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Testimony to the New York City Campaign Finance Board

Terry Meginniss
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Good morning. I am Terry Meginniss, general counsel to SEIU 32BJ. 32BJ is a labor organization. 32BJ negotiates collective bargaining agreements with employers covering employees who work in positions as doormen, maintenance workers, porters, cleaners, and security officers. Employees covered by our contracts work in NYC, other parts of New York State, and eight other states on the East Coast.

We understand that the CFB is considering adopting rules to implement the new Charter amendment on independent expenditures in New York City elections. We welcome the opportunity to offer preliminary observations on some key aspects of this important subject. We will want to comment more fully when the CFB apprises the public of just what rules it is considering, and we assume that there will be notice of such rules followed by a public comment period and another hearing.

General Support for Disclosure

Turning to the subject at hand, 32BJ strongly supports the principle that individuals and groups that seek to influence the public about how to vote on candidates and ballot measures should have to disclose who they are, what they are spending and the sources and amounts of funds that are given to them for that purpose.

These kinds of disclosures advance public understanding by letting people know what interests are aligned for and against particular candidates and major public proposals.

The new Charter amendment enshrines that principle.

We have a concern, however, that in implementing the new amendment, the CFB may venture into an area that we believe is not and should not be subject to regulation – internal communications within a membership organization, what we refer to as "member-to-member" communications.

Essentially, our concern is that CFB regulation of member-to-member communications will have a disproportionate and adverse effect on those who participate in the political process by engaging with the membership organization they belong to, rather than by throwing wads of money into political campaigns.

32BJ is a membership organization, an unincorporated association under New York law. Nearly all of the employees who are covered by our collective bargaining agreements are members of our organization. They pay dues, participate in meetings and elect the union's leadership. In a very real sense, the Union is its membership; the Union has no existence independent of its members. The Union is an "entity" as that term is used in the Charter amendment, and the entity is the collective body of its members.

Membership organizations are voluntary associations of people who come together around a particular common interest or objective. The members of these organizations are keenly interested in how political candidates deal with the issues that are germane

to the organization's concerns. 32BJ members care about where candidates stand on employees' rights and on laws that regulate working conditions. Members of environmental organizations are concerned with candidates' stands on environmental issues; women's rights organizations are concerned with candidates' stands on women's access to health care and reproductive freedom; and so on. Individuals may join more than one organization, because they have varied interests and wish to associate with those who share them. Very often, the principal mission of a membership organization is the dissemination of information to members on candidates' stands – are the candidates with us or against us on our issue. And organizations provide a vital forum for members to communicate with each other – and with candidates and public officials.

We believe that membership organizations play a critical role in the democratic process, and a critical ingredient in this role is the free and unregulated flow of information among the members of the organization.

The application of disclosure requirements to member communications would cause serious damage to internal communications in a membership organization. The prospect of having to track and quantify expenses associated with these communications and then report that information – possibly on very short notice – is daunting. Those who fail to comply would face investigations, fines and prosecution. That is a prospect that would cause many membership organizations to curtail or forgo these communications. That would be so even in the relatively few organizations that have enough resources to afford full-time staff. This would not serve the democratic process.

Let me illustrate why this would be the case. Member-to-member communications include not just the easily tracked letters from an organization's leadership to the members of the organization; they include the countless dialogues that occur in member meetings in union headquarters, at union meeting sites, and at union events. 32BJ has frequent membership meetings, all over the City. At nearly every single one of these meetings, members express views about particular candidates. In many instances, members expressly support particular candidates, as, for example, candidate screening committees' reports and recommendations on endorsement. In other cases, members do so impliedly. If the CFB were to extend disclosure requirements to member-to-member communications, the organization would have to report on every one of those meetings, since monetary expenditures would necessarily have been made to put the meeting together – for example, meeting places are rented, literature is produced and distributed, technology is rented and set up to connect other members in remote locations. Imposing a disclosure requirement, particularly one with a short timeline for reporting, would be extremely burdensome for our organization. To avoid difficulties with filing requirements, we would end up curtailing and controlling such discussion. The disclosure requirements would then inhibit the Union from providing the kind of membership forum to discuss City candidates and politics that it now provides.

Requiring disclosure could also very well be misleading to the public. For example, when 32BJ is preparing for contract negotiations and the threat of an impasse is looming, the organization distributes to its members statements of support that elected officials have made. We distribute those statements, not as an expression of support for a political campaign – in fact, we often disseminate the statements of support from candidates who are running against each other in an upcoming campaign and even the solidarity statements of candidates we are not supporting. The real reason we distribute those statements is because they are reassuring to our members as the contract fight looms. Even though that communication is not advocacy in favor of a particular candidacy, if the CFB construes the communication as advocacy and an independent expenditure, we would be at risk if we did not include them in disclosure reports.

Indeed, this is but one example. Our member-to-member communications include discussions of particular politicians in a whole variety of contexts not related to a political campaign. Each one of those communications could end up the subject of a dispute with the CFB, as the CFB dissected the statements to determine whether campaign advocacy could be inferred. We believe it would be entirely inappropriate, and unlawful, for the CFB to become so entangled in our affairs. And, we do not understand why the CFB would even want to do so in the first place.

The more discussion within an organization on such matters, the more open and robust the organization's internal political discussions, the greater would be the burden of tracking and reporting. And the more discussion of candidates' positions within the organization, the greater would be the likelihood of an error or omission in reports, and the greater would be the likelihood of fines for the organization, and even prosecution, as the Charter amendment authorizes.

Our members are relatively low-wage workers who have joined together in the union to achieve the best wages, benefits and workplace standards that they can by negotiating with employers that otherwise would simply race to the bottom. There are very few avenues open to our members to engage in the political process. They do so by engaging with others in membership organizations – for most of them, that organization is the union itself. Closing down that avenue is not in the interest of anyone who really believes that popular participation is essential to a democracy.

Need to Balance With First Amendment Rights

The sound purposes served by disclosure must accommodate protection of the legitimate First Amendment speech and associational rights and interests of individuals and groups that make independent expenditures.

Disclosure rules should not be so inappropriate or burdensome that they chill the very undertaking of that public expression itself.

The Supreme Court has long recognized that communications and activities within a union or other membership group merit strong First Amendment protection. Even when campaign finance laws were judicially construed to constitutionally prohibit these groups and corporations from undertaking certain electoral communications to the general public, that prohibition was never applied to internal union communications.

The Supreme Court and other courts have also long recognized that governmental investigation of the internal political activities of membership groups implicates fundamental First Amendment concerns because investigation chills speech and associational activity. That is especially the case where a law provides for stiff civil penalties and even criminal prosecution, as the Charter amendment does here. Only a compelling governmental interest in such an intrusion can justify it, and there is no such justification for treating internal membership organization communications as "independent expenditures" and subjecting those communications, and the organization's members, to the full panoply of regulation and enforcement.

The terms of the Charter Amendment do not suggest that disclosure should be required of member to member communications

The 2010 NYC Charter amendment is silent about internal communications. None of the explanations of this amendment that circulated before the election, and none of the reports or other

public papers of the Charter Review Commission, suggested that the new requirements would apply to internal communications.

Instead, the Charter amendment explicitly applies to what individuals and "entities" communicate, and a union and its members are most appropriately viewed as a single entity for these purposes, with required new disclosures relating only to what that entity spends on communications with people outside of the entity itself. 32BJ certainly supports the notion that if it has spent money on a communication to persuade the public at large to vote for or against a particular candidate or referendum, it will disclose the communication, acknowledge itself as the source and disclose what it spent on the communication. But that is because, in that instance, we are communicating outside of our own voluntary association.

We note that neither the NYC Campaign Finance Law, the NY State Election Law, nor the rules and regulations that have issued over decades under their authority have applied the previous independent-expenditure requirements to internal communications within membership organizations.

Neither the NYS Board of Elections nor the NYC Campaign Finance Board has ever sought through any considered regulatory, administrative or enforcement process to apply contribution, expenditure or disclosure standards to internal speech and associational activity. The CFB has on a few, rare occasions suggested such an application, but it apparently has recognized that this would dramatically change how groups and candidates have planned and behaved for many decades in City elections.

Against this backdrop, it cannot be said that the voters last November believed that they were approving a first-ever system in New York where internal union communications would be subjected to unprecedented intrusive regulation and public disclosure.

The CFB's "white paper" doesn't mention membership communications either. We would like to assume that this is at least a tacit acknowledgement that the new area of public reporting will apply only to communications by a group beyond its own membership. But the issue is so important to 32BJ that we believed it merited our clear and direct expression of our concern to you today.

Like many Americans, we have been very concerned about the consequences of the *Citizens United* decision. We believe that democracy is not well served by seeing great wads of money spent by corporate bodies on advertisements for, or more often these days against, particular candidates. We support the notion that requiring timely disclosure of the amount and sources of this spending will have at least some ameliorative effect.

We know that, in this context, the press often equates union campaign expenditures with corporate campaign expenditures. In fact, it is a false equation. Corporate spending promoting candidates with positions opposed to union and worker interests far, far outstrips union spending in this arena. There is no level playing field out there. The playing field is tilted strongly in favor of corporations, and it always has been. *Citizens United*, by recognizing First Amendment protection for all public political messages regardless of its source of funding, exacerbates that disparity.

I underscore this point because we are fearful that a similar misperception might affect the CFB's views about a disclosure requirement related to member-to-member communications, on the view that imposing a similar requirement on corporate communications with shareholders would provide real-world balance. But it is emphatically not the case that such a regulation would fall equally on

membership organizations and business corporations. In fact, corporations simply don't spend money on political communications to their shareholders because doing so is counterproductive to their business success.

Instead, experience, both before and since *Citizens United*, shows that business corporations undertake their political persuasion efforts to individuals in the public, and when they do so, it is almost exclusively through funding *other* groups which offer either donor anonymity or a public message that doesn't identify its business funders. The Charter amendment will shed some light on all that, but it won't change the volume of corporate spending on political campaigns.

Regulation of member-to-member communications of membership organizations would, however, reduce the volume of political discussion in those groups. If the CFB were to head in that direction, the consequence would be that the voices of workers and ordinary people who live and vote here would only be further diminished.

We would like to have the opportunity to submit additional comments in writing on these and other important issues raised by the Charter amendment. Thank you for this opportunity.