 parties to use housekeeping accounts,
13 potentially pushing the envelope to the kind
14 of expenses for which unlimited contributions
15 may be used. But my concern is without a
16 blanket exemption the Board is going to be
17 drawing the clashes with parties over
18 allegations that housekeeping expenses are
19 reportable under the Charter. After all, a
20 Campaign Finance Board finding that a party
21 housekeeping account paying for an
22 independent expenditure would be tantamount
23 to calling the party in violation of state
24 election law. An exemption would spare the
25 Campaign Finance Board clashes over political

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2 party compliance with a law that the Board
3 has no jurisdiction to enforce.

4 Again, in the interest of time, I'm not
5 addressing whether the Board has authority to
6 authority to subject both express advocacy
7 and electioneering communications in the
8 requirement, I just note that if you do
9 decide do reach electioneering communications
10 as it's defined in federal law and extend the
11 reach of that definition beyond television
12 and radio advertising, you may end up making
13 some public opinion pollsters pretty
14 miserable.

15 In conclusion, again I wish you well in
16 developing the proposed rules.
17 Unfortunately, I think you may find that this
18 Charter amendment as it is written does
19 reflect a bit of a Midas touch, and that even
20 in the realm of campaign finance disclosure,
21 all that glitters may not be gold.

22 MR. PARKES: Thank you, Larry. Any
23 questions of Larry?

24 MR. HALL: Thank you very much,
25 Mr. Laufer. I wanted to address one of your

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2 statements about membership, member
3 communications. So, are you comparing
4 members of unions where they pay dues to
5 social networks? I think you were saying
6 that the dues that are paid and the costs
7 that are incurred with unions distributing
8 communications would be similar to social
9 networks?

10 MR. LAUFER: The point I was making was
11 merely that in the context of recruiting
12 people to volunteer on a campaign, whether
13 that's activity taken by an individual or a
14 union in reaching out to a group of people,
15 whether they are dues-paying people or other
16 people who are connected with the person who
17 is advocating that they undertake volunteer
18 activity, that those are I believe analogous
19 communications in terms of urging those
20 people to get out and volunteer.

21 If someone has a Facebook page, for
22 example, and sends an email saying, "I think
23 my 1,000 friends out there should go out and
24 support such-and-such candidate, here is a
25 way to do it," I don't really see a

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2 communicative distinction between that type
3 of activity and a union that sends the same
4 message to a membership. That being said,
5 I'm questioning whether the Board has any
6 authority to adopt such an exemption given
7 the way the language in the Charter is
8 written.

9 And, you know, it's my own view that the
10 Board may want to take a broader look at the
11 subject in terms of acting within its
12 delegated authority in identifying subjects
13 for City Council legislation to the extent
14 that they believe there are public policy
15 justifications that support certain
16 exemptions.

17 MR. DAVIS: Of course a social network,
18 for example, may not cost \$1,000, may cost
19 nothing. So, it may not come within the
20 Charter provision anyway.

21 MR. LAUFER: That's a very valid point.

22 MR. DAVIS: So, indeed it's one of the
23 dilemmas about social network, if there's an
24 influence it could play without real dollar
25 costs.

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2 MR. PARKES: Of course, though, if the
3 individual hired someone to write, you know,
4 a position paper that they distributed, paid
5 more than \$1,000 for --

6 MR. DAVIS: Different issue. Different
7 issue, sir.

8 MR. PARKES: Okay. Any further
9 questions?

10 (No response)

11 MR. PARKES: Okay, thank you. Amy?

12 MS. LOPREST: No, I was just going to
13 comment that all of the written testimony
14 will be posted on our website. You know, so,
15 people who are interested, taking notes, will
16 be able to read it in their whole on the
17 website.

18 MR. PARKES: Thank you.

19 MS. LOPREST: Next, Council Member
20 Daniel Halloran from the 19th District in
21 Queens is on a tight schedule, so we agreed
22 to let him speak right now out of our
23 schedule.

24 MR. HALLORAN: Thank you very much for
25 that. Good afternoon to you, let me just

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2 remind you that I'm a product of Jesuit
3 education at Fordham University, Regis High
4 School, so, please take my comments from the
5 critical nature from which the Jesuits are
6 trained.

7 First, let me congratulate this body on
8 doing something that few municipalities and
9 fewer states have ever done, that is attempt
10 to level the playing field.

11 As a Republican member of the New York
12 City Council, 1 of 5 of 51 members, I can
13 certainly tell you the level of the playing
14 field in any manner is something I am deeply
15 interested in.

16 Let me also commend you on your use of
17 technology. While it was initially difficult
18 to learn, once mastered, your programs are
19 incredibly effective and provide all
20 candidates with an incredibly robust set of
21 tools to run their campaigns.

22 Let me now however now level some
23 criticisms. I sit here 18 months after my
24 campaign, my opponent under-reported by some
25 \$200,000 and so I didn't get a Tier 2 Bonus

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2 until post-election, which of course did me
3 absolutely no good from a financial
4 perspective.

5 MR. PARKES: If I could just ask, that's
6 an issue for the regular business of the CFB
7 please.

8 MR. HALLORAN: Understood. I just want
9 to point out that much of what you're going
10 to be doing has to go to a larger issue of
11 reform in the Board. I am struck
12 particularly by the comments of the last
13 person testifying who indicated that he saw
14 no difference between Facebook and a union
15 organizing people to come to the assistance
16 of a campaign. Of course the difference is
17 on Facebook, the worst that's going to happen
18 is that you're going to be unsubscribed as a
19 friend if you fail to answer the call of a
20 Facebook subscriber.

21 In the case of the unions, who I would
22 add, the elected officials will then be
23 spending the better part of the next six
24 months after their election going over their
25 contracts, looking at their department's

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2 fundings, in effect, affecting the very
3 nature of those relationships creates an
4 inherent conflict of interest, one that this
5 body should be very mindful of and what the
6 costs entailed creating the body are.

7 I also note that while unions including
8 municipal unions are indeed permitted to make
9 donations, S corporations, partnerships, are
10 not. It's amazing that a body that may have
11 absolutely presence in a political district
12 can give money when individuals who actually
13 run businesses in those districts are not
14 able to give money. If we're talking about
15 fundamental fairness and leveling the playing
16 field, it would seem to me that if you're
17 setting a limit for donations by unions, you
18 can just as easily accept the same donations
19 from mom and pop businesses. If you're
20 worried about proliferation of
21 sub-corporations or corporations which have
22 relationships, you can certainly craft
23 legislation to deal with that and look at the
24 common interests tests that we use during
25 civil litigation to determine if a company is

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2 a successor interest, coordinate interest or
3 other form.

4 In addition, of course, as this body is
5 aware, Federal Court decisions including one
6 by the Supreme Court have actually lifted the
7 veil and said that there should be a level
8 playing field between corporations and the
9 unions. And I would expect that if this
10 body's interest is truly fairness that they
11 will continue along that route.

12 In addition, I'd like to discuss briefly
13 the party housekeeping accounts which were
14 spoken of at the tail end of the prior
15 testimony. It would seem to me that if you
16 are to permit any form of exemption for our
17 political parties despite their cries of
18 First Amendment, you will effectively have
19 made this body's purpose meaningless. By
20 that, I mean, it is impossible for you to
21 control campaign spending on one side of the
22 fence and not control it on the other. If,
23 as everyone indicates, there is a 5 to 1
24 ratio of Democrats to Republicans in this
25 city, and in fact that ratio is even greater

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2 when you start talking about independent and
3 third-party parties, it will be impossible
4 for any of those bodies to compete in
5 elections if their primary political
6 agencies, the counted committees of the
7 various political parties, are given the
8 ability to expend funds in an almost
9 unlimited fashion under the guides of party
10 building. It is not a secret that in New
11 York City, there is really no Republican
12 primaries, it's really not a secret, that
13 most elections in New York City, just based
14 on the simple demographic of a 5 to 1 ratio
15 means that the victor of a democratic primary
16 is in all likelihood the victor in the
17 general election, you must look to that issue
18 and speak specifically to the problems that
19 are created when one party has such complete
20 and total dominance of the electoral field.

21 And when it does so, and it's entitled
22 to spend additional funds to bolster that
23 position, you have effectively neutered any
24 chance that the Campaign Finance Board has of
25 coming in and being a playing field leveler.

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2 I don't want you to take away from my
3 testimony that I have any lack of confidence
4 in you, in fact, just the opposite. I
5 believe that what you've done and what you
6 continue to do is critical to bringing
7 elections into a realistic and just outcome.
8 However, it is also clear that you are
9 fighting against tremendous pressures and
10 political interest groups. Just to point out
11 again, the very fact that a municipal union
12 whose budget, hiring and terms of contract
13 would be negotiated by the very people they
14 endorse for political office should send
15 warning flags to everyone. If that were the
16 case, in any private sphere, there would be
17 inherent conflict of interest laws to prevent
18 just that sort of relationship from even
19 forming.

20 While I have no problem with a union
21 endorsing a candidate, by that, I mean
22 saying, "We support Candidate X or Y,"
23 expenditures on of behalf of that candidate
24 or donations to that candidate in and of
25 themselves are inherently a conflict of

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2 interest, for, we are the body that approves
3 the budget year after year, the committees
4 that discuss the terms of the contracts and
5 ultimately will have say on who is or isn't
6 hired.

7 Let me also say that it is important
8 that as you go forward in making this
9 particular set of Charter reforms, that you
10 not be mindful that there are a series of
11 Charter revisions that need to be made, some
12 of course will be done by legislation in the
13 Council, and I know there are several bills
14 which are winding their ways through
15 committees to discuss your work, but also you
16 need to be making continuous recommendations
17 to the Council based on the observations you
18 have of what's going on. It is impossible
19 for us to effectively legislate for you if we
20 do not know what your concerns are.

21 And again, I apologize for referencing
22 my particular situation at the outset of
23 this, however, I think it is a fundamental
24 fairness issue that you must address if you
25 are going to really achieve your goal,

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2 because without us addressing the inability
3 of this Board to proactively prevent, inhibit
4 or otherwise punish those who use the system
5 to their advantage and to the detriment of
6 the intentions of the Campaign Finance Board,
7 then there will be no confidence in the work
8 that you do.

9 Again, I thank you for your time and I
10 thank you for your efforts and expenditures
11 on behalf of the City of New York and its
12 constituents who are thrilled to know that
13 there are people looking to make things a
14 little more balanced. Thank you very much.

15 MR. PARKES: Thank you, Dan. Any
16 questions?

17 (No response)

18 MS. LOPREST: Our next panel is Josh
19 Gold, the Political Director of the New York
20 Hotel and Motel Trades Council; Peter Ward
21 who is the president of the Hotel Trades
22 Council; Terry Meginniss -- I'm hoping I'm
23 pronouncing your name correctly, the General
24 Counsel and Chief of Staff of the Service
25 Employees International Union Local 32BJ;

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2 Robin Firth who is a member of that union;
3 and Dell Smitherman who is the Political
4 Coordinator for the Service Employees
5 International Union Local 1199. I think we
6 might need an extra chair.

7 MR. PARKES: Good morning, thank you all
8 very much. Everything that you've handed out
9 ahead of time will be in the record and that
10 you state now will be in the record, so if
11 you've handed out documentations beforehand,
12 I think it might be more effective for the
13 dialogue with the Board members if you
14 highlight the main points and we can engage
15 in discussion. Thank you.

16 MS. FIRTH: My name is Robin Firth and I
17 am a proud member of SEIU 32BJ. I am a
18 cleaner at 125 Barkley, and I have been a
19 member political organizer for two years. I
20 live in Flatbush neighborhood in Brooklyn.

21 I support requiring increased disclosure
22 of independent expenditure and I'm glad to
23 see that New York is taking steps to make
24 sure New Yorkers can make educated decisions
25 during election season. However, I'm

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2 concerned about the idea that the Campaign
3 Finance Board may regulate member to member
4 communications in a way that would make it
5 more difficult for me and other members like
6 myself to spread information about
7 politicians and the political process to
8 other co-workers.

9 I want to speak to you today about my
10 experience as a member political organizer.
11 As a member political organizer, I have been
12 able to educate fellow 32BJ members about the
13 importance of politics in our lives at work
14 and in our communities. I volunteer my time
15 to run monthly meetings to help members get
16 information about politics and about laws
17 that might impact them. We invite
18 politicians and community groups to speak at
19 these meetings and we have discussion about
20 our union and its participation in politics.
21 These meetings are member-driven and member-
22 run and provide a venue for members to
23 discuss the impact of politics on their
24 lives.

25 Our members are low and middle income

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2 workers, many of them are immigrants. Most
3 of them live in communities with low levels
4 of political participation. Working with our
5 members to increase their knowledge of
6 politics and their ability to participate and
7 in a forum has been a very a meaningful
8 experience for me.

9 When I first talked to many of the
10 members, they don't even know who their
11 elected officials are or what elected
12 officials even do. As a member political
13 organizer we help members to understand the
14 bigger picture of why working people need to
15 be involved in politics. For us, it's not
16 about getting members to vote for certain
17 politicians, it's about making sure that
18 members are registered, educated on the
19 position of different candidates and elected
20 officials and know how they can participate
21 on in the political process.

22 Before I became active in my union, I
23 was interested in politics but I never knew
24 how to get involved. I was very interested
25 in the issues but I was unsure of where to

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2 get my information about the position of
3 candidates. Sometimes I didn't know who to
4 vote for and sometimes would did not vote.
5 Now that I'm more active in the union, I'm
6 able to get information about the political
7 process and about politicians and I can pass
8 that information along to my co-workers and
9 other members of the union.

10 Our union is our membership and we are
11 only strong when we can communicate with each
12 other, educate each other and come together
13 to act. Member to member conversations and
14 communications are fundamental to the
15 democratic culture of New York.

16 As a member, I'm here today to express
17 concerns of burdensome reporting requirements
18 of additional information within the union,
19 our ability to communicate with other members
20 and damage to our members' capacity for
21 participation in the City's democratic
22 process.

23 MR. PARKES: Thank you very much, Robin.
24 Why don't we have each speak and then we'll
25 have the questions after to the whole panel.

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2 Thank you.

3 MR. MEGINNISS: Good morning, my name is
4 Terry Meginniss, I'm the General Counsel to
5 SEIU 32BJ and we had in mind that you should
6 hear from some of our members who are in fact
7 actively engaged in the political processes
8 of our union, so that you understand what
9 we're really talking about here, as you can
10 tell, we're here primarily because we're
11 concerned about the potential that the Board
12 might regulate and require disclosure of
13 member to member communications.

14 As a general proposition, we at 32BJ
15 strongly support the principle that
16 individuals and entities who seek to
17 influence the public about who to vote for
18 should be required to disclose who they are,
19 what they are spending and the sources of
20 funds that have been given to them to make
21 those advertising or other kinds of
22 communications known. These kinds of
23 disclosures advance public understanding by
24 letting people know interests are aligned for
25 and against particular candidates and they

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2 are entrained to believe that, in principle,
3 it's entrained in the Charter amendment,
4 those disclosures should be required.

5 Our concern has to do with what you
6 might do when you implement this and we are
7 particularly concerned that if you implement
8 this regulation to require disclosure of
9 member to member communications, those are
10 internal communications among the members of
11 a membership organization, that kind of
12 regulation will have a disproportionate and
13 adverse effect on those who are in the
14 political process only by virtue of their
15 participating in membership organizations,
16 and we believe that that group comprises a
17 large part of the membership of our union.

18 32BJ is a membership organization, it is
19 an unincorporated association under New York
20 law. Nearly all of the employees of 32BJ who
21 are covered by collective bargaining
22 agreements that 32BJ has negotiated are
23 members -- nearly all but not all. There are
24 some who chose not to be members and they are
25 not members of 32BJ. The members pay dues,

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2 they participate in meetings and they elect
3 the union's leadership. In a very real
4 sense, the union is its membership. The
5 union has no existence independent of its
6 members. The union is an entity within the
7 meaning of the Charter amendment's use of
8 that term and the entity is the collective
9 body of the union's members. We think too
10 often people think of unions as the named
11 individuals who are their officers, that's
12 not the case. The union is comprised of its
13 members as a whole.

14 Membership organizations are voluntary
15 organizations of people who come together
16 around a particular purpose. The members of
17 membership organizations are particularly
18 interested in how political candidates may
19 deal with issues that are germane to the
20 organization's concerns. 32BJ members care
21 about where candidates stand on employees'
22 rights and on laws that regulate working
23 conditions.

24 Members of environmental organizations,
25 and I happen to be one of those, are

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2 concerned with candidates' stand on
3 environmental issues.

4 Women's rights organizations are
5 concerned with candidates' stands on women's
6 access to health care and reproductive
7 freedom and so on. And the point that we're
8 making here is that the mission of those
9 organizations, the reason that people come
10 together is often specifically because the
11 members of the organizations want to know how
12 candidates stand on the issues of concerns of
13 them. The membership organization becomes a
14 vital source of that information and a vital
15 forum for discussion among the like-minded
16 co-members of the issues that are related to
17 those candidacies and those issues that end
18 up being a fundamental part of political
19 campaigns. We believe that membership
20 organizations are a critical element in the
21 political process, not just unions but all
22 membership organizations, for this very
23 reason, and we also believe that a critical
24 ingredient of why they're important is that
25 there's a free flow of information among the

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2 members of those organizations.

3 If you apply disclosure requirements to
4 member communications, we believe you will
5 damage those internal communications. The
6 prospect of having to track communications,
7 quantify expenses associated with them and
8 then report the information and potentially
9 within a very short time frame is daunting.
10 Those who fail to comply face investigation,
11 fines and prosecution. We are concerned that
12 you if you were to extend disclosure
13 requirements to member to member
14 communications, it would cost organizations
15 including our own to curtail some of the
16 discussions that go on presently within our
17 organization of these issues as we've
18 described. This would be so even for those
19 organizations like ours that have resources
20 to do this kind of work. It is still
21 daunting. And let me explain a little bit
22 why, I think, Mr. Davis, you had asked a
23 question about this before.

24 I think the Board thinks of member to
25 member communications as a letter that's sent

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2 by the president to every member of the
3 60,000 member organization, and that is one
4 kind of a member to member communication, but
5 32BJ has member meetings on a daily basis
6 throughout the year. Groups of members come
7 together in a variety of forums, and
8 particularly in campaign season they discuss
9 candidates, they discuss candidates'
10 positions, they distribute literature, they
11 argue with each other. There are screening
12 committees that make recommendations to other
13 meetings, all of these are member to member
14 communications and there are countless ones
15 of them, and all of those meetings are in
16 settings where the union has spent resources
17 to pull the meeting together or has spent
18 resources developing the literature that is
19 distributed or has spent resources on the
20 media that are involved in extending the
21 discussions of those who are not in the
22 meeting place itself.

23 As I said, at nearly every one of these
24 meetings members express views about
25 particular candidates, those views are often

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2 recommendations for or against candidates,
3 many of them explicit, some are less than
4 explicit. Our primary concern is that we
5 will be very hard-pressed to track and
6 quantify the expenses of all of those
7 discussions at meetings that take place.

8 The discussions, by the way, are often
9 made without planning and without advanced
10 notice, they happen, and people hand out
11 literature, and those people may be rank and
12 filers and they may be leaders. This is what
13 happens in a union.

14 I think if you were to impose that new
15 disclosure requirement to capture those kinds
16 of member discussions, we would be in a
17 position to impose rules that certain
18 discussions could not take place except at
19 certain forums, and we think that's just
20 awful for the democratic process and I think
21 you should come to that conclusion as well.

22 Let me just say one other thing,
23 requiring disclosure requirements to the
24 extent of that may result in misleading the
25 public in major ways as well. I'll give you

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2 a perfect example, we are engaged in
3 collective bargaining. Throughout the course
4 of this year our bargaining agreements will
5 end, covering some 30,000 members in New York
6 City in the commercial cleaning field, in the
7 fall of this year. As we approach the
8 expiration of those contracts, one of the
9 things that we always do is galvanize members
10 to engage in rallies, demonstrations and in a
11 number of those meetings, we distribute to
12 the members expressions of support that we
13 have from politicians. We don't do that to
14 endorse their candidacies, even though they
15 may well be running at the time, we do that
16 for our own purposes. It is helpful to us
17 for the members to know that the politicians
18 are supporting them now in their
19 confrontation over a collective bargaining
20 agreement. In fact, we distribute the
21 expressions of support of politicians whose
22 candidacies we oppose and the expressions of
23 support of two candidates who may be running
24 against each other, it really doesn't have
25 anything to do with their running for office.

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2 The concern we have, particularly if you
3 adopt a rule to the effect that advocacy of a
4 politician can be inferred rather than be
5 expressed, and that that might trigger a
6 disclosure requirement, is that all of those
7 would have to be -- all of those expressions
8 of solidarity that we distribute to members
9 would have to then be reported to the
10 Campaign Finance Board which would report to
11 the public who would be under the impression
12 that we've endorsed those candidates which
13 would be exactly false.

14 These are just one example -- this is
15 just one example. There are hundreds of
16 instances in which our ordinary business
17 leads to our discussion of politicians and
18 candidates who may be running for office and
19 the positions that they are taking in their
20 campaigns. All of those could conceivably be
21 subject to a disclose requirement if you were
22 to extend it to member to member
23 communications, and frankly there is no
24 principle basis of distinguishing one kind of
25 member to member communication from another.

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2 In fact, the terrible aspect of this is
3 that the more internal discussion is the more
4 robust the program that union has for
5 engaging its members in this kind of
6 discussion to decide what the union should do
7 and in fact why a particular candidate should
8 be supported. The more that that happens,
9 the greater the reporting requirements, the
10 greater the likelihood that an error or
11 omission might occur that might result in
12 fines or penalties.

13 We think this would be really bad for
14 the political process, as Robin said before,
15 most of our members modestly paid persons who
16 are doormen, cleaners, security guards in
17 buildings, the union is the forum in which
18 they gain access to the political process.
19 Many of the other membership organizations
20 who would be affected by the same requirement
21 have people who only care to engage in the
22 political process by learning from the
23 organization that they belong to, whether
24 they're environmentalists or whatever.

25 If you adopt this measure and it has the

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2 effect which we believe it will have of
3 cutting down on communications, we think you
4 will have dealt a blow to the democratic
5 process.

6 I just want a couple more areas I want
7 to talk about. We think as you approach this
8 you must also consider that the First
9 Amendment plays a very important role in what
10 you can and can't regulate. The sound
11 purposes that we believe are served by
12 disclosure requirements generally, you have
13 to accommodate the protection of the First
14 Amendment and speech and associational rights
15 for groups like ours. Disclosure
16 requirements cannot be inappropriate or so
17 burdensome that they chill the very
18 undertaking of expression for association.

19 The Supreme Court has long recognized
20 that communications and activities within a
21 union or any other membership organization
22 merit strong First Amendment protection.
23 Even when campaign finance laws were
24 judicially construed to constitutionally
25 prohibit unions and corporations from

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2 undertaking electoral communications, that
3 prohibition was never applied to internal
4 communications. I believe it's precisely
5 because of the constraints of the First
6 Amendment in this area.

7 The Supreme Court and courts have also
8 long recognized that governmental
9 investigation of the internal political
10 activities of membership groups implicates
11 First Amendment concerns because the
12 investigation itself shows speech and
13 association. That's particularly true where
14 the outcome of an investigation could lead to
15 stiff civil penalties and even criminal
16 prosecution which is embedded in what you
17 have before you today.

18 The only thing compelling governmental
19 interest is in truth justified and I don't
20 believe that there is any compelling
21 justification in deciding member to member
22 communications on independent -- I'm sorry
23 that the expenses served, paid, in connection
24 with member to member communications are
25 independent expenditures within a meeting in

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2 the Charter.

3 I would like to talk about the Charter
4 amendment as well. The Charter itself
5 doesn't mention member to member
6 communications. None of the explanations of
7 the amendment that's circulated before the
8 election or none of the reports or other
9 public papers from the Charter Revision
10 Commission suggested that these requirements
11 will be extended to member to member
12 communications.

13 The Charter itself talks about the
14 communications by individuals in entities,
15 and I want to come back to that. A
16 membership organization is an entity. It
17 speaks to others when it speaks not to itself
18 but to others. When the entity -- when the
19 communication we're talking about is a
20 communication among the members of a group,
21 that's not an expression by an entity to
22 someone else. In our judgment, the Charter
23 amendment should be read not to extend to
24 member to member communications.

25 We note that neither the New York City

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2 Campaign Finance Law nor the New York State
3 Election Law nor the rules and regulations
4 that have been issued over the decades under
5 the authority of those laws have applied to
6 previous independent expenditure requirements
7 to internal communications within membership
8 organizations.

9 Neither the New York State Board of
10 Elections nor the New York City Campaign
11 Finance Board has ever sought to even
12 consider regulatory, administrative or
13 enforcement processes to apply contribution
14 expenditure or disclosure standards to
15 internal speech in associational activity.

16 That having been said, we're fully
17 familiar with the comment and the Campaign
18 Finance Board's August 2009 determination
19 that Mr. Laufer had referred to before where
20 the Board appeared to equate internal
21 organization member to member communications
22 with independent expenditures. That's why
23 we're here, we're concerned that that may
24 result in this Board going, venturing, into
25 that area.

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2 Let me just close by making what I think
3 may be a political point. Like many
4 Americans, we are really concerned about the
5 consequences of Citizens United. Democracy
6 is not well served by seeing great wads of
7 money spent by corporate bodies on
8 advertisements for people who are frankly
9 more often against particular candidates. To
10 the extent that the union spends money on
11 communications directed to the public, we
12 fully support the idea that that
13 communication be documented, that it be
14 clear, "who paid for it? Us," and that it be
15 clear what was spent, and we want the same
16 with respect to corporate spending.

17 We know that in the press and here
18 people often equate union campaign
19 expenditure, union campaign activity like
20 corporate campaign activity with the idea
21 that somehow there is some similar equation
22 between the two, and in fact it's an
23 incredibly false equation. Corporate
24 spending promoting candidates, opposed to
25 union and worker interests, far, far

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2 outstrips union spending in this arena even
3 though we spend an awful lot of money on it.

4 There is not a level playing field out
5 there. The playing field is tilted strongly
6 in favor of corporations and it always has
7 been. We think Citizens United is not a good
8 development for our democracy, but it's out
9 there. I underscore that point because I'm
10 fearful that there may be a similar
11 misperception at play here with respect to
12 the CFB's consideration of member to member
13 communications. The view that a disclosure
14 requirement of member to member
15 communications will somehow play equally with
16 corporations and membership organizations, it
17 won't. Corporations don't spend their
18 campaign dollars talking to their
19 shareholders, they spend them talking to the
20 public and they frequently do it through
21 other organizations to disguise who they are
22 and what they're paying, and we think that's
23 wrong. But they don't spend their money
24 talking to their shareholders. If you were
25 to impose this, it would have a huge impact

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2 on us, it won't have any commissary impact on
3 corporations. To the extent that it chills
4 us, as we expect it will, you will have
5 tilted the playing field even further.

6 So, we would like the opportunity to
7 submit what I've just said in writing to you.
8 I'm sorry, I didn't bring an extra copy
9 today.

10 MS. LOPREST: That's great.

11 MR. MEGINNISS: We understand that there
12 will a further notice of a proposed rule-
13 making and opportunity to be heard --

14 MS. LOPREST: Yes.

15 MR. PARKES: Do we have other members
16 going to speak?

17 MR. SMITHERMAN: Good afternoon. My
18 name is Dell Smitherman and I am the
19 political coordinator for 1199 SEIU United
20 Healthcare Workers East. I'm here to provide
21 information about 1199's member to member
22 political work and the union will submit
23 additional comments in writing.

24 1199 represents over 300,000 members and
25 retirees in New York, Maryland, Washington

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2 D.C., Massachusetts and Florida. We are a
3 union of healthcare workers employed in home
4 care, hospital and municipal industries as
5 well as pharmacies, freestanding clinics and
6 other healthcare settings.

7 Our union's mission is to improve and
8 expand quality patient care, to protect and
9 improve the lives of our members and our
10 families and to work in solidarity with
11 working people in our communities and around
12 the world. Most of our members are African-
13 American, Latino, Caribbean and Asian. Many
14 are immigrants. All members hold working-
15 class jobs. In New York City, most 1199
16 members live outside of Manhattan or above
17 125th Street with the greatest concentrations
18 in Brooklyn and the Bronx. Our members come
19 from backgrounds and neighborhoods where
20 people are disconnected from the political
21 process. As a political coordinator, it's my
22 job to make sure the union reaches out to
23 them and helped them to goat involved.

24 I and the political organizers I manage
25 are in constant contact with members. We

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2 attend their deligates' assemblies at the
3 union hall, we visit them in their workplace,
4 we knock on their doors and we call them on
5 the phone. We keep them up to date on the
6 union's endorsements and opportunities to
7 globalize. We make sure they're informed of
8 the effects of the elected representatives'
9 policy decisions on their lives and their
10 industries.

11 Many of our members start out viewing
12 the political process with apathy or even
13 deep distrust, those are the members we take
14 extra care to reach out to. We want them to
15 know that they have a voice, that their votes
16 count and that the politicians have to be
17 responsive to them. And it works, I've seen
18 members start out with the notion that
19 there's no point in getting involved turn
20 into our best activists, our best politic
21 canvases and ultimately join the union's
22 political staff full-time.

23 And in fact, I've been through that
24 leadership development process myself. In
25 1995 I started working at the geriatric

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2 center in Brooklyn, the shop wasn't
3 organized, but being from a union family, I
4 got involved in organizing and start the two-
5 year process of winning recognition from the
6 union. In 1997 I became a union delegate
7 helping to educate the members and enforce
8 the rights under the collective bargaining
9 agreement.

10 I was never too involved in the
11 political process, but in 2001 I got involved
12 in my first political campaign after being
13 recruited by the 1199 political organizer. I
14 started volunteering on lobby days and member
15 to member campaigns and in 2002 became a
16 political organizer. In 2010 I became
17 political coordinator. Since getting
18 involved, I have been all over New York State
19 and the country reaching out to thousands of
20 members and helping thousands of
21 disenfranchised people get involved in
22 politics and excited about voting for the
23 first time.

24 We all know that the Supreme Court last
25 year made it easier for corporations and

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2 unions to make independent expenditures on
3 public campaigns who support or oppose
4 candidates. We agree that those public
5 campaigns should be subject to full
6 disclosure requirements. 1199's political
7 action fund sometimes conducts political IE
8 campaigns and has always disclosed them on
9 state and federal campaign finance reports.

10 But my outreach to our members helping,
11 them to engage in the process and
12 facilitating their work to identify and
13 support the candidates who best represent the
14 interest of the organization they joined is
15 not the same as corporations' mail to the
16 public in support of a candidate whose
17 policies will best maximize profits for its
18 shareholders.

19 We urge the Campaign Finance Board to
20 recognize that important difference and not
21 unfairly burden crucial member to member
22 activity by volunteering limitations. Thank
23 you very much.

24 MR. GOLD: Good afternoon. My name is
25 Josh Gold, I'm Political Director at New

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2 York's Hotel and Motel Trades Council. I
3 want to thank you for the opportunity to
4 testify. I have a short statement that I
5 wanted to read, but I look forward to the
6 opportunity to comment in full after the
7 Campaign Finance Board presents the draft
8 rules. I know you have the statement on
9 front of you -- it's very short, I'll just
10 read it very quickly. There's a
11 compelling -- government for public interest
12 introduced disclosure requirements regarding
13 political speech made to the general public.
14 HTC strongly supports the idea that those who
15 seek to independently influence the general
16 public's voting decisions disclose who they
17 are, their funding and spending. We do,
18 however, urge the CFB to refrain from
19 attempting to introduce regulations of
20 internal communications with their membership
21 organization.

22 Often, member to member communication
23 for issue-oriented groups and neighborhood
24 associations strive to increase awareness and
25 participation amongst their members through

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2 internal communication. And I stole
3 "awareness and participation" from the CFB's
4 website.

5 We believe that extensive, uninhibited
6 communication between organizations and their
7 members helps to increase both knowledge and
8 turnout. Their concern that disclosure
9 requirements would do little to provide
10 critical information and context for members
11 of the public nor help them to evaluate
12 advertising messages aimed at influencing
13 their vote. Requirements would, however,
14 intimidate internal communication and even
15 attempt to communicate, create enhanced
16 burdens, limiting the desire to do so and
17 thereby stifling awareness and participation
18 amongst our members as well as member
19 organizations citywide.

20 As the Charter Review Commission noted,
21 the lack of citizen participation in the
22 electoral process seriously weakens our
23 democracy. Even among registered voters, the
24 turnout in elections, especially in New York
25 City, is quite low. The Commission goes on

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2 to say that there's little they can do to
3 increase turnout. By requiring membership
4 organizations to disclose internal
5 communications, creating those enhanced
6 burdens, the CFB may do just the opposite by
7 limiting or decreasing turnout. Thank you.

8 MR. PARKES: Thank you very much, Robin
9 and Terry and Dell and Josh. Any questions
10 from members of the Board?

11 MR. DAVIS: I think that was very
12 helpful and I would appreciate you submitting
13 that in writing and I think very helpful.
14 But I gather from everybody that you do
15 accept the notion that if expenditures are
16 made directed at non-members, those should be
17 covered?

18 MR. MEGINNISS: Yes, absolutely.

19 MR. PARKES: Any other questions or
20 comments? Well, thank you all very much.

21 MS. LOPREST: I do have one question. I
22 know that this will be difficult to define,
23 but the question -- I know you were here when
24 I asked the question of the Brennan Center,
25 it's do you think, I mean, you know, these

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2 meetings that you have, you know, are
3 different than, and maybe internal
4 newsletters may be different than individual
5 mailings that you send that have the look and
6 feel more of campaign literature that might
7 only be sent to your mailing list of your
8 members but might have the feel of campaign
9 literature? And again, it would be hard to
10 define this, but I wondered if you had any
11 ideas about whether that would be appropriate
12 to cover that or not.

13 MR. MEGINNISS: I have an idea. It
14 would be completely inappropriate, and this
15 is why: The very fact that it's hard to
16 define and the very fact that you describe it
17 as the look and feel means that you and we
18 would be entangled in endless wrangling about
19 what was the real purpose, why it was done,
20 what other purposes we claim the union might
21 have when it's served by the sending of that,
22 whether you would weigh that as sufficient to
23 make it not really campaign literature. It's
24 that kind of entanglement that we think
25 really ends up being a government intrusion

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2 in our associational interests and we believe
3 this is something that can't happen in the
4 First Amendment. So, that's the legal
5 answer.

6 The practical answer is, you and I will
7 be fighting about it for, you know, years and
8 years and years to come, each and every one
9 of these, and we would think you wouldn't
10 want to. I mean, I think in the end the
11 question is, what is the real purpose of the
12 disclosure requirement? It's to make clear
13 who is spending what. It is to make clear
14 that no one can get away with funding
15 something in a disguised fashion as the
16 Brennan Center folks described in the
17 Littleton case. That purpose is not served
18 by requiring the union to tell you what it's
19 sending to its own members. The members
20 aren't confused about who the union is and
21 what they're saying and why they're saying
22 it.

23 So, we would urge you to think about
24 those particular interests and step back from
25 engaging with us forever in what we think

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2 would not be litigation that would be helpful
3 to you or the body of the public.

4 MR. GOLD: I just want to add that while
5 you and him are fighting, I will not be
6 sending out -- you know, we'll think twice
7 about whether or not the newsletters should
8 include a picture of the candidate because
9 it's not going to be inside whatever rules
10 you end up crafting and the effect would be
11 chilling the communication that we think
12 helps our members participate more in the
13 political process.

14 MR. HALL: Do any of you see that
15 there's a distinction between individual
16 members' communications amongst themselves
17 and the actual union leadership distributing,
18 you know, pamphlets or information or
19 pamphlets to its members?

20 MR. MEGINNISS: Well, let me say this:
21 each and every union leader is an individual
22 union member and the union itself is only
23 made up of individual union members.
24 Individual union members -- sorry, individual
25 union leaders, union leaders don't fall from

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2 the sky, they're elected, they stand for
3 election every three years. They themselves
4 may very well cease to be -- well, maybe I'm
5 being a little cute. But the point is, no,
6 we don't see any distinction between that
7 whatsoever, and I don't think there is a
8 principle for basis for making that
9 distinction.

10 MR. HALL: But the distributions or
11 expenditures agreed upon have to be agreed
12 upon by the actual leadership, too?

13 MR. MEGINNISS: Yes, and they have to be
14 reviewed by the membership. You know, I'm
15 not sure what you mean by that, but to the
16 extent -- union has a treasury, right?
17 That's the members' dues money, individual
18 members' dues money, that's all it is, and
19 the leadership makes some decisions about how
20 the money is spent but in the end, that's the
21 members money.

22 MR. HALL: Okay, thank you.

23 MR. PIAZZA: Something you had said
24 earlier concerned me, where corporations do
25 not communicate, there's a broad rule that

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2 you seem to believe that corporations do not
3 communicate with their shareholders. Now,
4 say Clorox for an example, Clorox Corporation
5 sends out a mailing to its numerous
6 shareholders, should that have the same
7 status as member to member communication with
8 any union?

9 MR. MEGINNISS: Yes, and I took the
10 liberty of overstating the proposition, I'm
11 sorry. And I think what I was trying to
12 convey was that while this kind of member to
13 member communication is an incredibly
14 important part of a union's political life,
15 it's really not an important part of a
16 corporation's political life in the sense
17 that the corporation spends money.

18 When a corporation spends money on, you
19 know, supporting or opposing a candidate, it
20 doesn't just send a mailing to its
21 shareholders, it goes on television.

22 When we send a mailing to our members,
23 we're informing them of where the group as a
24 whole has decided to go, and we do a lot of
25 that. All I was trying to suggest was if you

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2 go after member to member communications,
3 don't assume that whatever that constraints
4 come from that, following, you know,
5 corporations and unions as a practical
6 matter, as a legal matter they would.

7 MR. PARKES: Any other questions?

8 (No response)

9 MR. PARKES: Well, thank you all very
10 much.

11 MS. LOPREST: We're going to have one
12 last panel but I think we'll take a five-
13 minute break just to stretch.

14 (Brief recess taken.)

15 MS. LOPREST: This panel is Rachael
16 Fauss and Alex Camarda from Citizens Union;
17 Deanna Bitetti from Common Cause New York;
18 and Barbara Rochman from the Women's City
19 Club of New York.

20 MR. PARKES: And a reminder, please,
21 that if you have a statement that you've
22 already submitted, we have it, we've made
23 them available, I think it can be more
24 helpful if you try to summarize it and then
25 we can engage in more dialogue with the board

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2 members. Thank you.

3 MS. LOPREST: And I've been told that
4 despite my previous statement, now I'm
5 talking too close to the microphone, it's
6 harder for people to hear so you have to talk
7 closer to the microphone but not too close.
8 So, because it's hard for webcast for people
9 to hear the testimony.

10 MR. CAMARDA: Good afternoon, members of
11 the Board. My name is Alex Camarda and I'm
12 joined by my colleague Rachael Fauss and
13 we're providing testimony on behalf of
14 Citizens Union.

15 Couple things before we go into a
16 summary of our testimony. First, I want to
17 thank the Board for providing the opportunity
18 to give public input on these important rules
19 pursuant to the ballot provision that was
20 passed this past fall. As part of our
21 disclosure, Citizens Union did support that
22 proposal in a larger report that we issued
23 recommending changes to The City Charter.

24 Lastly, I should say I'm going to
25 comment on the first two issues for

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2 consideration that were pur forth by the
3 Board and I think Rachael will do the last
4 four. Anything that we don't comment on,
5 it's likely because we don't have a position
6 on, but we'll provide personal thoughts
7 afterwards and questioning if the Board
8 desires.

9 So, with regard, I could say to the
10 scope of regulated activity, much like you
11 heard from our good government colleagues at
12 the Brennan Center and at NYPIRG, we also
13 believe that the Campaign Finance Board
14 should go beyond the express advocacy words,
15 the so-called magic words, "vote for," "vote
16 against," and have a broader, more expansive
17 definition that captures communications
18 intended to influence voters about a
19 particular candidate. We heard some examples
20 that were federal definitions. We would
21 provide one from California.

22 California Fair Political Practices
23 Commission defines independent expenditure
24 communications as those susceptible of no
25 reasonable interpretation other than as an

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2 appeal to vote for or against a specific
3 candidate or measure. What we're really
4 trying to get at here, and we're not
5 particular to a definition, what we're really
6 trying to do is get at sham issue ads which
7 are clearly targeting a candidate but may not
8 use express advocacy words "vote for" or
9 "vote against."

10 The other instructive point in the
11 California definition is that they actually
12 provide examples of what would be considered
13 language being used to influence an election.
14 And so, we think that would be useful to take
15 a look at and for the Board to actually
16 provide those so that third-party entities
17 are informed as to what they need to
18 disclose.

19 With regard to timing, we would file the
20 template that's been mentioned previously of
21 30 days prior to the primary, 60 days prior
22 to a general election. We think that volume
23 that involves the Federal model and it's also
24 consistent with when we think the public pays
25 attention to elections.

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2 With regard to the types of
3 communications, we think that the Board
4 should go beyond advertisements and
5 literature to include those type of voter
6 contact communications that campaigns often
7 do like robo-calls and door-to-door
8 canvassing, online communications for
9 example.

10 Moving on to the second area of
11 consideration with regard to information
12 that's disclosed to the Board about
13 independent expenditures, when we crossed
14 those triggers that were specified in the
15 ballot proposal, we think a number of pieces
16 of information should be provided: The
17 dollar value of the expenditure, the name and
18 address of the entity making those
19 expenditures; for individuals, the
20 occupation, employer and address, the entity
21 or entities contributing funds used to make
22 the expenditures including their address and
23 name; and for independent individuals, their
24 occupational employer and address; also the
25 name of the entity receiving the payments

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2 including the detailed purpose of the
3 expenditure, name, address, type of business;
4 and for individuals, occupation and employer
5 and limited address information, given the
6 needs for privacy in that regard; and lastly,
7 the target, the candidate or ballot measure
8 of each expenditure along with whether the
9 expenditure shows support or does target. We
10 think all this would be a great model for the
11 State which does not clearly link
12 expenditures with the target, and we hope
13 that that will serve as an example for the
14 State to adopt.

15 Then lastly in this area, we think that
16 the reporting ought to be done consistent
17 with periodic filing of expenditures for the
18 current schedule for campaign committees with
19 the exception of the last 10 days before an
20 election when we think it should be done
21 within 24 hours.

22 And with that, I'll turn it over to
23 Rachael for comment on the last four areas.

24 MS. FAUSS: Regarding exemptions,
25 something that was discussed earlier today is

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2 exemption for media and press, we also
3 support that. One possible model for
4 language is looking at the federal definition
5 which excludes communications from a
6 political party or political committee,
7 there's certainly other models to look at as
8 well.

9 And something that I would note that was
10 raised was that some of the more online
11 communications like blogs, they may not meet
12 the \$1,000 threshold so the concern about
13 them might not be quite as great -- though,
14 it's, you know, 21st Century technology and
15 communications mean that you do have to more
16 careful about what you're regulating.

17 Regarding enforcement, we believe that
18 the Board should both allow for complaints
19 and initiate its own investigations. This is
20 something Citizens Union has supported for a
21 variety of enforcement, whether it's conflict
22 of interest, campaign enforcement, just the
23 ability to have both of those types of inputs
24 we support, and we support the use of fines
25 and think that the Board should look to how

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2 it works with campaign notices that if
3 there's a violation, there's the opportunity
4 to correct the violation before there's a
5 fine that's levied.

6 Regarding disclaimer requirements, we
7 support them both on mailing, radio,
8 television, email and websites, in a variety
9 of different means. And something that we
10 think is important is that the language be
11 standardized so that can be through using
12 your required language so the voters can
13 easily scan an ad and know the source of it
14 and look at different ads and be able to
15 compare the different sources.

16 Some of the information that we think
17 should be available is if the statement or
18 the communication is not authorized by a
19 candidate or candidate committee; then also
20 the name of the organization or individual
21 that has funded the expenditure including the
22 address, website, telephone number; for
23 individuals, the employer and occupation
24 information can be disclosed, maybe not the
25 address if there are safety or privacy

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2 concerns.

3 Then, as far as what items might not be
4 covered for disclaimers, Los Angeles provides
5 a potential model for the Board to look at
6 which is small promotional items are not
7 considered political communications, such as
8 pens, pencils, clothing and mugs, that's a
9 possible item to look at.

10 And the last item is outreach by the
11 Campaign Finance Board, and given the Board's
12 outreach to the candidates and the public via
13 its website and a lot of its means, we fully
14 expect that you provide more information
15 about independent expenditures through those
16 means. But some additional things to look at
17 in terms of outreach for independent
18 expenditures is looking at the doing business
19 database that the City has, looking at the
20 lists of political committees that are
21 unauthorized that are in the list of the
22 state courts, list of political committees
23 since they're the most likely to be doing
24 these types of expenditures. Then also
25 outreach to bar associations and civic groups

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2 such as the Citizens Union are certainly
3 possible.

4 And the last thing that we'd like to
5 note is that a lot of the discussion today
6 has been about the value or the mechanics of
7 how this will happen but I think it's
8 important to think about how this will appear
9 to the voter, and we'd encourage that the
10 Board in providing this on its website not
11 only think about independent expenditures
12 separately but also in addition to the
13 information that's provided about
14 contributions. So, for example, in searching
15 a particular candidate, it should have all
16 the contributions and independent
17 expenditures related to that candidate in
18 addition to searching for independent
19 expenditures separately. So, with that, we
20 would like to close.

21 MR. PARKES: Thank you very much,
22 Rachael.

23 MS. BITETTI: Hi. My name is Deanna
24 Bitetti. I'm the Associate Director for
25 Common Cause New York. I want to thank you,

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2 Chairman Parkes, Executive Director Loprest,
3 the rest of the members of the Board, of
4 course staff of the Board as well. For the
5 sake of brevity, I will skip over most of my
6 introductory remarks and say also in full
7 disclosure and Common Cause did support the
8 ballot measure, it's always supported in
9 further disclosure of independent
10 expenditures.

11 In regards to the proposal's outline of
12 Campaign Finance Board's hearing on this in
13 requesting for suggestions and comments in
14 the specific scope of activity, Common Cause
15 believes that utilizing a combination of all
16 of the outlined requirements, expressed
17 words, express advocacies susceptible of no
18 reasonable interpretation other than as they
19 appeal to the voter, "for or against,"
20 electioneering communication, should all be
21 included in order to produce a more robust
22 reporting system.

23 In regards to expenditures for other
24 electioneering activities, the rationale
25 behind the robust independent expenditure

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2 reporting system is not to capture that of
3 grassroots activism and chill that type of
4 speech.

5 Actions by volunteers, for example,
6 should not be described as in-kind donations
7 but out-of-pocket expenses or staff time in
8 the amount of the outlined proposal of a
9 \$1,000 of more in materials, for instance,
10 should be disclosed.

11 Common Cause further believes that the
12 Campaign Finance Board should require as much
13 information as needed in order to check
14 whether the materials apply what the Charter
15 requires for disclosure and ensure as much
16 transparency to the voter. This includes, of
17 course -- and this has been outlined
18 repeatedly -- detailed expenditures, the name
19 of the vendor receiving the independent
20 expenditure, if the expenditure is made to
21 support or oppose a specific candidate or the
22 purpose or explanation of the expenditure.
23 In addition, of course information such as
24 date, address of the group and website we
25 would actually include, as well as other

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2 identifying information so that to allow the
3 voter to identify the group who is making the
4 expenditure.

5 In regards to reporting requirements, we
6 do agree with expedited time frame for
7 reporting expenditures. If the expenditure
8 for any campaign literature or advertisements
9 by a political committees is an independent
10 expenditure, we feel strongly that the
11 political committee in addition to the
12 disclosures required should include on the
13 literature or advertisements the names and
14 telephone numbers and websites applicable and
15 the three major largest contributors to that
16 political committee. If an acronym is used
17 to name any political committee, the name of
18 that sponsor and organization of the
19 committee should also printed or spoken.

20 This is once again similar to current law in
21 California, we do not believe that it creates
22 (inaudible.)

23 We do like the approached outlined with
24 the Campaign Finance Board for creating a
25 reasonable time frame by which groups could

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2 provide a comprehensive list of funders, and
3 we look forward to working with you further
4 to establish what a reasonable time frame
5 actually looks like.

6 We agree with most of the exemptions
7 spelled out for media and press. We further
8 believe that monies earmarked for
9 non-political spending by small donors should
10 be exempt from disclosure. We are assuming
11 that independent expenditures should be made
12 by committees born for this specific purpose,
13 therefore, any monies not specifically
14 allocated to packs or committees formed will
15 not be required to be disclosed.

16 On the question of press or media, some
17 of our thoughts while we were listening to
18 the discussions, some of our thoughts, was
19 that in defining press or media, we're
20 looking at any publicly disseminated
21 communication modality that is not
22 specifically party-standing, sponsored by a
23 party, a c(3) or c(4) organization or a
24 campaign, that would include bloggers and
25 tweeters also and once again those that do

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2 not reach \$1,000 threshold as outlined by the
3 independent expenditures reporting
4 requirements.

5 Two last small notes: We remain very
6 leery of the CFB proposing any rules to
7 establish an exemption prior to litigation by
8 groups that seek to prevent disclosure or by
9 the agency attempting to compel a group to
10 disclose. These occurrences are situational
11 and it becomes increasingly difficult to
12 create a meaningful standard by which groups
13 would be exempted. The language would either
14 be way too broad or way too specific. One
15 alternative discussion is to think about a
16 possible petitioning procedure whereby groups
17 could petition the CFB for exemption,
18 allowing for testimonies from groups and
19 witnesses attempting to prevent the
20 disclosure, but any process would have to be
21 carefully vetted and thought out.

22 In regards, lastly, to outreach
23 measures, the Board should ensure that
24 constant trainings are provided for for
25 elected officials, packs, groups such as

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2 labor organizations and political
3 consultants, anyone involved in the campaign
4 and any individual that is interested in
5 running for an office. In addition, an easy
6 to understand training manual or outline
7 manuals should be provided for download on
8 the website, in addition to providing
9 information about reporting of independent
10 expenditures in the 2013 Voter Guide.

11 In the meeting notice, it was referenced
12 that the CFB has little contact with
13 potential independent actors. One approach
14 should include outreach among independent
15 actors to provide trainings at public places,
16 city universities, schools, local community
17 boards, civic group meetings, Republican and
18 Democratic or independent political club
19 meetings, and of course highlighting the
20 changes as much as possible on local news
21 media outlets.

22 Lastly, in regards to the enforcement
23 mechanisms, the Board should investigate, we
24 agree, both complaints of violations as well
25 as initiate investigations of under-reported

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2 activities, reviewing, as stated, existing
3 rules that govern campaigns and third-party
4 expenditures. We do believe, without going
5 into too much detail, the disclaimers and
6 identifiers should be standardized to allow
7 the voter to have as much access to
8 information as possible so we avoid anything
9 that you need a magnifying glass to see.

10 And we also agree that certain
11 communications should be exempted from such
12 requirements such small items as described
13 previously.

14 Once again, we are extremely supportive
15 of requiring disclosure of independent
16 expenditures. We want to thank the Board for
17 holding this hearing and look for continuing
18 to work with you, to strengthen and ensure
19 complicity with independent expenditure
20 reporting requirements.

21 MR. PARKES: Thank you, Deanna.
22 Barbara?

23 MS. ROCHMAN: I'm Barbara Rochman, from
24 the Women's City Club of New York. I want to
25 thank you for holding these hearings.

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2 MS. LOPREST: I think you need to talk a
3 little closer to the microphone.

4 MS. ROCHMAN: Thank you for holding the
5 hearings and the opportunity to appear before
6 you.

7 Women's City Club believes that the
8 importance to democracy of transparency in
9 political campaigns cannot be overstated, and
10 that is sort of the principle that we use to
11 approach in our testimony, and I will try to
12 summarize.

13 As a general proposition, we believe
14 that it is essential that when rules are
15 issued for disclosure of independent
16 expenditures, these rules should be crafted
17 as broadly as possible. Rules that enable
18 the CFB to capture the greatest amount of
19 information about contributors to independent
20 entities and expenditures made by those
21 entities are necessary to fully inform New
22 York City voters. And I'll go into some of
23 the specifics that you requested be
24 discussed.

25 As to the scope, we don't believe that

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2 disclosure of independent expenditures should
3 be limited to express communications asking
4 voters to support or oppose named candidates
5 or specific ballot propositions. This phrase
6 that you used in your white paper about
7 requiring disclosure as to communications
8 that are the functional equivalent of an
9 appeal to vote for or against a specific
10 candidate or ballot proposition would be what
11 we think should be used.

12 And we would not want to see disclosure
13 requirements limited only to electioneering
14 communications made shortly before an
15 election as in the Federal law, and I don't
16 think there are such time limits in the
17 campaign finance amendments that were made in
18 the Charter concerning independent
19 expenditures. For instance, the required
20 disclosure of expenditures which aggravate
21 \$5,000 or more within the 12-month period
22 preceding a covered election.

23 We think that expenditures for mailing,
24 phone banks, etcetera, online communications,
25 should be evaluated based on actual cost or

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2 fair market value of the goods and services.
3 And expenses related to volunteer canvassers
4 or phone bankers, there are actual definable
5 costs for those activities; literature, costs
6 of phone banks, staff supervision and other
7 support services that can be identified.

8 As to the required information, we urge
9 you to demand the detailed information that
10 you set forth as recommended by the National
11 Institute on Money and State Politics and it
12 includes name, address, all of those things,
13 I'm not going to read to you but it's fairly
14 it detailed.

15 As to the timing of reporting the
16 required information, with constantly
17 expanding electronic means of recording,
18 tallying and sending data, it doesn't seem
19 unreasonable to require disclosure of
20 contributions within 24 hours of receipt.
21 There may be certain cases where it is
22 unreasonable, but as a general proposition,
23 certainly for contributions that meet some
24 kind of a dollar threshold.

25 Exemptions, what we would support is all

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2 the press and media exclusion from reporting
3 requirements since this is part of their
4 essential First Amendment functions, and also
5 people generally know the kinds of positions
6 that media outlets take and that may be why
7 they choose to read them or watch them in the
8 first place.

9 We haven't really looked closely at the
10 whole issue of union and member
11 communications, but on a personal basis, I
12 used to be the president of the 501c(3) or
13 (4) organization with a pack, and we took it
14 for granted that communications to our
15 members about who we were endorsing were not
16 considered to be a political contribution,
17 so, I would just point that out. Although,
18 it is true, there are a lot of clearly
19 defined educational activities that are part
20 of lots of organizations that would not come
21 under the term of independent expenditures,
22 so, I don't think that -- I think that that's
23 part of the union issue as well, because much
24 of what they do is really not political. But
25 we haven't really looked at this thoroughly

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2 enough.

3 We don't think it's necessary for you to
4 set up a whole system of rules to deal with
5 real or perceived harassment and I think you
6 developed your means of enforcement fairly
7 well and we have nothing really to add to
8 that.

9 As to disclaimer requirements, well,
10 they should be obviously clear and visible,
11 and we looked at what the FCC had issued in a
12 special notice on political ads and
13 solicitations and they have certain language
14 about what's paid for and so forth and they
15 don't require specific type fit on the
16 publications but they do give like a safe
17 harbor, so they say if it's 12 point and
18 further you seem to be okay. And they also
19 have these rules in terms of radio and TV
20 messages which you're probably familiar but
21 what seems to make a lot of sense to us.

22 Outreach, well I think you have all the
23 usual suspects that you do outreach to, but I
24 guess you would have to add organizations,
25 corporate organizations like the Chamber of

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2 Commerce, the ACME and all of that group
3 would have to be added to your outreach and
4 training and communication, and that's really
5 a quick summary of what we think, and we
6 don't think you need to put identifications
7 on the buttons.

8 MR. PARKES: Well, thank you very much
9 Rachael and Deanna and Barbara and Alex.
10 Questions now from Board members?

11 MR. DAVIS: Well, two. One, is if any
12 of you do have positions on the member to
13 member, I think you've been here and heard
14 the discussion, we'd be interested in and
15 for, see, you, how do you think you fit under
16 it if you spend more than a \$1,000
17 disseminating your endorsements?

18 MR. CAMARDA: We don't have an official
19 position on it with regard to our own voter
20 directory and endorsements. I think that
21 would probably be subject to it because
22 probably comes above \$1,000.

23 MR. DAVIS: And member to member, do
24 those who have an expressed view, do you have
25 any positions? Again, I think you've all

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2 been here for the discussion, you've heard,
3 you know, the back and forth, so.

4 MS. BITETTI: I will say that I do think
5 that Common Cause does need to do more
6 thinking critically about member to member
7 communications. I will say from listening to
8 discussions that I think there is an
9 interesting distinction to be made between
10 member to member or even what we reference or
11 I reference in my testimony about volunteers
12 coming together, giving out material, what
13 that threshold would be, how you don't want
14 to, you know, chill the kind of grassroots
15 activism, but there should be a distinction
16 between leadership coming out with a call and
17 saying we're putting this out as the senior
18 staff or a president to do something, I think
19 it needs to be looked at. And I think you
20 had asked this question, Mr. Hall, as a
21 little bit differently than between me as an
22 individual member of any membership
23 organization, talking to maybe Alex or
24 Rachael and saying "Let's go out and flyer
25 this candidate," I do think that there has to

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2 be a difference, what those specifics are, I
3 can't say. Definitely need more to
4 consider.

5 MS. ROCHMAN: The Women's City Club does
6 not endorse candidates but we do take
7 positions on issues. Certainly we took
8 positions on the Charter revision and so
9 forth, and we do communicate that to our
10 members, so I don't know if we have bias
11 here, but I think it's a foreign issue, and
12 the organization hasn't really taken that in.

13 MR. PARKES: Anything else?

14 MR. CAMARDA: If I could just add a
15 couple personal thoughts on that not
16 connected to the Citizens Union position.
17 So, I think the decisions made in other areas
18 obviously have a ripple effect on this, if
19 communications go beyond express advocacy
20 words, you're going to capture a lot more of
21 internal member to member communications. If
22 the time frame that you're dealing with, if
23 it's 30 days before a primary and 60 days
24 before a general, obviously if you said that,
25 it's going to capture fewer communications.

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2 In my experience as being part of the
3 Teachers Union, you know, there weren't a lot
4 of communications that said "vote for" or
5 "vote against," but there were a lot about
6 particular officials and what they were doing
7 and whether that was good or bad, so I think
8 those are all things to be considered, in
9 addition to whether, in many instances in the
10 City, if you're part of the union, you're
11 kind of automatically defaulted into that
12 union, it's not something that you've
13 proactively joined. I think the difference
14 between organizations that you opted to and
15 versus those that you defaulted into also
16 matters.

17 MR. PARKES: Anything else?

18 (No response)

19 MR. PARKES: Well, I would like to thank
20 all of our presenters today. I'd like to
21 thank the Campaign Finance Board's staff for
22 presenting such great materials in advance.
23 I'd like to thank the press for being here
24 and I'd like to thank my fellow Board
25 members. I think we are off to a great start

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in facing what is truly a critical and very
important issue for our electoral process.

Thank you all. Meeting is adjourned.

(Time noted: 1:30 p.m.)

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C E R T I F I C A T I O N

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, CASEY MARTIN, a Stenotype Reporter and Notary Public for the State of New York, do hereby certify:

THAT this is a true and accurate transcription of the New York City Campaign Finance Board public hearing held on March 10, 2011.

I further certify that I am not related either by blood or marriage to any of the parties in this matter; and

I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of March 2011.

CASEY MARTIN

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