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NEW YORK CITY CAMPAIGN FINANCE BOARD  
PUBLIC HEARING

40 Rector Street  
New York, New York  
October 27, 2011  
11:00 a.m.

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B E F O R E:

Joseph P. Parkes, S.J., Chair

BOARD MEMBERS:

Amy Loprest, Executive Director  
Mark S. Piazza  
Richard J. Davis  
Art Chang  
Courtney Hall

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2 MR. PARKES: Good morning, and welcome.  
3 My name is Joe Parkes and I'm the Chairman of  
4 the New York City Campaign Finance Board.  
5 We're joined by the rest of the members of  
6 the Board here this morning: Mark Piazza and  
7 Art Chang, Courtney Hall and Rich Davis and  
8 the Executive Director Amy Loprest.

9 This morning, we have a public hearing  
10 on the proposed rules for the disclosure of  
11 independent expenditures in City elections.  
12 We are here today largely because of the (c)  
13 changes generated by the U.S. Supreme Court's  
14 decision in Citizens United which allows  
15 corporations, unions, trade groups, or  
16 wealthy individuals to spend freely to  
17 influence elections.

18 While direct contributions to candidates  
19 may still be limited, the Court ruled last  
20 year that those acting independently to  
21 support or oppose those candidates may face  
22 no limits on their activities. At the  
23 Federal level, the removal of those  
24 constraints unleashed a tidal wave of ads and  
25 mailings upon the 2010 Midterm Elections

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2 funded by unlimited contributions from  
3 undisclosed sources.

4 To ensure that scenario will not be  
5 repeated in New York City, last November,  
6 voters approved an amendment to the City  
7 Charter that requires public disclosure of  
8 independent spending in future City  
9 elections. It is our responsibility to  
10 administer this requirement.

11 Since the passage of the Charter  
12 amendment, the New York City Campaign Finance  
13 Board has engaged in an unprecedented effort  
14 to solicit public input on this very  
15 important and difficult and complex issue.  
16 In doing so, we've heard comments a broad  
17 variety of actors in the political life of  
18 New York City.

19 Our first public hearing on the issue in  
20 March was well attended. Testimony from that  
21 hearing, along with subsequent comments  
22 received by the Board, has helped shape our  
23 approach towards drafting the rules that will  
24 enable us to administer the disclosure  
25 required by the Charter. From that initial

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2 round of comment, we prepared a draft.

3 The proposed rules issued by the Board  
4 were printed in the City Record on September  
5 26, 2011. Since then, we have continued to  
6 hear from interested parties. Based on what  
7 we've heard, it's clear to us that our work  
8 is not done. There are several  
9 considerations among which the Board is  
10 seeking a proper balance. The regulations  
11 should not be so broadly or blindly imposed  
12 that they discourage organizations or  
13 individuals from participating in the  
14 political process as advocates for a cause or  
15 issue. But in order to provide voters with  
16 meaningful information, the rules governing  
17 disclosure must be written to reflect they  
18 ways politics is practiced in New York City.

19 A requirement that is too narrowly  
20 defined may allow protection for wealthy  
21 interests seeking to avoid scrutiny for their  
22 political activities, leaving voters in the  
23 dark. The voters have told us that  
24 organizations that are spending money to  
25 influence City elections should conduct their

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2 business in the light of day, and our  
3 ultimate responsibility is to the voters.  
4 The Charter mandate should enable New Yorkers  
5 to vote in future elections armed with a  
6 complete view of money that is raised and  
7 spent that can influence City elections.

8 As our work continues, I'm pleased to  
9 say that our public rulemaking process has  
10 been working as we intended. We have had a  
11 robust public discussion on this issue. We  
12 have heard many constructive comments about  
13 our approach and I know we will hear many  
14 more today.

15 If you've joined us today, here in  
16 person or through our live video stream on  
17 the Internet, thank you for participating in  
18 this conversation. If you have signed up to  
19 testify, you will be called in order. If you  
20 haven't signed up but you wish to testify,  
21 please see Bonnie Chang of our staff who will  
22 add you to the list. This hearing is being  
23 transcribed and will be made part of a public  
24 record for this rulemaking. If you would  
25 like to submit written comments with your

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1  
2 testimony, please submit them before close of  
3 business today, and thank you for all those  
4 who have already submitted their written  
5 testimony.

6 I would now like to ask Rich Davis, one  
7 of my fellow Board members, to make few  
8 comments. Rich?

9 MR. DAVIS: Thank you, Chairman Parkes.  
10 You know, one of the important purposes of  
11 the public hearing process is to solicit a  
12 variety of views about what has been  
13 indicated and what we all know are  
14 complicated issues. And it's fair to say, as  
15 we look out there and look at what we've  
16 received, that they're not dissapointed in  
17 terms of our receipt of a lot of different  
18 views.

19 In looking at some of what we have  
20 already received, however, it wasn't clear  
21 that some people might focus on what the  
22 rules actually do and don't do and what  
23 changes and what steps have already been  
24 taken to deal with some of the issues that  
25 people are seeking to raise today.

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2 I think it will be useful to begin by  
3 putting this a little bit in context. These  
4 are disclosure rules, they require disclosure  
5 of communications that can influence  
6 elections, either because they explicitly are  
7 in support or oppositions to a candidate, or  
8 because they frankly are made so close to the  
9 election that they can easily be read as  
10 indicating such support or opposition.

11 And I know that that last category is a  
12 source of issue that we're going to be  
13 discussing and how to deal with that. But if  
14 you look around the country and hear what  
15 some of the greatest abuses have been, then  
16 it's actually been in that category of  
17 communications.

18 If the proposed regulations don't place  
19 limitations on what people or groups can say,  
20 they don't restrict how they can raise money,  
21 how much they can spend how much they speak,  
22 again, the disclosure rules, and that's  
23 required by the Charter, what the voters  
24 wanted so the public could know who is  
25 speaking and how much they're spending. So,

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2 they are disclosure rules which are mindful,  
3 as the chair indicated, of creating a  
4 balance, and we don't overdo it so that we  
5 chill, but they are disclosure rules.

6 Based on the hearings in March, you  
7 know, certain issues have already been  
8 addressed, and certain accommodations have  
9 been made even where it can be argued that  
10 there is an indirect effect on elections. I  
11 mean, I think the most important example  
12 relates to materials that a membership  
13 organization produces for its internal  
14 deliberations about who to endorse. Those  
15 internal deliberation communications are  
16 exempted. It is exempted under the current  
17 rules and under the current proposed rules.  
18 So, nothing we're dealing with now in terms  
19 of what's on the table from the Campaign  
20 Finance Board will require disclosure of all  
21 those massive communications which take place  
22 prior to an actual endorsement of a  
23 candidate. That's one of the key points  
24 we've heard at the March hearings. It made  
25 sense in terms of how difficult it would be

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2 to track that, and that exemption is already  
3 in the rules. You know, it's a  
4 straightforward exemption, but, you know, the  
5 fact that even here there's a connection to  
6 an election demonstrates that in crafting  
7 specific exemptions to otherwise broad  
8 disclosures, it's not always going to be an  
9 easy task.

10 Also not covered, it's very important to  
11 understand, in terms of particularly the  
12 latter technological world that we live in,  
13 there are a lot of communication methods that  
14 have little or no costs; email, Twitter, text  
15 communications, individual phone calls below  
16 a certain threshold; they're not covered  
17 because they're not going to generate the  
18 cost. So, if you talk to elected officials,  
19 one of the mass ways of communicating with  
20 them is email -- not covered, because of the  
21 cost. So, I think it's important that people  
22 focus on that.

23 Now, based on the comments we have  
24 received, we're obviously exploring other  
25 forms of streamlining, including shortening

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2 the time before elections that certain  
3 communications need to be reported.

4 Now, one thing that's been said which is  
5 really erroneous and we do think is important  
6 to say, because it's been repeated in letters  
7 and written through comments, is that these  
8 rules would deem interaction with public  
9 officials or other activity conducted in  
10 coordination with elected officials or  
11 candidates for office as in-kind  
12 contribution. It's not the case. These  
13 rules cover independent expenditures, they  
14 don't deal at all with that kind of  
15 expenditure. That's not the subject of these  
16 rules today.

17 So, I think, as Chair Parkes indicated,  
18 we hopefully can have full discussion. We  
19 are looking forward to getting input. I  
20 should say that in closing, before we start  
21 the testimony, obviously one issue we have  
22 heard loud and clear is how to deal with the  
23 disputes and issues about the budget and how  
24 our rules intercepted that. Plainly we are  
25 going to try and address that in a

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2 constructive way that both deals with it so  
3 there can be full ability to try and  
4 influence legislators on budget issues  
5 without, you know, gutting some core  
6 principles that are necessary to make these  
7 rules meaningful.

8 MR. PARKES: Thank you very much, Rich.  
9 Before we call up our first witness, Amy  
10 Loprest has a few housekeeping items she  
11 would like to address.

12 MS. LOPREST: Because we have a lot of  
13 people who are interested in testifying  
14 today, and we are interested in getting, you  
15 know everybody in, everyone has been told  
16 that they're limited to five minutes, you  
17 know. But the Board has all the written  
18 testimony that's been submitted so far, and  
19 we'll have a complete package of all the  
20 written testimony and the transcript to  
21 review in the process of adjusting the rules  
22 based on what people have said. Father  
23 Parkes will announce the people to come up  
24 and testify. We hope that we can move that  
25 quickly.

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2 Also, I just want to remind people that  
3 we're holding this at OATH, the Office of  
4 Administrative Trials and Hearings, so, if  
5 you could avoid lingering in the hallways.  
6 If you need to have a conversation, I  
7 understand that. If you could go into the  
8 waiting room or out into the elevator bank,  
9 because they have all sorts of hearings and  
10 conferences going on and we don't want to  
11 disrupt their process. So, with that, let's  
12 start.

13 MR. PARKES: Thank you. First up,  
14 Michelle Jackson, general counsel, Human  
15 Services Council. Welcome, Michelle.

16 MS. JACKSON: Thank you. Good morning.  
17 My name is Michelle Jackson. I'm the general  
18 counsel for the Human Services Council in New  
19 York City. I'd like to thank the Campaign  
20 Finance Board for offering me this  
21 opportunity to testify this morning about the  
22 proposed regulations on independent  
23 expenditures.

24 The Human Services Council is a  
25 501(c)(3) membership organization and we

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2 represent approximately 200 not-for-profit  
3 human services providers in New York City.  
4 We advocacy on their behalf, on a number of  
5 issues, and we also encourage them to  
6 advocacy on their own behalf and more  
7 importantly, on behalf of the people that  
8 they serve who often cannot speak for  
9 themselves.

10 We greatly appreciate the work of the  
11 Campaign Finance Board to ensure fair and  
12 informed elections and to promote  
13 transparency. And I'd also like to thank  
14 Eric and Jesse from the Campaign Finance  
15 Board for sitting down with us and being very  
16 helpful in helping us understand the proposed  
17 rules, since this is definitely not an area  
18 that 501(c)(3)s have focused on in the past.

19 While we do appreciate the work of the  
20 Campaign Finance Board, I think that the  
21 proposed rules go beyond the intent of the  
22 Charter amendment and will hinder non-profits  
23 in their ability to advocacy.

24 Particularly of concern is the  
25 electioneering communications that encompass

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2 issue advocacy as well as member to member

3 communication. 501(c)(3)s are prohibited

4 from engaging in campaign activities but are

5 allowed to engage in issue advocacy, even

6 during an election, as long as they follow

7 certain guidelines set out by the IRS. A few

8 examples of really core advocacy is important

9 not only to the non-profits but to the

10 communities. One is the example expressed in

11 the Campaign Finance Board explanation of the

12 rule around budget advocacy, the budget

13 season seems to get longer each year and non-

14 profits engage in budget advocacy. They also

15 play an important role in informing the

16 community about the needs of the community.

17 So, telling them this senior center is going

18 to close in their neighborhood or there's a

19 need for more child care in Brooklyn, these

20 are all examples of campaigns that

21 non-profits have undertaken to inform the

22 public and encourage them to contact their

23 elected officials about issues that impact

24 them. They have been very successful in

25 letting people know about the importance of

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2 other programs in the community and what will  
3 happen if the public doesn't take action.

4 So, these are items that would be encompassed  
5 under the electioneering communications.

6 And it's problematic for non-profits for  
7 a few reasons: First, like I said,  
8 non-profits are already regulated by their  
9 501(c)(3) designation, they're not allowed to  
10 engage in campaign activities, and they also  
11 do have to report issue advocacy already to  
12 the City Clerk under the City's lobby laws.  
13 So, it's kind of unnecessary as well as  
14 overly burdensome to report into this system  
15 as well.

16 Regarding the overly burdensome, I think  
17 HSC has for years done education and outreach  
18 around the City lobbying laws and in our  
19 experience have found that many of our  
20 non-profits struggle to not only understand,  
21 but to find the resources to comply with  
22 those regulations and often do make the  
23 choice to stop advocating because they just  
24 don't have the time, money or staff to  
25 dedicate to reporting. So, it will, I think,

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1  
2 adding another regulatory body on top of what  
3 they already encompass, especially at a time  
4 where their funding is low and need is high,  
5 will result in a lot of non-profits deciding  
6 to stop doing very important advocacy work  
7 because they just aren't able to comply with  
8 the regulations. So, that is something I  
9 would like you to consider.

10 Also, the idea of a 501(c)(3) reporting  
11 to the Campaign Finance Board, while we  
12 appreciate some of the kind of amendments to  
13 the proposed regulations, including allowing  
14 people to saying as not taking a position  
15 instead of saying they oppose or support a  
16 candidate when they report, I think it would  
17 be very difficult for non-profits to display  
18 to the general public as well as to the  
19 private donors why they're reporting to the  
20 Campaign Finance Board when they're not  
21 allowed to engage in campaign activities, and  
22 also the portion of the law that requires  
23 non-profits -- well, anybody reporting -- to  
24 report funders if they meet a certain  
25 threshold, a \$5,000 threshold, will be

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1  
2 extremely problematic for non-profits. As an  
3 advocacy organization, I can tell you it's  
4 difficult to get funding for advocacy, and  
5 the disclosure includes general operating  
6 grants to see a portion of which can go to  
7 the advocacy, but I think that there are a  
8 lot of funders out there who will pull back  
9 their funding rather than be listed on the  
10 Campaign Finance Board website as supporting  
11 electioneering.

12 So, our proposals really encourage the  
13 Campaign Finance Board to consider getting  
14 rid of the electioneering definition and  
15 really narrow down into express advocacy and  
16 not include issue advocacy as well as member  
17 to member communications. Alternatively, we  
18 would ask for a 501(c)(3) exception because  
19 non-profits are already regulated in another  
20 way, and like I said, our reportings are  
21 issue advocacy if it meets a certain  
22 threshold to the City Clerk's Office, so,  
23 that information is available in another  
24 place. I'd be happy to answer any  
25 questions.

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2 MR. DAVIS: I have a question. I  
3 recognize, you know, most of your  
4 organizations -- not all of your  
5 organizations, you know -- about operating in  
6 good faith. But I'd like to possibly give  
7 you an example. If an organization called  
8 Understanding Jobs, Inc. -- and if there is  
9 such an organization in existence, I  
10 apologize, I'm meaning it to be a  
11 hypothetical -- in the two weeks before the  
12 election, sends to every voter in a  
13 councilmanic district a flyer which says,  
14 "You know that Councilman X doesn't  
15 understand how jobs are created. Jobs are  
16 created, you know, through investment, and  
17 they killed investment by voting against the  
18 Kingsbridge Armory, and now 500," or whatever  
19 the number is, "people of your fell Council  
20 member," you know, "are not going to be able  
21 to have jobs," and they sent that two weeks  
22 before the election. Maybe it's a 501(c)(3),  
23 do you think that should or shouldn't be  
24 covered?

25 MS. JACKSON: I don't think that it

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2 should be covered. If 501(c)(3)s are  
3 complying with the IRS regulations, they're  
4 allowed to engage in that kind of issue  
5 advocacy, and the IRS does look at people who  
6 spring up after an election and the tone of  
7 what they take, if they've been doing this  
8 for a long period of time, when the issue  
9 becomes bright. So, I think that there's  
10 other ways that if that group was kind of a  
11 sham group and they really --

12 MR. DAVIS: Well, it doesn't have to be  
13 a sham group.

14 MS. JACKSON: I think that's what you're  
15 trying to capture. I mean, I think that if  
16 it's issue advocacy that's taking place in  
17 the normal course of business, I think it  
18 should be overly broad to capture all of  
19 that.

20 MR. DAVIS: So, your position is let it  
21 go?

22 MS. JACKSON: Right.

23 MR. PARKES: Next up is Elizabeth Perez,  
24 a staff attorney for the Lawyers Alliance for  
25 New York. Elizabeth, welcome.

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2 MS. PEREZ: Hello, and thank you. My  
3 name is Elizabeth Perez, I'm a staff attorney  
4 at Lawyers Alliance for New York. The  
5 Lawyers Alliance itself is a non-profit  
6 organization, a 501(c)(3) organization. We  
7 represent non-profits in New York, we're  
8 working in low-income communities on a range  
9 of business and transactional needs. I  
10 particularly am involved in advising  
11 non-profits on lobbying advocacy issues in  
12 New York City.

13 As a step back, we want to thank the  
14 Campaign Finance Board for addressing the  
15 issues raised by Citizens United. We are  
16 supportive of transparency and generally do  
17 want to know. We are on the same side as  
18 wanting there to be sunlight in areas where  
19 confusion could exist. But as drafted, I  
20 think that the regulations, the proposed  
21 regulations, raise a number of issues  
22 particularly for 501(3)(c) organizations.  
23 And Michelle has pointed this out in her  
24 testimony, but the distinction between  
25 501(c)(3) organizations and every other

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1  
2 entity that you will be regulating under  
3 these regulations is that 501(c)(3)s can not,  
4 are not permitted to engage in partisan  
5 political activity. That is separate from  
6 501(c)(4)s and other tax exempt  
7 organizations, and the IRS has addressed  
8 these topics of what happens when a  
9 501(c)(3), something becomes issue advocacy  
10 around a campaign versus truly trying to  
11 intervene into an election.

12 In particular, the definition of  
13 electioneering communications should be  
14 narrowed. The fact that advocacy takes place  
15 within a few days of an election should not  
16 be the determining factor for whether or not  
17 that activity is partisan, intended to  
18 influence an election or not, whether it's an  
19 ongoing issue advocacy campaign. Non-profits  
20 already report -- not that every other entity  
21 shouldn't be reporting their lobbying and  
22 legislative activity -- to the New York City  
23 Clerk, often to the New York State Commission  
24 On Public Integrity and to the IRS. So, I  
25 think it will be very important as we go

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1  
2 forward with this to look at the proposed  
3 definition of electioneering communication  
4 and take into consideration the fact that  
5 there is a difference between true issue  
6 advocacy and interfering in a campaign. The  
7 IRS has issued guidelines on how to  
8 differentiate between these two, and I think  
9 they could be constructive. For example, you  
10 would look at whether -- the IRS looks at  
11 whether there's an ongoing series of  
12 substantially similar advocacy communications  
13 by the organizations or whether it's  
14 something that's come up simply because it's  
15 sort of a hot topic for the election, the IRS  
16 looks at whether the communication identifies  
17 specific legislation outside the control of  
18 the organization. So, if an issue that has  
19 come up happens to be timed within 30 or 90  
20 days of an election, that should not have --  
21 the simple amount of timing shouldn't be a  
22 determining factor, especially if it's  
23 outside the control of the organization.

24 Another factor the IRS would look at is  
25 whether or not the communication identifies

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2 the candidate's stand on issue in question.  
3 So, there may be a difference between a  
4 communication saying that "Council Member X  
5 has taken the wrong stand on this particular  
6 issue," versus, "This is what's happening,  
7 tell your Council Member that we support his  
8 vote this way or oppose this particular  
9 measure," and I think there is a significant  
10 difference for our clients.

11 Finally, another disclosure requirement  
12 issue is that the funder disclosure, there is  
13 I think some lack of clarity with respect to  
14 what needs to be disclosed. In particular,  
15 Section 1304(b) says that independent  
16 spenders are to report the name of  
17 individuals or entities paying for an  
18 expenditure. And when it comes to non-profit  
19 organizations, what we would like to know is  
20 whether or not that includes general  
21 operating support for an organization,  
22 because requiring that would be a burden on  
23 non-profits. The IRS already requires that  
24 donors are disclosed if they are above 2  
25 percent of revenue for the organization, but

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2 that disclosure isn't public. When you put  
3 it on your 990 on Schedule B, Schedule B,  
4 unlike the rest of the 990s, is not a public  
5 document.

6 So, just quickly, one of our clients, I  
7 wanted to just give an example of how this  
8 affects our clients. (Inaudible) Citizens  
9 Services is a 501(c)(3) organization, a  
10 membership organization, last year about this  
11 time they sponsored a campaign centered  
12 around midyear budget cuts. So, it's this  
13 time of year, around when an election could  
14 be, and that campaign asks senior centers who  
15 would be affected and the senior citizens in  
16 the communities to send letters to council  
17 members and to elected officials to say,  
18 "These cuts should not be made." The cuts  
19 were centered around case management for  
20 senior citizens and they're projected budget  
21 cuts of 30 percent. The campaign was  
22 partially successful, the cuts were reduced  
23 although not completely eliminated. But the  
24 point is that that CFCS is reporting that  
25 legislative activity, it's an ongoing concern

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2 to them, the funding for senior centers,  
3 already to the City and the State, they're  
4 communicating with members yes, the senior  
5 centers, but the seniors that they're  
6 actually working with are not members of  
7 CFCS. So, the membership exception would not  
8 cover the activities that are being  
9 disclosed. I think my time is up.

10 MR. PARKES: Thank you, Elizabeth.  
11 Question?

12 MR. DAVIS: Same question. If I wasn't  
13 being clear, then let me be clear. This is  
14 two weeks before an election, from  
15 Understanding Jobs, Inc. -- maybe a  
16 501(c)(3), may not be, but let's assume that  
17 it's a 501(c)(3), to every voter in the  
18 councilmanic district saying, "This Council  
19 person doesn't understand how jobs are  
20 created. They voted -- " this is in the  
21 past, "They voted against the Kingsbridge  
22 Armory project, costing 500 jobs." So,  
23 covered or not covered?

24 MS. PEREZ: I think they're already  
25 reporting activity to the Lobbying Bureau

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2 right? Because it would be like legislative  
3 activity, correct?

4 MR. DAVIS: It's happened already, the  
5 Council has voted.

6 MS. PEREZ: They're reporting their  
7 activity every two months, so that activity,  
8 if they were sending that letter campaign,  
9 that activity has been reported as  
10 legislative advocacy.

11 MR. DAVIS: So, you think that --  
12 because I thought you said that if it  
13 focused, it didn't say, you know, "Support  
14 X," or you know, "Call your Council person,"  
15 but I thought you said that if it focused on  
16 a named person criticizing them for a  
17 specific vote. Maybe I misunderstood.

18 MS. PEREZ: If you look at our written  
19 testimony, there's a list of factors that the  
20 IRS has proposed, I don't think it's as clear  
21 cut as yes or no. I think that because it's  
22 the IRS's job to regulate whether a 501(c)(3)  
23 organization is involved in partisan  
24 political activity, which they could lose  
25 their tax exempt status for doing that. So,

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1  
2 that test belongs to the IRS. The disclosure  
3 already exists under the existing system for  
4 legislative advocacy.

5 MR. PIAZZA: So, if you already have a  
6 reporting requirement that you meet, how  
7 strenuous would it be to also report to the  
8 CFB then, if you've already done the  
9 reporting?

10 MS. PEREZ: That's a good question. We  
11 do a lot of education around this question,  
12 because it's not clear under -- there are a  
13 lot of gray lines of what needs to be  
14 reported and what doesn't, more probably for  
15 the Lobbying Bureau than for this particular  
16 campaign, especially with the pre-clearance  
17 system that you've set up.

18 However, CFCS, for example, is already  
19 reporting bimonthly, so every two months, to  
20 two different oversight bodies; the Lobbying  
21 Bureau and the State Commission on Public  
22 Integrity. That's 14 reports a year, and  
23 this is an organization that has one person  
24 employed as the advocacy person. So, it may  
25 not sound like a lot in the abstract, but in

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2 reality -- because non-profits are not  
3 focused on the timing of elections, they're  
4 not intervening into the elections if they're  
5 operating as they should be. So, I think it  
6 would be a significant burden for groups that  
7 are not operating on an election cycle.

8 MR. PARKES: Any other questions?

9 (No response)

10 MR. PARKES: Thank you very much,  
11 Elizabeth.

12 Our next speaker is Dick Dadey, the  
13 executive director of Citizens United.

14 MR. DADEY: Good morning, members of the  
15 Campaign Finance Board. I'm here with my  
16 colleague at Citizens United, Alex Camarda.  
17 The written testimony you have in front of  
18 you I'm quickly going to go through in order  
19 to comply with the five-minute time frame.

20 As an organization involved in the  
21 cause-and-effective and workable Campaign  
22 Finance Reform, I would like to lay out the  
23 principles that guided Citizens United in  
24 this consideration of this issue and our  
25 ultimate view. One, without inhibiting

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1  
2 political speech, we support strong and  
3 effective disclosure when it comes to how  
4 elections are conducted and political  
5 campaigns are funded. New Yorkers, whose  
6 taxes help pay candidates' campaigns for  
7 City-elected office here have a right to be  
8 well-informed about the sources of funding  
9 and expenditures that they use, be they  
10 candidates' or groups' or individuals' wages  
11 being not connected to candidates, but the  
12 fact who was elected here in New York.

13 In light of the consequences, and this  
14 is Number 2, one of the consequences in the  
15 Federal case now likely known as Citizens  
16 United, whoever the individual or what the  
17 entity is; corporations, businesses, unions,  
18 not-for-profit organizations, trade  
19 associations; if it intentionally  
20 participates in an activity that is intended  
21 to influence the outcome of a City election,  
22 or uses the time of an election to affect  
23 candidates' positions or how candidates are  
24 perceived by voters during an election  
25 campaign, the same set of rules need to apply

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2 to all. Terms of the application of the law  
3 is a tenant of our democracy.

4 Three: Traditional lobbying activity  
5 aimed at affecting a vote on a specific  
6 particular legislative bill, administrative  
7 regulation or budget item should not be  
8 subject to disclosure under the new law.

9 We have a number of recommendations here  
10 broken out on these various sections. I'll  
11 skip around a bit. But in terms of scope of  
12 regulation and the question of express  
13 advocacy and electioneering, while the  
14 language related to the disclosure of  
15 independent expenditures in the Charter  
16 relates to support or opposition of  
17 candidates, we believe it is legally  
18 permissible for the Board to interpret this  
19 language to include electioneering that is  
20 designed to affect an election or the  
21 electorate's view of a candidate during an  
22 election campaign.

23 Inclusion of all electioneering as a  
24 qualifying independent expenditure is  
25 essential for real disclosure and

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1  
2 transparency of third-party spending. If  
3 regulated activities are confined to  
4 interpret advocacy, independent expenditures  
5 will only be reported if the magic word such  
6 as "vote for" or "vote against," is used.  
7 This would create a gigantic loophole that  
8 would enable third parties to run as,  
9 distribute printed materials, or make robo  
10 calls right before an election that states a  
11 candidate was dead wrong on the budget or  
12 jeopardizing our children's education or an  
13 infinite number of other phrases that would  
14 have the effect of informing and influencing  
15 voters without ever having to declare that  
16 spending, identify the entity or individual  
17 behind such communications or the money  
18 funding such spending. The same lack of  
19 disclosure will apply if the candidate were  
20 praised and supported by third-party  
21 spending.

22 In short, without the inclusion of  
23 electioneering in regulated activity, the  
24 change to the Charter affirmed by the voters  
25 will be gutted to the point of disclosing

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2 very little of the independent expenditures.

3 That being said, we do hear the concerns  
4 of those entities engaged in traditional  
5 lobbying activity that their actions  
6 generally intended to exclusively advocate on  
7 legislation or the budget will be  
8 misinterpreted as directed to support or  
9 oppose a candidate, so, we then offer two  
10 recommendations to address them: Number 1,  
11 lower the time frame for disclosure of  
12 electioneering to the to the Federal window  
13 of 30 days before a primary and 60 days  
14 before a general election.

15 Number 2, the Campaign Finance Board  
16 should provide numerous examples on specific  
17 safe harbor language as guidance for the  
18 organizations for their own communications  
19 related to legitimate lobbying activity on  
20 specific bills and determinations by  
21 governmental entities so it is not confused  
22 with or has to be reported as independent  
23 expenditures. That would eliminate  
24 organizations' concern over the need to  
25 disclose legitimate lobbying activity. We

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2 believe that the qualifying language be  
3 specific enough in referencing a bill or a  
4 clearly identified item in the City budget  
5 that is being decided at that time.

6 Organizations engaged in communications  
7 around their lobbying should also take full  
8 advantage of what is already provided in the  
9 preliminary rules: the ability to submit  
10 communications to the CFB for feedback as to  
11 whether such a communication would need to be  
12 reported.

13 While we make these recommendations to  
14 improve the rules, certain realities need to  
15 be acknowledged. When an organization truly  
16 only intends to advocate about an issue, the  
17 public and the voters may perceive it as a  
18 judgement about a candidate when it is so  
19 close to an election. It's the perception of  
20 the voters that matters most in determining  
21 whether a communication is an independent  
22 expenditure, not the intent of those  
23 delivering it.

24 Organizations leveraging the occurrence  
25 of an election to influence City action or

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1 candidates' views on other issues are using  
2 the potential influence of voters for paying  
3 attention to candidates running for office to  
4 advance their agenda. That is exactly why it  
5 is electioneering; when advocacy crosses that  
6 line for particular bills and determinations  
7 towards general issue advocacy, and that  
8 needs to be reported.  
9

10 To the scenario of legitimate lobbying  
11 being confused for electioneering only lasts  
12 a few months every four years and in one  
13 20-year cycle an additional one election.

14 Number 3: The regulation under  
15 consideration is disclosure. The least  
16 intrusive form of campaign finance regulation  
17 is ever increasingly being rolled back by the  
18 courts. If disclosure is only tepidly  
19 inclined in the very city where modern  
20 campaign finance is increasingly an island in  
21 a world of unregulated campaign spending, how  
22 would we inform the public about it, if not  
23 limit the enormous amounts of money in our  
24 politics?

25 Regarding member to member

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1  
2 communications, I just want to point you to  
3 Recommendation No. 3 where we believe that  
4 additional exemptions for literature  
5 distributed to members should be added when  
6 the communication is sent out only for  
7 members.

8 And there's Recommendations 4 and 5 to  
9 deal with additional disclosure and reporting  
10 requirements. So, I'll leave it at that.

11 MR. PARKES: Thank you very much, Dick.  
12 I'll remind everyone that the written  
13 testimony that people hand in will be posted  
14 on the CFB website so everyone will have a  
15 chance to look at it. Any questions of  
16 Dick?

17 MR. DAVIS: My example again of  
18 Understanding Jobs, Inc. two weeks before the  
19 election mailed to every voter in the  
20 district, "This Councilman doesn't understand  
21 how jobs are created," covered or not  
22 covered?

23 MR. DADEY: If this is not already  
24 considered by the City Council, has been  
25 acted upon either through approval or defeat,

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2 it then would cross into electioneering,  
3 because you're no longer talking about a  
4 specific piece of legislation that has  
5 already been settled by the Council, and  
6 therefore, it enters into electioneering,  
7 because you're now speaking about a broader  
8 issue and an elected official's action on  
9 that issue where the issue is no longer  
10 considered a wide piece of legislation. So,  
11 I would argue that it would be reportable.

12 MR. DAVIS: Okay. To switch it just a  
13 little, because that's the past. Now, since  
14 you gave that answer, I'll move on to the  
15 next one. Same thing, two weeks before the  
16 election, to every voter in the district,  
17 assuming that the Council actually had the  
18 ability to vote on the Millionaire's Tax,  
19 "Councilman Jones refuses to support the  
20 Millionaire's Tax. Is that what you want?"  
21 or, you know, that doesn't say any magic  
22 words, but, you know, it contains a clear  
23 condemnation of a principle because it goes  
24 to every voter in the district two weeks  
25 before.

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2 MR. DADEY: If it is a piece of  
3 legislation that's going to go to the City  
4 Council that is active and under  
5 consideration, I would argue that it's not  
6 reportable, even given the large scope of the  
7 organization's effort in informing the  
8 voters.

9 MR. DAVIS: Okay.

10 MR. PARKES: Thank you very much, Dick.

11 MR. DADEY: You're very welcome.

12 MR. PARKES: Next up is Deanna Bitetti,  
13 the associate director of Common Cause New  
14 York. Welcome, Deanna.

15 MS. BITETTI: Good morning -- or it  
16 actually might be afternoon, I'm not sure --  
17 members of the Board. Thank you for the  
18 opportunity to speak today. I also want to  
19 thank the Campaign Finance Board as well;  
20 Eric, Jesse, Ilona -- I know I'm missing  
21 some -- for repeatedly meeting with us and  
22 answering our questions.

23 Before beginning to even address the  
24 rules themselves, I think that it's important  
25 to first look at these underlying purposes

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1  
2 for seeking disclosure as to what's the  
3 nature of independent expenditures. We quite  
4 support reporting disclosing requirements for  
5 independent expenditures in order to help  
6 foster an informed electorate, not to limit  
7 the number of communications that attempt to  
8 influence voters. However, we do believe  
9 that member to member communications should  
10 not have to be disclosed as electioneering  
11 communications. We are concerned with  
12 organized money, not organized people. We  
13 feel that it's a positive thing that people  
14 bound together to develop a position on  
15 important public policy issues to convince  
16 others to support or oppose candidates for  
17 these specific positions or pieces of  
18 legislation.

19 We believe that the first line in  
20 addressing independent expenditures is to  
21 ensure that the source is as transparent as  
22 possible in order to allow voters to assess  
23 the credibility of the actual source of the  
24 claims made by the independent expenditure  
25 campaign. However, this is not a problem

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1  
2 that we find with member to member  
3 communications. Individuals who are members  
4 of an organization who choose to use their  
5 dollars to support that organization or  
6 attend events sponsored by the organization  
7 are very clear about what communication they  
8 are receiving. In fact, they probably  
9 support and choose to use their money to  
10 support these organizations for that very  
11 reason.

12 In the proposed rules, for instance,  
13 emails are exempt but attachments to emails  
14 are not exempt. The cost of creating the  
15 attachment or the flyer must be reported as  
16 an independent expenditure. We believe that  
17 emails between members, regardless of content  
18 or the attachment, should be exempt. When a  
19 union member is someone who can sign up for  
20 email alerts from advocacy groups receives  
21 the organization endorsement, they're not  
22 confused, once again, as to the source of the  
23 communication. Yes, they have means readily  
24 available to them to determine the cost  
25 incurred by the organization of which they

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2 choose to be a part of.

3 And it's also true, some unions and  
4 other member to member organizations may have  
5 125,000 members, and those sheer numbers  
6 could be a powerful force to influence an  
7 election. However, we do not believe that  
8 it's the members who receive the message that  
9 determines whether the communication should  
10 be reported as an independent expenditure.

11 Echoing some of the concerns already  
12 brought forward, we are concerned that the  
13 electioneering communication time frame is  
14 too long, we do advocate for the Federal, the  
15 30 days. We actually don't support  
16 necessarily 60 days, we actually think 30  
17 days for local City elections is more than  
18 suffice.

19 One possible way and one recommendation  
20 specifically that we have to reconcile the  
21 definition of electioneering communications  
22 is to limit the reportable expenditures to  
23 public communications. The Federal  
24 definition states that a communication is  
25 publicly distributed "if it is disseminated

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1  
2 for a fee by a TV station, radio station,  
3 cable system or satellite system." I  
4 understand that going specifically with the  
5 Federal definition you leave out a lot of  
6 communications that could be included; with  
7 the presidential we look at TV broadcasts, in  
8 local elections, we know there may be mailers  
9 or other things. Broadening the scope of the  
10 Federal definition to include some of these  
11 very public pieces of literature should be  
12 included. We think that there are ways to  
13 limit. So, going back to the example posed  
14 earlier to a threshold limit of the amount of  
15 money spent and also to place a number on the  
16 communications; so, how many people are  
17 receiving it? Is it reasonable to assume  
18 that it is for the public and not for just  
19 internal member to member communications?

20 Another issue -- I want to pivot a  
21 little bit away from the member to member for  
22 a second and just point out that we all know  
23 that in a lot of cases there is literature  
24 put out there as independent expenditure as  
25 something that we want to get to the heart

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2 of, so just put it out there, and you might  
3 have a name, put out by committees  
4 (inaudible) which tells you nothing about who  
5 is actually spending the money, who is doing  
6 the independent expenditure. One of the  
7 examples that we just want to point to really  
8 quickly as something that we support as part  
9 of the disclaimer for an independent  
10 expenditure, in L.A., for instance, their  
11 City Ethics Commission requires that on that  
12 campaign literature, when it's deemed a  
13 communication, an independent expenditure,  
14 you actually list the contributions or the  
15 major funding sources of \$25,000 or above.  
16 In California as a state, they actually ask  
17 to list just the top two. I did print out  
18 some literature, one from the City Council  
19 list you'll see "Major funding by," the font  
20 is really small. One of the issues that L.A.  
21 expressed is because there are too many  
22 names. The state system that they have with  
23 the two names we think is acceptable.

24 Another piece of literature, and I know  
25 (Inaudible) that just went viral -- anyone

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2 seen the "Too Legit to Quit" video -- it's  
3 actually quite amusing -- for the mayoral  
4 race in San Francisco? You can see "Paid for  
5 by" who, "Major funding by," "Not authorized  
6 by a candidate or a committee."

7 MR. PARKES: Thank you very much,  
8 Deanna. Any questions or comments?

9 (No response)

10 MR. PARKES: Okay, thank you. Next up  
11 will be Jennifer March Joly. Could I  
12 suggest, Jennifer and other speakers, you  
13 don't have to be too close to that mic, and I  
14 think if we touch the table, that causes a  
15 lot of static.

16 So, Jennifer is the executive director  
17 of the Citizens' Committee for Children.

18 MS. JOLY: Good morning, and thank you  
19 for the opportunity to offer comments on the  
20 proposed independent expenditure regulations.

21 As many of you may know, Citizens'  
22 Committee for Children was founded in 1944 by  
23 Eleanor Roosevelt, and our sole purpose is to  
24 air professional stats which citizens  
25 volunteer that document the facts, to educate

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1  
2 the community and advocate for change, and  
3 we're focused on ensuring that policies,  
4 budgets and legislation respond appropriately  
5 to the needs of New York City's children.  
6 Our advocacy is unique and facts-based,  
7 involves public policy research in a  
8 tradition of citizen activism. We don't  
9 accept government resources, nor do we  
10 provide direct services. We advocate year  
11 round. And as a 501(c)(3), we absolutely  
12 don't engage in campaign activity, nor do we  
13 endorse or donate to candidates.

14 Because advocacy is our central focus  
15 and the most effective tool in achieving our  
16 organization's goals, we're deeply concerned  
17 that the new rules could negatively impact  
18 our ability to mobilize New Yorkers and weigh  
19 in on legislative budgetary and policy  
20 issues. I would say that City leaders  
21 actually depend on us to clarify the impact  
22 of proposals that come before them on New  
23 York City's communities and children, and  
24 unfortunately in this budget climate, we seem  
25 to be doing a lot of advocacy year round.

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1  
2 We're particularly concerned about the impact  
3 on our ability to communicate with New  
4 Yorkers at large and elected officials during  
5 the City budget process, because we're on the  
6 steps of City Hall and communicating  
7 regularly virally, as well as on websites,  
8 through paid ads, sometimes through flyers on  
9 public positions on policies of importance to  
10 New Yorkers. And we're really fearful, given  
11 the high cost and complexity of the CFB  
12 filing requirements and potentially the need  
13 to retain legal counsel to make sure that  
14 small non-profits do it right. So, that will  
15 really place a chill on our ability to  
16 communicate and ability of others to  
17 communicate with New Yorkers and elected  
18 officials, which would be a real shame.

19 Another concern that other people have  
20 already mentioned is the requirement that  
21 organizations spending more than 5,000 would  
22 have to report and make public the sources of  
23 their funding. I'm entirely privately  
24 funded, I raise over \$2 million a year from  
25 the ground up. Many of my funders are

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2 anonymous, and most of the foundations  
3 supporting my general operating expressly  
4 prohibit campaign activity, and I'm really  
5 fearful that these new requirements could  
6 have a negative impact on my ability to raise  
7 the funds I need to keep my organization  
8 going.

9 The last incredibly troubling  
10 requirement would be the requirement that we  
11 would declare our advocacy spending as  
12 supporting or opposing particular  
13 candidates. As we are not involved in  
14 political campaigns or committees, we can't  
15 make such endorsements, and we think they  
16 directly contradict the requirements under  
17 Federal IRS law that we must abide by as a  
18 501(c)(3) organization.

19 So, I tried to be quick and coherent.

20 MR. PARKES: Thank you very much,  
21 Jennifer. You were quick and you were  
22 coherent. Any questions?

23 (No response)

24 MR. PARKES: Thank you. So, we're  
25 learning a lot of history here this morning,

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2 in addition to talking about electioneering  
3 and campaigns. Next up is Gregory Brender,  
4 the early childhood and education policy  
5 analyst for United Neighborhood Houses.  
6 Welcome, Gregory.

7 MR. BRENDER: Thank you very much, and  
8 thank you for the opportunity to testify.  
9 I'm here on behalf of United Neighborhood  
10 Houses. I'll give you our history as well.  
11 We were founded in 1919 with the Federation  
12 of New York City Settlement Houses and  
13 Community Centers. We have 37 member  
14 agencies throughout all five boroughs of the  
15 City. We provide a broad range of  
16 services -- everything cradle to grave,  
17 everything from early childhood, after  
18 school, adult literacy, senior centers, home  
19 care and a wide variety of programs to meet  
20 community needs. And a crucial part of the  
21 work that we do is using the expertise that  
22 our member agencies have gained from service  
23 to advocate for the kind of services that  
24 they provide in which their communities need.  
25 We're proud of this work. We're proud

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2 that we sometimes are called on a source of  
3 expertise, like folks in the administration,  
4 folks in the City Council, and that we can  
5 use what we've learned from our member  
6 agencies to help them serve their communities  
7 better.

8 We are very concerned about the effects  
9 that these new proposed rules can have on our  
10 ability to do this part of our work. We do  
11 believe that we share your goal in increasing  
12 citizen engagement and increasing  
13 participation in government. Part of our  
14 efforts is that one of our campaigns that we  
15 do every year is the campaign for summer jobs  
16 which advocates for the Summer Youth  
17 Employment Program which promotes young  
18 people to work during the summer. We not  
19 only engage and advocate for that program but  
20 we also help to bring a group that's often  
21 marginalized politically, young people  
22 specifically from low-income neighborhoods to  
23 be active, to be saying what they need from  
24 their government.

25 Our efforts are never part of a

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1  
2 political campaign. We've never supported or  
3 opposed a political candidate, we wouldn't be  
4 able to do so because we're a 501(c)(3). We  
5 advocate, we organize, we provide expertise.  
6 And we hope these activities should not  
7 trigger campaign disclosures. Unfortunately,  
8 with these rules, it would require us to  
9 submit campaign disclosures if we spend as  
10 little as \$1,000, which we could spend, say,  
11 on a couple buses moving kids from Brooklyn  
12 to City Hall to meet with Council members or  
13 folks from the administration.

14 We also have expressed concern about  
15 having to express support or oppose a  
16 candidate, because of course we do not  
17 support or oppose candidates. We have taken  
18 position on legislation, we push for things  
19 in the budget, but we do not engage in any  
20 electioneering.

21 In covering organizations, I think we  
22 play an important role in the policymaking  
23 process and hope to continue to do so without  
24 having to essentially come out and become a  
25 campaign organization which we're not.

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2 Thanks again for the opportunity to  
3 testify.

4 MR. PARKES: Thank you very much,  
5 Gregory. Any questions?

6 MR. DAVIS: I have a question. Would it  
7 be typical for you to issue communications  
8 which refer to personal qualities, character  
9 or fitness of a candidate; would that be  
10 something you would normally do?

11 MR. BRENDER: I can't think of any time  
12 we have done it.

13 MR. DAVIS: Would you normally support  
14 or condemn a candidate's position stance on  
15 an issue?

16 MR. BRENDER: I think we would say  
17 things like, "Thank you for supporting," and  
18 condemn might be a bit strong word, but we  
19 certainly hope to change people's minds when  
20 they have positions we disagree with.

21 MR. DAVIS: And would you support or  
22 condemn a candidate's public record  
23 generally?

24 MR. BRENDER: I don't think we would  
25 ever have a comment on a candidate in

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2 general, like, "So and so is a good or bad  
3 council member."

4 MR. DAVIS: So, in particular, you might  
5 support or compliment them on a stance on an  
6 issue on the things like that. I'm just  
7 trying to get a slate, because those are the  
8 things that are included in the definition of  
9 electioneering. Thank you.

10 MR. PARKES: Thank you very much,  
11 Gregory. Next up are Josh Gold, Brian  
12 Gaffney and Kazi Hossain of the New York  
13 Hotel and Motel Trades Council. Welcome.

14 MR. HOSSAIN: Good morning, everybody.  
15 Thank you for this opportunity to testify on  
16 this important matter. My name is Kazi. I  
17 am a resident of Queens and a bartender at  
18 the Plaza here in Manhattan where I have  
19 worked since 1986. I am also a proud member  
20 of the Hotel Trades Council.

21 I was disappointed to learn that this  
22 body may pass rules that could limit  
23 particular conversation within the union.  
24 While any mass communications to the general  
25 public about elections must be disclosed to

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2 the public, the same cannot be said for  
3 Internet member to member communications.

4 Policies is an essential part of the  
5 union. As a member, I have helped registered  
6 dozens of co-workers. I have also had  
7 hundreds of conversations with members about  
8 the importance of voting and about candidates  
9 we have. I have also volunteered on  
10 campaigns. For example, in 2008 I met Danny  
11 Dromm through the union. I began to  
12 volunteer with Councilman Danny and  
13 introduced him to more union members, union  
14 staff. He encouraged me to get more involved  
15 in the campaign, and I did help to organize  
16 events in the Bangladeshi community for  
17 Danny, including two meetings, one is a  
18 fundraiser also.

19 I am engaged in politics because my  
20 union has encouraged me to engage. They  
21 encourage me with flyers and on the phone and  
22 in person. There are concerns that these  
23 conversations have to be tracked. It could  
24 lead to less conversation and therefore, less  
25 participation.

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2 But more importantly, to me, the union  
3 is like a large family. As a family, you may  
4 have conversations about issues or politics  
5 at the kitchen table, but what happens at the  
6 kitchen table, it should stay at the kitchen  
7 table. The same thing is true with the  
8 union. Internal conversations members have  
9 with each other, whether they are in person,  
10 on the phone or in writing or on our business  
11 not is anybody else's business.

12 I urge you to strongly consider  
13 exempting member to member communications  
14 from these rules. Thank you, everybody.

15 MR. PARKES: Thank you very much, Kazi.  
16 Any questions about that? Comments?

17 (No response)

18 MR. GAFFNEY: Good morning. Thank you  
19 for giving me this opportunity to testify  
20 before you. My name is Brian Gaffney and I'm  
21 an on-call banquet bartender. Previously I  
22 worked for 17 years at 3 World Trade Center  
23 for Vista International Hotel and the Marriot  
24 World Trade Center. So, if you do your math,  
25 for 17 years going back I'm a two-time victim

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2 of terrorism. After the tragic days of  
3 September 11th, my great union, be it  
4 displaced, put me in different locations. 10  
5 years later, I'm currently working at the New  
6 York Palace Waldorf Astoria, the Hyatt Hotel  
7 and the Hilton Hotel, all based in New York  
8 City. This is one of the reasons why I'm a  
9 proud member of the Hotel Trade Council.

10 I wanted to testify today to make an  
11 important point. I am engaged in politics  
12 and a political process because my union  
13 encourages me to get involved. Over the past  
14 few years I have been actively involved in  
15 more than a handful of campaigns from Julissa  
16 Ferreras' City Council race to Sheldon  
17 Silvers' Assembly race. I've knocked on  
18 doors, handed out literature and engaged with  
19 voters.

20 Conversely, I would not be an active  
21 voter if not for my communication with my  
22 union about the importance of voting. I  
23 would not have volunteered on more than a  
24 half dozen campaigns and I would not  
25 constantly engage friends, family and

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2 co-workers about politics.

3 The Hotel Trade Council encourages me to  
4 be involved in politics through mailers,  
5 flyers and conversations because we need  
6 representation in this political environment,  
7 and anti-union corporations are fighting us.  
8 And I know my union is going to help me pick  
9 candidates who will fight for my interest in  
10 City government, Albany and Washington.

11 Increased regulation will make it harder  
12 for communication and will decrease voter  
13 participation in New York. I urge you to  
14 reconsider a full member to member exemption.  
15 Thank you for your time.

16 MR. PARKES: Thank you very much,  
17 Brian. Josh?

18 MR. GOLD: I'll be very quick and very  
19 brief. Thank you for the opportunity to  
20 testify. I really want to also thank the  
21 staff whom we've had a lot of productive  
22 conversations, and I'm looking forward to see  
23 how the proposal shapes out.

24 A lot of my colleagues today are here to  
25 talk about the issue advocacy, some of the

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2 burdens of nature of the organizations and  
3 some of the other concerns with the rules.  
4 I'm going to focus on the member to member  
5 exemption.

6 Let me first stress that the Hotel  
7 Trades Council supports the idea that those  
8 who seek to independently influence the  
9 general public's voting decision disclose who  
10 they are, who they're funding, and their  
11 spending. I can't stress that enough that we  
12 strongly agree with that. However, members  
13 of organizations are not the general public.  
14 They know why their organization is trying to  
15 influence their decision and they know where  
16 the funding is coming from.

17 As a policy matter, the Board should do  
18 everything in its power to counter the lack  
19 of participation in the electoral process.  
20 Various studies -- I list them out and can  
21 provide them to you later -- show that  
22 political mobilization efforts have a direct  
23 impact on participation levels. Regulating  
24 those internal mobilization efforts will  
25 discourage them, thereby decreasing

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2 participation citywide.

3 Setting aside that it's bad policy to  
4 discourage participation, regulating member  
5 to member communications was simply not the  
6 intent of New York City voters. Member to  
7 member communication is not even mentioned in  
8 the Charter Revision Commission's report, nor  
9 was it a topic of discussion in the testimony  
10 in front of the Charter Revision Commission.

11 While the Board's staff is relying on  
12 the L.A. unique disclosure requirements as a  
13 comparison point for proposal member  
14 communication disclosure, it is important to  
15 remember that Los Angeles' municipal code  
16 differentiates between member communications  
17 and independent expenditures. The code  
18 clearly states that the drafters' intent was  
19 to regulate two distinct classes of  
20 communications: Independent expenditures, as  
21 well as member communications. In fact, if  
22 you go to the disclosure website, you'll see  
23 two separate columns, one for member to  
24 member communications and a separate column  
25 for independent expenditures. If the Charter

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2 Revision Commission intended to capture  
3 member communications, it would have clearly  
4 stated so as the drafters of Los Angeles'  
5 code did.

6 To summarize, the people of the City of  
7 New York never intended to regulate member  
8 communications. In fact, regulating such  
9 communications with burdensome reporting  
10 requirements would further stifle voter  
11 participation in a city already suffering  
12 from anemic voter turnout in civic  
13 engagement. That's it.

14 MR. PARKES: Thank you very much, Josh,  
15 Kazi and Brian. Any questions or  
16 observations?

17 (No response)

18 MR. PARKES: Thank you very much. Now  
19 I'd like to welcome Councilwoman Gale Brewer.

20 MS. BREWER: Thank you for the  
21 opportunity to testify regarding the Campaign  
22 Finance Board's rules, proposed rules for  
23 disclosure of independent expenditures. As  
24 you know, I am Gale Brewer. I represent the  
25 Upper West Side and the lower part of Hell's

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1  
2 Kitchen and Clinton in the Council. And as  
3 you know, I am currently the chair of the  
4 Community and Governmental Operations which  
5 has oversight responsibility for the CFB and  
6 issues related to the conduct of elections,  
7 including what we're talking about today.

8 Since March 2011, when the CFB began  
9 this public process of promulgating rules for  
10 implementing the new Charter amendment  
11 relating to independent expenditures, I have  
12 closely monitored these efforts. And like  
13 everyone else here today, I want to commend  
14 the CFB for the openness and transparency  
15 that the staff and the Board have exhibited  
16 throughout the process. I think you know how  
17 great your executive director is.

18 The new reporting requirements apply to  
19 activity that is at the very heart of our  
20 democracy, the ability of individuals and  
21 groups of individuals to band together so  
22 that their voices can be heard and their  
23 viewpoints reflected during an election. I  
24 have no doubt that the CFB fully appreciates  
25 the importance and legitimacy of such

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2 activity.

3 The Charter amendment, which you know I  
4 voted against, as proposed last year by the  
5 Charter Revision Commission and approved by  
6 the voters, seeks to ensure that this  
7 activity is transparent so that voters can  
8 understand the source behind the messages  
9 they are receiving. While this is an  
10 honorable goal, it is of the utmost  
11 importance that the law is not implemented in  
12 such a way as to quell or discourage anyone  
13 from exercising the right to engage in robust  
14 political speech. Again, you've heard about  
15 it this morning.

16 This is especially important, as it goes  
17 back to small, less sophisticated civic  
18 groups and clubs. Whereas, large  
19 organizations, like political parties and  
20 some unions, have the knowledge and resources  
21 to navigate complex reporting requirements,  
22 CFB must carefully guard against these  
23 reporting requirements becoming a trap for  
24 those who are simply unaware, unknown or  
25 simply hapless. If even one individual or

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2 small group of citizens is discouraged by the  
3 rules from participating in an election, then  
4 CFB will not only have failed to properly  
5 implement the law passed by the voters in  
6 November 2010, but would have failed in its  
7 efforts for an equally important mission of  
8 increasing participation in our City's  
9 elections. Mr. Chang knows this, head of  
10 VAC.

11 So, to make sure this doesn't happen, I  
12 have a few suggestions which you may have  
13 heard, some which may be incorporated into  
14 the CFB rules and others that should be done  
15 through day-to-day operations.

16 In terms of outreach and education, once  
17 these rules are finalized, it is imperative  
18 that CFB conduct extensive outreach to ensure  
19 that every individual and group affected by  
20 the rules is cognizant of the new  
21 requirements, it should include workshops and  
22 mailings that explain very clearly who has to  
23 file and the process for doing so, which must  
24 involve not only reaching out to large  
25 organizations but to small ones as well --

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2 I'll try and summarize -- even more  
3 importantly than we do as campaigners and  
4 elected officials.

5 Assistance and support with campaign  
6 finance laws are very complex. Every  
7 candidate who has participated in the process  
8 knows when its ability to comply with the law  
9 is only as good as the advice in the  
10 assistance they receive, oftentimes, from  
11 high-priced attorneys or consultants. No  
12 individual or group should have to hire an  
13 attorney to comply with these reporting  
14 requirements. The CFB's candidate service  
15 has done a commendable job in providing  
16 assistance and support to candidates, and  
17 obviously they need to do the same for these  
18 individuals. In the most recent budget, at a  
19 time when many agencies were being scaled  
20 back, CFB was granted authorization for two  
21 new positions. These positions should be  
22 used for this purpose.

23 CFB must make sure also that the  
24 reporting software is simple and easy to use,  
25 maybe even more so than C-SMART. Many

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2 organizations that may have to file do not  
3 have the staff or resources to devote to  
4 filing many reports. Filing should not have  
5 to spend hours compiling information.

6 Free common sense enforcement. No  
7 matter how much CFB does and no matter how  
8 much assistance is available, there will be  
9 groups who file late or neglect that they  
10 should have filed or leave out information.  
11 And I feel strongly that the enforcement in  
12 the law and the discretion that has been  
13 afforded to impose in penalties must be taken  
14 into account. The Administrative Code  
15 requires CFB to adopt a schedule of penalties  
16 for violations and infractions, and I urge  
17 CFB to include in the independent expenditure  
18 rules the following: While no penalty should  
19 be imposed for failing to file or for late  
20 filing unless such action was willful, so  
21 long as the filing is made within a  
22 reasonable period of time; no penalties  
23 should be imposed for a first-time offense by  
24 any individual or group unless such offense  
25 was willful and involves more than \$3,000; in

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2 no instance should a penalty be larger than  
3 the amount of the expenditure at issue.

4 My reason for suggesting these rules is  
5 not to let bad actors off the hook, it's to  
6 set in place what should be CFB's prime  
7 objective which is to encourage disclosure  
8 and get people into the system. As we know,  
9 a lot of people are not into the system now  
10 because they're afraid. If CFB chooses to  
11 focus on the latter, it will only serve to  
12 inundate people and keep them out the  
13 system.

14 There is a distinction between issue  
15 advocacy and electioneering. A number of  
16 non-profit groups -- and I was on 12  
17 non-profit boards before I was elected, I'm  
18 very familiar with them, they have raised  
19 concerns which you'll hear about and have  
20 heard about where their advocacy may be  
21 subject to the proposed disclosure  
22 requirements. Their concerns need to be  
23 addressed and a clear distinction needs to be  
24 drawn between legitimate advocacy and  
25 activity that is meant to influence an

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2 election.

3 The primary issue is with the proposed  
4 90-day window in which electioneering  
5 activities will be subject to disclosure.  
6 The examples given in the guide to the  
7 proposed rules which constitutes  
8 electioneering is, quote, "Tell Candidate X  
9 that her position on budget cuts is wrong."  
10 Groups are clearly concerned about the impact  
11 such a statement will have on their outreach  
12 during the City's budget season. It is my  
13 hope and belief that the rules have been  
14 crafted in such a fashion as to exclude  
15 legitimate advocacy work by non-profit  
16 groups, that needs this to be clarified -- it  
17 is not now -- and clearly explain to all  
18 groups who may be subject to these  
19 regulations.

20 CFB needs to do everything in its power  
21 to ensure that the effect of the disclosure  
22 rules does not dissuade groups from  
23 contacting all of us and all people who are  
24 concerned about the budget. That will be a  
25 tragedy, and I would not support it.

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2 It is my strong belief, and I say this  
3 over and over again, that 501(c)(3) groups  
4 should be exempted from these rules, as they  
5 are already subject to restrictions and  
6 electioneering activity by the IRS.

7 I will also bring to your attention that  
8 Speaker Quinn is not able to be here today  
9 but she has submitted testimony. As you  
10 know, she is has been very involved in this  
11 since the beginning, and one of the issues  
12 she is particularly involved with is that of  
13 member to member communications. We are all  
14 in agreement, the Speaker and I, and I'm sure  
15 other members in the Council, that member to  
16 member communications which are not meant to  
17 influence a general electorate should be  
18 completely exempted from disclosure.

19 Finally, on a separate note, our agency  
20 has agreed to work with the State to achieve  
21 consistency between the City's and the  
22 State's regulations with respect to  
23 independent expenditures. As you know better  
24 than I, the Public Integrity Reform Act  
25 passed by the State and signed by the

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1  
2 governor in June of this year includes a  
3 provision that mandates that the State Board  
4 of Elections promulgate rules clarifying the  
5 State's independent expenditure reporting  
6 requirements as reflected in CFB's efforts to  
7 conform with City's and the State's reporting  
8 requirements for candidates, as we have seen  
9 with the Lobbying Commission  
10 recommendations -- and I attended all their  
11 hearings, to simplify the City's and State's  
12 lobbying reporting requirements and systems  
13 wherever possible. We should avoid  
14 duplicative City and State regulations that  
15 add to confusion, at the same time we can  
16 provide more added public benefit. We need  
17 to provide the public benefit but not add to  
18 the confusion.

19 While I understand the CFB has no  
20 control over the timing of the State's work,  
21 I ask that their progress is monitored and as  
22 the process moves forward along enacting new  
23 rules, consider where any changes should be  
24 made to the City's rules in order to  
25 promulgate consistency and clarity.

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2 Thank you for allowing me to go  
3 overtime, and I appreciate being here today.

4 MR. PARKES: Thank you very much  
5 Councilwoman Brewer. Any questions or  
6 comments? Rich?

7 MR. DAVIS: I think what we said at the  
8 outset, one of the things we are focused on  
9 is how to accommodate the issues in terms of,  
10 for example, budget advocacy so as we, you  
11 know, figure out a way not to pick those up  
12 in a way without trying to totally cut the  
13 rules. So, I think that's where we are very  
14 focused on that --

15 MS. BREWER: If we change the -- it will  
16 be even more complicated, too, which I assume  
17 is going to happen.

18 MR. DAVIS: It is no question. No  
19 question.

20 MS. BREWER: Right, it will happen.

21 MR. DAVIS: I'm nervous about asking you  
22 the same question I asked some of the other  
23 witnesses but I'll give it a go.

24 MR. PARKES: Give it a shot.

25 MR. DAVIS: I asked them about a

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1  
2 circumstance in which an organization, a  
3 hypothetical organization called  
4 Understanding Jobs, Inc., which might be a  
5 501(c)(3) designed to promote how jobs are  
6 created, sent a mailer to every voter in a  
7 council district two weeks before an  
8 election, essentially saying, you know, "Jobs  
9 are created by promoting investment. Your  
10 Council Member X doesn't understand that, as  
11 reflected by that Council Member's vote on  
12 the Knightsbridge Armory issue which killed  
13 jobs. They don't understand it." How do you  
14 feel about --

15 MS. BREWER: I think that is a clearly  
16 political piece, and I think that should not  
17 be sent unless following the laws that  
18 you're -- in other words, I would consider  
19 that would be very similar to, "Vote for Gale  
20 Brewer."

21 MR. DAVIS: I think that's the dilemma.

22 MS. BREWER: It's so easy, it's clear.

23 MR. DAVIS: Exactly. And the dilemma is  
24 where to draw that. I would give an extreme  
25 example, the hard issue is where to draw it

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2 to protect the things that I think you and  
3 others want to protect but still cover --

4 MS. BREWER: But 501(c)(3)s should not  
5 do that. So, that would not be done. I  
6 still believe in exempting 501(c)(3)s. You  
7 would not find a 501(c)(3) doing that.

8 MR. DAVIS: Outside of New York, we've  
9 seen plenty of them.

10 MS. BREWER: We're in New York. I'm  
11 telling you 501(c)(3)s don't do that. I've  
12 never seen that, and I've been doing this for  
13 a very long time.

14 MR. DAVIS: Certainly the 501(c)(3)s in  
15 this room who testified would not do it.

16 MS. BREWER: I don't think 501(c)(3)s  
17 would do it. So, the question would -- you  
18 could make that clearer but at the same time  
19 proving it to the budget section, if the  
20 human services groups, groups that I happen  
21 to be very partial to, send out, you know,  
22 "These are the budget issues and these  
23 council members are on the General Welfare  
24 Committee and we need your support to get  
25 more day care," that is necessary. And

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2 that's what we're worried about curtailing.  
3 And if you're talking about your timing, it  
4 needs to give them enough time to do that and  
5 not curtail their activity for the budget,  
6 and that's what you have to wrestle with,  
7 because I think it's a very fine line.

8 MR. DAVIS: Absolutely.

9 MS. BREWER: I'd like to see the Federal  
10 guidelines adhered to and I'd like to see a  
11 way in which non-profits are not part of this  
12 discussion.

13 MR. DAVIS: Thank you very much.

14 MR. PIAZZA: I do have a question for  
15 the Councilwoman. So, you advocate for a  
16 blanket exemption for the 501(c)(3)?

17 MS. BREWER: I do.

18 MR. PIAZZA: Now, what if a 501(c)(3)  
19 supports a ballot proposal?

20 MS. BREWER: I mean, what I remember  
21 when I got in trouble, because as a candidate  
22 I filled out a slip that said, "Support  
23 following ballot proposals," and I had a fit  
24 which the CFB. I was in this room and I  
25 remember having a huge fight with whoever was

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2 chair at the time.

3 MR. PIAZZA: I was here.

4 MS. BREWER: I think he doesn't speak to  
5 Rabbi Potasnik (ph) anymore because of them.

6 The issue -- I think that ballot  
7 proposals are substantive and I think we'd  
8 have to have another discussion about it. To  
9 me that's slightly different, I have to tell  
10 you, than taking on a candidate. I know that  
11 may not seem in the same ball of wax to you,  
12 but the ballot proposals are very complicated  
13 and I think they do need some discussion that  
14 may separate from what you're saying. I  
15 think that would be a different discussion  
16 and there should be more perhaps different  
17 rules. I certainly do. I had a fit, as you  
18 know, because I think that the public needs  
19 to know people's positions and it should go  
20 on a leaflet, and I think you'd have  
21 different discussion. We don't have enough  
22 discussion about the ones, as you remember,  
23 November 2010, in my opinion.

24 MR. PARKES: Thank you very much,  
25 Councilwoman. Our next person to testify is

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2 Lawrence Gold, an attorney with Trister and  
3 Ross. Lawrence, welcome.

4 MR. GOLD: Thank you, Mr. Chairman and  
5 thank you for having me today. I am Lawrence  
6 Gold. I'm a lawyer with Trister, Ross,  
7 Schadler and Gold. I practice campaign  
8 finance, election and First Amendment law. I  
9 represent unions and other civic  
10 organizations. I'm here on behalf of SEIU  
11 Local 32BJ, a labor organization that has  
12 70,000 members who live in New York City,  
13 work in approximately 10,000 workplaces, work  
14 as doormen, maintenance employees, porters  
15 cleaners, security officers and other  
16 positions. And also testifying today from  
17 the Local would be Walter Cooper.

18 This is a very important rulemaking, of  
19 course it is the first time that City law has  
20 directly regulated unions and other groups  
21 that are not candidates, political parties,  
22 or pacts, although this proposed rule would  
23 also apply to the pacts of Local 32BJ and  
24 other organizations.

25 We have submitted extensive written

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1  
2 comments and we have 10 principle  
3 recommendations in them and numerous related  
4 ones. We take the rulemaking seriously as  
5 the Board's opportunity to test its proposal  
6 and to be informed about its likely impact,  
7 and we know that you'll give it careful and  
8 full consideration. We appreciate that.

9 Let me highlight just a few points, and  
10 then I welcome your questions. First, the  
11 Local strongly supports the goal of  
12 meaningful and useful disclosure of who  
13 spends for independent expenditures to the  
14 public to elect or defeat City candidates.  
15 But the proposed rules are very complicated  
16 on several parts, and each choice that you  
17 make about how to regulate something has  
18 ramifications when combined with others, and  
19 few of its aspects can really be treated or  
20 considered in isolation. So, the more  
21 broadly you define, for example, what media  
22 and outlets are, quote, "public  
23 communications", and the more broadly you  
24 define what speech content is an independent  
25 expenditure if it's uncoordinated, and the

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2 more you include union internal membership  
3 communications, then the more limited the  
4 scope of a union's ability there will be to  
5 deal with elected officials and even  
6 legislative and agency policy matters.

7 For example, it's 2013 and the City  
8 primary is almost three months away. The  
9 City's budget is before the Council and it's  
10 very controversial. The union is mobilizing  
11 members and the public to preserve financing  
12 levels in City hospitals. The union has  
13 allies in this campaign including elected  
14 officials, say, the incumbent mayor who is  
15 running for re-election and three council  
16 members in particular. The union decides to  
17 publicize its position and their position and  
18 hold a rally on the eve of a council vote.  
19 The key part of the message is the validation  
20 by the City officials of its position and of  
21 the goal in the legislative process. Ads are  
22 put in community newspapers, there's some  
23 targeted radio, mail to members, calls to the  
24 public about this matter with that message  
25 and about the rally. The consequence of this

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1  
2 is if there's \$1,000 per candidate -- that is  
3 before incumbents -- is spent, then this is  
4 considered an independent expenditure, then  
5 the union has to report the type of  
6 communication, the description of it, the  
7 names of the candidates, that the union  
8 supports them in their election, the amount  
9 of the payments, the purpose of the payments,  
10 the names of their allies who chipped in for  
11 this, provide all the vendor invoices related  
12 to this and provide copies of all the  
13 communications, plus such other similar  
14 information as the Board may require. This  
15 is the expressed language of the proposed  
16 rule.

17 If they reach the \$5,000 level, they  
18 must not only do that, and this is per  
19 candidate, which is very easy to spend in the  
20 media I've mentioned, then they also have to  
21 disclose, the union has to, every single  
22 receipt in any amount from any institutional  
23 source since the 2009 Election almost four  
24 years ago regardless of its nature, its date  
25 and amount of these receipts, and from

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1  
2 individuals, all receipts from individuals of  
3 \$1,000 or over from the year before the 2013  
4 Primary going back to 2012, name, address,  
5 occupation and employer, employer and  
6 employer address. This could include members  
7 of the union. And if any of these  
8 communications are coordinated with a  
9 candidate, that will instead convert them  
10 into in-kind contributions even though there  
11 may be no electoral connection whatsoever.

12 In addressing a point that Mr. Davis  
13 made originally, this does convert speech  
14 into in-kind contributions. The more the  
15 scope that you define what is a public  
16 communication and the more that you define  
17 the scope that it reaches membership  
18 communications, if they are coordinated, then  
19 under City law, incorporating the proposed  
20 rules, they do become in-kind contributions  
21 to these candidates. And of course the  
22 contribution limits are very small.

23 And the disclosure also extends, for  
24 example, I think there was a mention of  
25 emails. In fact, once you hit the \$1,000 or

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1  
2 \$5,000 threshold under Proposed Rule  
3 1303(a)(3), "any additional spending," any  
4 additional spending no matter how much, those  
5 are the words of the proposal, "must be  
6 disclosed." Anything that's spent on email  
7 or any other communication will result in  
8 additional disclosure. We believe this is  
9 unnecessary and contrary to the Charter  
10 amendment. Let me just say in one sentence  
11 what principle suggestion is to deal with  
12 this, and there are others. First, to  
13 confine the scope of independent expenditures  
14 to express advocacy or its functional  
15 equivalent through electoral spending that  
16 reflects the Charter language.

17 Secondly, omit the separate "to oppose"  
18 electioneering communications category,  
19 because the Board simply does not have the  
20 authority under the Charter amendment to do  
21 that, and we have explained why in the case  
22 law in our comments.

23 Third, exempt all membership  
24 communications, as other speakers have  
25 advocated.

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2 And finally, with respect to incoming  
3 receipts, way too broad. Narrow it as the  
4 SEC has and as the courts have to  
5 contributions, through contributions that  
6 were either solicited or earmarked for the  
7 independent expenditures that the  
8 organization undertakes.

9 We think these and other recommendations  
10 are really essential so that the final rule  
11 will be fair, workable, useful, reflect what  
12 the Charter in fact authorized the Board to  
13 do, and achieve meaningful disclosure of  
14 independent expenditures.

15 I appreciate the opportunity to appear  
16 and I welcome any questions you may have.

17 MR. PARKES: Thank you very much,  
18 Lawrence. Questions?

19 MR. DAVIS: When Citizens United  
20 testified, in terms of electioneering  
21 communications, they drew a distinction  
22 between electioneering communication,  
23 essentially attacked a candidate for a past  
24 vote, as opposed to an electioneering  
25 communication which attacked a candidate

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2 because of a position they're taking on a  
3 pending vote, saying that the first one they  
4 thought should be disclosed. Again, we're  
5 talking about not whether they can make the  
6 communication, but whether that is a  
7 disclosure requirement. What do you think  
8 about that distinction?

9 MR. GOLD: Number of points. First, the  
10 Charter amendment simply does not give the  
11 Board the authority to regulate that.

12 MR. DAVIS: Let's assume we disagree and  
13 on that and let's get to the policy on that.

14 MR. GOLD: Fine. Then there's no  
15 reference to a candidacy or an election, it  
16 is certainly legitimate --

17 MR. DAVIS: Even if it's two weeks  
18 before the election, to every voter in the  
19 district?

20 MR. GOLD: You talking about an  
21 incumbent?

22 MR. DAVIS: If every voter in the  
23 district gets that communication, you think  
24 that's not intended to --

25 MR. GOLD: The incumbent's council

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1  
2 person is not immune from public criticism or  
3 praise or commentary merely because it's two  
4 weeks before an election. And these are  
5 issues that can arise again. It may be that  
6 this is a very effective time to influence  
7 their council member in order take a certain  
8 position. It may also be that the council  
9 member is unopposed or practically unopposed  
10 in a general election.

11 I note that in your own advisory opinion  
12 when you talk about what is campaign related,  
13 when you're trying to determine whether a  
14 City candidate can use public money for  
15 expenditures, one of the factors is whether  
16 or not the candidate is opposed in the  
17 election. It's precisely the kind of  
18 circumstance that I think is more in the  
19 proposed kind of crude definition of  
20 electioneering communication that's here.  
21 And it may be frustrating that you can't  
22 capture certain things, but I think you have  
23 to recognize that in order to protect civic  
24 activity, public discussion of legislators,  
25 policy and the like, I don't think you can

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2 really draw that rigid line, "Well, they  
3 voted on it already," or "Maybe they'll vote  
4 on it again," "Maybe it will be amended  
5 again." I think that's a risky one and it  
6 doesn't really satisfy what the rules should  
7 be.

8 MR. DAVIS: Thank you.

9 MR. PARKES: Thank you very much,  
10 Lawrence.

11 MR. GOLD: Thank you.

12 MR. PARKES: Next we'll have Walter  
13 Cooper, an executive board member of SEIU  
14 Local 32BJ. Welcome, Walter.

15 MR. COOPER: Thank you for giving me  
16 this opportunity to testify. My name is  
17 Walter Cooper. I'm a proud member SEIU  
18 32BJ. I have been a member for 32 years,  
19 first as a janitor, then as a doorman in the  
20 Upper West Side where I live. Now I work at  
21 SEIU 32BJ to help communicate with our  
22 members about politics and how it impacts  
23 their lives.

24 When people think of our union, they  
25 think of our president Mike Fishman. But our

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1  
2 union is not Mike Fishman, it is the poor,  
3 working class people that are members. We  
4 are door persons, porters, janitors, handy  
5 persons and security officers. We are a  
6 union of people who struggle to get by,  
7 working one, two, or three, maybe three  
8 jobs. We are a union of immigrants and of  
9 low-wage workers.

10 As a member of SEIU 32BJ and a citizen  
11 of New York City, I support requirements for  
12 disclosure of independent expenditures. I  
13 want to know when corporations or other  
14 groups are spending large amounts of money to  
15 influence the public. I feel this is  
16 important information to have that will help  
17 me make better decisions about my own  
18 participation in the election process.

19 However, I am concerned about the idea that  
20 the Campaign Finance Board might regulate  
21 something so simple and so essential to the  
22 democratic culture of our union as one  
23 member's communication with another member.

24 To me, communication is fundamental to  
25 our union. It is also what helps make sure

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2 that our union is accountable to our members  
3 and that we as members have that means to  
4 influence the union. Communication ensures  
5 that our union is our membership.

6 To me, the purpose of our union's  
7 political program is not to get certain  
8 elected officials elected, it is to educate  
9 members, to train them as leaders and to give  
10 them the tools they need to participate in  
11 the public process during election season and  
12 throughout the year. This is something that  
13 has been a lifelong mission for me. It is  
14 the reason that about 10 days ago, our  
15 president Mike Fishman, asked him to start a  
16 political program at 32BJ so that members  
17 could have the opportunity to participate in  
18 politics in the City and so that we could do  
19 it together.

20 Our union is a democratic group of  
21 workers who have shared interests. We are  
22 constantly communicating member to member  
23 about politics, about the positions of  
24 different elected officials on issues that  
25 impact working people. We communicate about

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1  
2 elections but we also communicate about voter  
3 registration and civic education, about laws  
4 that help working people and about which  
5 elected officials support our fights to win  
6 good contracts and improve our standards.  
7 This helps make sure that members have the  
8 information they need to participate in the  
9 political process of our City and in the  
10 democratic process of our union.

11 For example, all of our political  
12 endorsements happen through a democratic  
13 process that include our members. A union  
14 executive board, which is a major rank and  
15 file member of union, votes on every single  
16 political endorsement our union makes.  
17 Communication to and education of our members  
18 is a vital part of the process. If we  
19 disclosed requirements for independent  
20 expenditures, include member to member  
21 communication, they will be burdensome and  
22 intrusive. Does this mean I will have to  
23 limit the time we invite elected officials to  
24 rallies or union meetings because the cost of  
25 those meetings may go over the campaign

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2 finance limit? Does this mean that if I make  
3 100 copies of a flyer to pass out at a  
4 worksite with the politician where we are  
5 supporting our fight for a fair contract, I  
6 will have to report this expense?

7 These kinds of communications are  
8 fundamental to our organization. If the new  
9 requirements do anything to limit the ability  
10 of union members to participate in member to  
11 member communications, they will harm the  
12 ability of our union to spread information in  
13 a capacity of our members to participate in  
14 the democratic process of our union and our  
15 City. Thank you.

16 MR. PARKES: Thank you very much,  
17 Walter. Any questions? Rich?

18 MR. DAVIS: Just, you know, I mean  
19 obviously we're going to consider this issue  
20 again, as we have listened to you and  
21 others. I just want to be clear for  
22 everybody that the whole process leading to  
23 the endorsement is already excluded. I just  
24 want everybody -- because that was a major  
25 point in the March hearing. None of that has

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2 to be reported. We have already excluded  
3 that. So, obviously we know you want a  
4 broader exemption, but I just want to be  
5 clear about that.

6 MR. PIAZZA: I have a question for  
7 Mr. Cooper, Mr. Chairman.

8 MR. PARKES: Alright.

9 MR. PIAZZA: Mr. Cooper, if I told you  
10 that most member to member communications are  
11 excluded from the proposed rules, would you  
12 support the balance of the proposed rules?

13 MR. COOPER: I'm not a lawyer so I'd  
14 have to really dig into that a little deeper  
15 to give you an answer on that.

16 MR. PARKES: That's a good lawyer's  
17 answer, though.

18 (Laughter)

19 MR. PIAZZA: But you did state in your  
20 earlier testimony that you support disclosure  
21 of independent expenditures.

22 MR. COOPER: Yeah, for major  
23 corporations and anything in that sort that  
24 we have an idea of what's happening with  
25 everybody else.

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2 MR. PIAZZA: That's what I'm trying to  
3 get at.

4 MR. COOPER: Right.

5 MR. PARKES: Thank you very much,  
6 Walter. And next up is Carly Knudson --  
7 excuse me if I mispronounce your name. Carly  
8 is the executive director of NYCLASS.  
9 Welcome, Carly.

10 MS. KNUDSON: Thank you and good  
11 afternoon. I'm going to move quickly. I  
12 think you guys have heard a lot today. I  
13 just want to make a couple of points with  
14 regard to how we feel this will affect our  
15 work at NYCLASS, which stands for New Yorkers  
16 for Clean, Livable and Safe Streets. Can you  
17 hear me okay?

18 MR. PARKES: Please speak up a little  
19 bit.

20 MS. KNUDSON: Sure. We are a non-profit  
21 animal advocacy organization committed to  
22 bettering the lives of New York City's  
23 animals. And initially, I'd like to first  
24 thank you for this opportunity to be heard and  
25 for hearing all of us on on this issue.

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2 Advocacy allows us to serve the City in  
3 fluent new causes through educating the  
4 public and policy makers, conducting  
5 research, litigating, organizing, lobbying  
6 and keeping an open dialogue. City council  
7 members depend on non-profits to surface the  
8 impacts of proposed legislation, policies and  
9 budgeting on New York City communities. It's  
10 critical for non-profits like NYCLASS to take  
11 part in this democratic process, and advocacy  
12 is one of our most effective tools to achieve  
13 our goals. This is not only our First  
14 Amendment right, it is our responsibility to  
15 the individuals and the communities we serve  
16 and represent.

17 We strongly believe -- it's our  
18 understanding that these new rules will  
19 severely impact non-profit, grassroots, and  
20 member to member legislative advocacy  
21 programs. Proposed regulations will make it  
22 much more difficult for non-profit membership  
23 organizations to communicate with the public  
24 about political issues, and when our  
25 supporters communicate with each other about

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2 current affairs, it increases participation  
3 in the political process.

4 History demonstrates that when  
5 organizations communicate with their members  
6 about politics, those members are more likely  
7 to participate in the electoral process.  
8 However, instead of purely regulating speech  
9 intended to help influence the public and  
10 directly affect an election, it's our  
11 understanding of the proposed regulations  
12 through additional -- sorry.

13 MR. PARKES: Take your time.

14 MS. KNUDSON: It's already been  
15 addressed, so, I'll actually now move on a  
16 little bit.

17 So, moving forward with the regulations  
18 really threatens our ability to communicate  
19 with the public about legislative issues and  
20 participating effectively in policy debates  
21 through the added burden of time loss on  
22 disclosing activities.

23 As many of you already know, a horse  
24 collapsed and died in midtown last weekend,  
25 and notifying our supporters of this horrific

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2 event, we actually called our City Council  
3 members and voiced the need to pass Intro  
4 86-A to -- (interruption.)

5 Had this been an election year, the time  
6 and resources put into making that call to  
7 our members would have to be disclosed, as we  
8 understand it. And as a small non-profit  
9 with 46,000 members and two paid staffers,  
10 that's a lot of extra burden. We are not a  
11 political campaign, and we feel we should not  
12 be required to file campaign disclosures.

13 I've received many (inaudible) to CFB's  
14 response to proposed rules will result in  
15 limiting their own free speech, an outcome  
16 which is at odds we believe with the CFB's  
17 broad goal of increasing participation in the  
18 democratic process.

19 In summary, non-profit organizations  
20 have a unique and essential role to play in  
21 the policy process, the CFB should not be  
22 interfering with our right to participate in  
23 legislative and issue advocacy by adding  
24 added burdens. The consequences of these  
25 actions run counter to the CFB's broad goal

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2 of increasing participation in the democratic  
3 process.

4 MR. PARKES: Thank you very much,  
5 Carly. Very well said and spoken. Any  
6 comments or questions?

7 MR. DAVIS: I just want to say that I  
8 actually don't think your blast relating to  
9 the horse incident would have been covered.  
10 I don't think that would have been an  
11 electioneering communication under the  
12 definition. But I understand there are  
13 broader issues. I just wanted to mention  
14 that.

15 MS. KNUDSON: Thank you for that  
16 clarification.

17 MR. PARKES: Thanks, Carly. Next up is  
18 Gene Russianoff who is the staff attorney for  
19 the New York Public Interest Research Group.  
20 Gene, welcome.

21 MR. RUSSIANOFF: Good afternoon,  
22 Chairman Parkes and Board members and staff.  
23 I would like to second all of the speakers  
24 who praised the Board and the staff for being  
25 very open and responsive. We've had several

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2 meetings and it's been very, very helpful.

3 I'm going to focus on electioneering  
4 issue, and I think it's useful to remind  
5 everyone when the rules would require repo-  
6 rting-and that's when they are a public  
7 communication -- exceed \$1,000 and are  
8 electioneering within 90 days of the  
9 election.

10 Electioneering is defined as a  
11 communication that refers to the personal  
12 qualities, characteristics, or fitness of the  
13 candidate or supports or defends that  
14 candidate's public record or position on  
15 issues such as, quote, "Candidate X, that her  
16 position on the budget is wrong."

17 But this provision eliminates real  
18 speech of groups like mine. NYPIRG often  
19 praises or criticizes City elected officials  
20 in an election year over their stances on  
21 issues that we are advocating. These range  
22 from higher education, to mass  
23 transportation, to enacting campaign finance  
24 reforms and ethics issues. Like many groups,  
25 NYPIRG often tries to gather issues discussed

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2 during the election cycle, our approach is  
3 strictly nonpartisan. We don't intend or  
4 seek the aid or oppose a candidate.

5 I'd like to give you a real world  
6 example, and this dates back to the '97 City  
7 elections when then mayoral candidate Rudolph  
8 Giuliani used hundreds of thousands of  
9 dollars of City funds to film and air  
10 recycling commercials. The televised ads  
11 featuring the mayor and Yankee manager Joe  
12 Torre throwing cans and bottles into a  
13 recycling bin aired over the summer and into  
14 September 1997. We strongly criticize the  
15 mayor for misusing City funding just as we  
16 did then Mayor David Dinkins in the '93  
17 elections for misusing City Funds, promoting  
18 himself on commercials that were hockey  
19 municipal bonds.

20 After the election, the Council passed  
21 Local Law 40 in 1998, which, according to  
22 City officials, quote, "To appear or  
23 otherwise participate in any television,  
24 radio or printed advertisements or  
25 commercials or by electronic means on the

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2 Internet which is funded in whole or in part  
3 by Government funds or resources, on or after  
4 January 1st in the year in which the election  
5 for that office is held." I would note that  
6 it was signed into law by Mayor Giuliani.  
7 NYPIRG does not consider this an act of  
8 electioneering. It was legislative advocacy  
9 and public education that is at the heart of  
10 our mission. Reporting on this  
11 electioneering risks associating ourselves  
12 with the advancements or the decline of  
13 candidates, when we are, as I said before,  
14 strictly nonpartisan.

15 We realize that the Board is facing a  
16 complicated issue here, and a legitimate  
17 problem, which is people try to evade the  
18 requirements of express advocacy by what some  
19 confuse as really supporting a candidate.

20 I've looked at possible responses, I  
21 don't think any of them are perfect but I  
22 think they're worth mentioning. One that has  
23 been discussed I think by Commissioner Davis  
24 is shortening the period during which  
25 electioneering rules are in effect, the

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2 Federal government, following the Federal  
3 government, 60 or 30 days before the  
4 elections. Common Cause has suggested 30  
5 days as a maximum for both of those.

6 And the question here is, does the  
7 public need to know (inaudible) mandating  
8 disclosure during a four-and-eight-week  
9 period, and I think it's something worth  
10 debating.

11 Another response is applying  
12 electioneering to only broadcast cable or  
13 satellite communications, this is what they  
14 do at the federal level. Practically this  
15 would limit the rule's effect to citywide  
16 races as -- either kind of broadcasts are not  
17 really down to council races.

18 And the last thing has also been  
19 mentioned, you could require disclosure of  
20 electioneering but have a no-stance  
21 category. You know, I'd put that out there,  
22 but I don't think it would satisfy groups  
23 like mine, because what do we tell our  
24 funders when they ask, "Why are you reporting  
25 to the Campaign Finance Board?" The rest of

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2 my testimony, you have it in writing. I'd be  
3 happy to take any questions.

4 MR. PARKES: Thank you very much, Gene.  
5 Any questions or comments?

6 MR. DAVIS: What's your position on the  
7 two hypotheticals that I gave to --

8 MR. RUSSIANOFF: I was agonizing over in  
9 the corner, and you know, I think an honest  
10 answer is that communication wouldn't be  
11 covered. The literature that talks about a  
12 stand on the armory -- and I don't know if  
13 this was Citizens Union's approach of a  
14 specific piece legislation being before the  
15 Council, because that's pretty easy to give  
16 you an idea to have someone introduce a  
17 bill. It just strikes me as another thing  
18 that could be evaded.

19 MR. DAVIS: What about the scope of the  
20 communication in the sense that my example  
21 included a mailing sent to every voter in the  
22 Council District? And forgetting about how  
23 you would define scope for the moment.

24 MR. RUSSIANOFF: Like under the IRS  
25 rules there are factors that you could lay

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2 out, like whether the group has a long  
3 history on this issue or it's just sprung up  
4 overnight to be a sham committee, and that  
5 would be one approach.

6 It's very hard to distinguish between  
7 the context -- acknowledging that it's hard  
8 to distinguish between the context of these  
9 speeches here and not running afoul of  
10 people's First Amendment rights.

11 MR. PARKES: Thank you very much, Gene.

12 MR. DAVIS: Thank you, Gene.

13 MR. CHANG: I'm going to take the chair  
14 for a moment for Chairman Parkes. I'd like  
15 to call the next speaker, Mr. Artie  
16 Clements.

17 MR. CLEMENTS: Thank you. My name is  
18 Arthur Clements. I'm a Station Agent for New  
19 York City Transit Authority and I'm a member  
20 of TWU Local 100. As a New York City station  
21 agent, I serve the members of the public,  
22 selling MetroCards, giving directions, and  
23 assisting customers who have lost family  
24 members, property or who are victims of  
25 crime.

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2 Last year nearly 500 of my union  
3 brothers and sisters, also station agents,  
4 were laid off because state legislatures took  
5 \$260 million of dedicated transit funding  
6 away from the MTA. My union worked with me  
7 and other union members to organize a  
8 political response to these terrible cuts,  
9 which resulted in many closed booths  
10 throughout the system and the elimination of  
11 two subway lines.

12 Under new campaign rules, you are  
13 proposing Local 100 would no longer be able  
14 to educate me and our members as to which  
15 politicians to support and which to oppose  
16 the diversion of public transit funds.

17 My understanding is that if the new  
18 finance rules are supposed to prevent undue  
19 influence by defaulting in political  
20 campaigns. This is very different from  
21 preventing those who I personally entrust my  
22 dues money to communicate with me about  
23 something critically important to me; whether  
24 I have a job or not and who supports my  
25 ability to work as an MTA employee who

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2 depends on public funding.

3 I'm not a special interest and I don't  
4 believe any member of Local 100 is a special  
5 interest. This is bizarre to try to restrict  
6 my First Amendment rights while billionaires  
7 like Rupert Murdoch have free rein of a bully  
8 pulpit like the New York Post. We can't  
9 compete with Murdoch, this will just further  
10 drown out the voices of working people.

11 Member to member advocacy should be  
12 exempt from these regulations. Please  
13 reconsider your proposed rules when it comes  
14 to the right of unions to communicate with  
15 their members. Thank you.

16 MR. CHANG: Thank you, Art. Are there  
17 any questions for Mr. Clement?

18 (No response)

19 MR. CHANG: Thank you, Mr. Clement. Let  
20 me call our next speaker, Santos Rodriguez.

21 MR. PARKES: Good afternoon, Santos.  
22 Welcome.

23 MR. RODRIGUEZ: Good afternoon. My name  
24 is Santos Rodriguez. I'm an organizer for  
25 the International Association of Heat and

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1  
2 Frost Insulators Local 12. We are deeply  
3 concerned about the impact that the proposed  
4 regulation would have when we try to  
5 communicate and educate through messages  
6 regarding local politics to our members. For  
7 me, this is all done outside normal work  
8 hours and is not in conjunction with my job  
9 description. I take a personal interest in  
10 the well-being of our trade, which is why I  
11 chose to speak here today.

12 Our representatives approach the members  
13 and thoroughly explain the political process  
14 in detail pertaining to virtually every City  
15 and State election that would have an effect  
16 on securing work. The current structure of  
17 the electoral process works well for  
18 everyone, not just our members. We have  
19 changed the opinion of many of our members  
20 because they see the result of their  
21 participation. They really never thought  
22 their vote mattered so much since  
23 participating within the political process.

24 The purpose of engaging the members is  
25 providing opportunity for employment for

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2 every city resident, regardless of their  
3 race, religion or what political affiliate  
4 they belong to. Now, members make it a  
5 priority to cast a vote which is  
6 knowledgeable and supportive. Today, no one  
7 believes that their voice won't be heard.

8 My local is small, and does not have the  
9 means and ability to conform to the elaborate  
10 tasks in reporting requirements. We will  
11 simply be prohibited from communicating with  
12 our members about political races potentially  
13 affecting their lives and income. Again, our  
14 labor union is small, but I can tell you that  
15 the work strictly is on a local basis and  
16 does not receive or look for any hope from  
17 the international affiliates.

18 If the proposal was adopted, it would  
19 greatly weaken the capacity to pull together  
20 and participate to all intensive purposes in  
21 the election process that's so important to  
22 our members. We strongly recommend to  
23 contemplate the situation as you plan a new  
24 regulation. Thank you for your  
25 consideration.

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2 MR. PARKES: Thank you very much,  
3 Santos. Any questions?

4 (No response)

5 MR. PARKES: Thank you. We'd now like  
6 to call Demos Demopoulos, who is with  
7 Teamsters Local 553.

8 MR. DEMOPOULOS: Good afternoon. I am  
9 Demos Demopoulos, secretary/treasurer and  
10 executive officer of Teamsters Local 553, one  
11 of the oldest local unions in New York,  
12 representing roughly 1,200 members in the New  
13 York Metropolitan area. I'd like to begin by  
14 thanking you, not only for the opportunity to  
15 comment on these proposed regulations, but  
16 also for your service to this city.

17 In regards to the November 2010  
18 amendment to the City Charter, I think we can  
19 agree with its intent. However, it is my  
20 opinion that the rules that were drafted in  
21 response of this amendment far exceed its  
22 mandate and actually threaten the political  
23 participation of thousands of New York  
24 residents, including my members.

25 Under these guidelines, our membership

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1  
2 and public advocacy in our necessary work  
3 with public officials would be improperly  
4 classified as in-kind contributions to  
5 candidates. This rule would limit and even  
6 prevent us from communicating with both our  
7 members and with the public regarding our  
8 issues.

9 If the Campaign finance Board believes  
10 it should regulate and limit member  
11 communications and issue advocacy,  
12 effectively impeding our First Amendment  
13 right to communicate with our members, then  
14 voters or elected representatives should have  
15 the right to vote and weigh in on this  
16 important issue, especially since it is not  
17 what New Yorkers thought they were voting on  
18 on last year's ballot.

19 When union members communicate with each  
20 other about politics, it increases our  
21 participation in the political process.  
22 Several studies prove that when unions  
23 communicate with their members about politics  
24 and why their vote matters, those members are  
25 more likely to participate.

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2 Treating membership organizations as if  
3 it were an actual political campaign  
4 committee is misguided. If we spend as  
5 little as \$1,000 communicating with the  
6 public about an elected official's stand on  
7 legislative issues, if the elected official  
8 happens to be a candidate, we would have to  
9 file extensive financial reports for the  
10 first time. The same would be true if we  
11 were communicating with our own members about  
12 an election.

13 Reporting is not a simple process that  
14 my limited staff can take on. There would be  
15 as many as 12 scheduled reports, plus up to  
16 14 more just before the primary general  
17 election. Each report would require a great  
18 deal information and documentation. Failure  
19 to report or to report incorrectly would lead  
20 to a lengthy investigation, \$10,000 fines,  
21 and even criminal prosecution. The proposed  
22 rule is especially onerous because it goes  
23 beyond simply requiring new disclosures. If  
24 a covered communication were coordinated with  
25 an elected official, it would be deemed an

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2 in-kind contribution. It would be illegal  
3 and prohibited. And each amount is  
4 cumulative per candidate through a four-year  
5 election cycle.

6 If my union were to shine a light on a  
7 City Council member's role or leadership on  
8 an issue relative to our members, for  
9 example, cleaning up New York's heating oil,  
10 we would be prevented from doing so due to  
11 our limited staff capacity and contribution  
12 limits which would strangely apply. There  
13 could be little question, that given the high  
14 costs, both in complexity of the CFB filing  
15 and the need to retain accounting and legal  
16 counsel, the risk of erroneous reporting,  
17 that many groups would respond to these  
18 proposed rules by limiting their own speech,  
19 including their own members, an outcome at  
20 odds with the CFB's broad goal of increasing  
21 participation in a democratic process.

22 Smaller unions and organizations such as  
23 Teamsters Local 553 would especially be hurt  
24 with the unacceptable consequence of the City  
25 law that designated instead to inform the

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2 general public about identities and funders  
3 of secretive groups that are trying to  
4 persuade them how to vote.

5 The CFB can fulfill the City Charter  
6 amendment on bringing transparency and  
7 accountability of independent political  
8 expenditures without stifling speech that is  
9 critical for the democratic process by  
10 limiting these proposed rules through  
11 excessive advocacy, the spending that targets  
12 the public with speech that clearly supports  
13 or opposes candidates in elections.

14 The CFB should not interfere with  
15 membership relationships, impose erroneous  
16 and chilling requirements on legislative and  
17 issue advocacy or enforce organizations to  
18 report irrelevant, private information in  
19 exchange for exercising our First Amendment  
20 rights. Thank you again.

21 MR. PARKES: Thank you very much,  
22 Demos. Any questions or comments?

23 (No response)

24 MR. PARKES: Our next speaker will be  
25 Wayne Sheppard of the Transit Workers Union.

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2 Good afternoon and welcome, Wayne.

3 MR. SHEPPARD: Good afternoon. My name  
4 is Wayne Sheppard. I'm a bus operator for an  
5 MTA bus. I am a member of TWU Local 100.

6 I am constantly in public view and I  
7 interact with hundreds of people each day.  
8 Every day I constantly see the power of  
9 big-money advertising, not only on my bus,  
10 but on billboards and posters which are  
11 everywhere in our city. I understand that  
12 the Campaign Finance Board is concerned about  
13 the power of big financial interests to shape  
14 who gets elected to public office and I share  
15 your concern.

16 Additionally, members of the public  
17 are annoyed by constant political ads and  
18 robo calls which is standard procedure at  
19 election time. Yet, as a union member  
20 myself, I can tell you that the  
21 communications coming from my union are not  
22 an annoyance, instead they are helpful in  
23 informing me of my political options. I pay  
24 dues money so that the union can do research  
25 and figure out how best to advance my wages

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2 and working conditions. I believe I'm  
3 entitled to these results of that research,  
4 which is best expressed in who the union  
5 decides to support politically. That's why  
6 I'm asking you to consider communications  
7 between the union leadership and our members  
8 to be protected and not subjected to new  
9 rules and regulations. Thank you.

10 MR. PARKES: Thank you very much,  
11 Wayne. Comments, suggestions?

12 (No response)

13 MR. PARKES: Thank you. Next up will be  
14 Arthur Eisenberg, director for the New York  
15 Civil Liberties Union.

16 MR. EISENBERG: Good afternoon. Thank  
17 you for the opportunity to present testimony  
18 this afternoon. I have submitted a written  
19 statement that I hope and respectfully  
20 request to be made part of the record of  
21 these proceedings. In that statement I  
22 essentially identified three significant  
23 concerns of the New York Civil Liberties  
24 Union. The first has to do with the absence  
25 of any exemption for controversial

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2 organizations.

3 The Supreme Court has repeatedly said  
4 that controversial organizations whose  
5 contributors may be exposed to harassment or  
6 retaliation for being associated with those  
7 organizations are entitled to an exemption  
8 under the disclosure laws. And we would  
9 urge, therefore, that there be an express  
10 identification of the opportunity for  
11 controversial organizations to seek such a  
12 disclosure -- an exemption rather.

13 Our second concern has to do with the  
14 scope of the definition of electioneering  
15 communication which we think extends well  
16 beyond campaign speech and extends into areas  
17 of issue-oriented advocacy. There are a  
18 great many advocacy organizations,  
19 non-profits, non-partisan organizations that  
20 publish what are called legislative score  
21 cards where they identify the voting record  
22 of various legislators. And as we read the  
23 proposed rules, if these score cards were  
24 published or presented on a website within 90  
25 days of an election and they happen to

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1  
2 identify a legislator who now may be running  
3 for one of the public offices covered by the  
4 rules, there would be significant disclosure  
5 requirements. And we think, therefore, the  
6 breadth of the electioneering communication  
7 definition extends well beyond campaign  
8 speech and should be cut back to the  
9 definition either of an express advocacy or  
10 what the court has called the functional  
11 equivalent of express advocacy.

12 Our third concern has to do with an  
13 exemption that is provided in the proposed  
14 rule for the mass media; for the New York  
15 Times, for the New York Post. In the  
16 Citizens United case, the Supreme Court  
17 addressed this privileging of the mass media  
18 and basically held that it was  
19 impermissible, that the newspapers and  
20 broadcasters are entitled to no greater First  
21 Amendment protection than individuals or  
22 other non-profit organizations. There's no  
23 reason why Rupert Murdoch should get an  
24 exemption and Rupert Murdoch's neighbor is  
25 deprived of that exemption merely because

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2 Rupert Murdoch owns the printing press and  
3 the neighbor does not. I don't know what the  
4 solution is to this problem, but we identify  
5 this as a concern that I think the Board will  
6 need to consider as it further considers  
7 these proposed rules.

8 MR. PARKES: Thank you very much,  
9 Arthur.

10 MR. DAVIS: Let me ask a question. When  
11 you say controversial organizations be  
12 excluded, I haven't had a chance to read your  
13 testimony yet, do you give us any guidance in  
14 how to define that?

15 MR. EISENBERG: Well, the Supreme Court  
16 has in fact addressed this issue. It  
17 addressed this issue first in Buckley against  
18 Valeo, and then subsequently in a socialist  
19 workers party, I think it was Brown against  
20 Socialist Workers Committee, and essentially  
21 what the court suggested was that the burden  
22 would be on the organization to seek the  
23 exemption, but if the organization could show  
24 a reasonable likelihood that its supporters,  
25 contributors, would experience retaliation or

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2 harassment by virtue of their association  
3 with the organization, the organization and  
4 its members were entitled to an exemption.

5 MS. LOPREST: You're talking about the  
6 disclosure of the contributor part?

7 MR. EISENBERG: Yes.

8 MS. LOPREST: I mean, I know you have  
9 other concerns about the overall reporting  
10 requirement but not the reporting requirement  
11 of actual spending. So, it's not like a  
12 preferable organization, it's spending that  
13 fell into the definition, that would be fine  
14 if it were a question of their funders?

15 MR. EISENBERG: I think the focus of the  
16 court was on the harassment of the funders on  
17 the contributors.

18 MS. LOPREST: I just want to be clear,  
19 okay.

20 MR. EISENBERG: Just to amplify that for  
21 one more moment, I think actually Citizens  
22 United and the court again reaffirmed that  
23 principle, but I think probably the best  
24 articulation of the concerns and of the  
25 standards is set forth in Brown against

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2 Socialist Workers Committee which is cited in  
3 our written testimony.

4 MR. DAVIS: I'm just trying to figure it  
5 out. I mean, in New York City, the NRA might  
6 be a controversial organization, in  
7 Mississippi, the Committee to Band Handguns  
8 or whatever.

9 MR. EISENBERG: And that's quite right.  
10 And if the NRA can show that its members  
11 experience or contributors experienced  
12 retaliation or harassment, the court has said  
13 that they're entitled under the First  
14 Amendment to an exemption.

15 MR. DAVIS: Thank you.

16 MR. PARKES: Thank you very much,  
17 Arthur. Next I'd like to call Robert Bishop  
18 from Pitta, Bishop, Delgiorno and Giblin.

19 MR. BISHOP: Good afternoon, Father,  
20 members of the Campaign Finance Board. And  
21 it's very, very encouraging for me to see all  
22 the members here. We don't see that at a lot  
23 of the public hearings, and I commend all of  
24 you for your patience and listening to us.

25 MR. PARKES: Thank you.

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2 MR. BISHOP: My name is Bob Bishop. My  
3 firm Pitta, Bishop, Delgiorno and Giblin, in  
4 conjunction with our affiliated law firm  
5 Pitta and Giblin, represents more than 40  
6 unions, as well as a number of not-for-profit  
7 membership organizations that would be  
8 affected by the proposed rules.

9 I'm testifying here today on my own  
10 behalf. I've studied the Campaign Finance  
11 Board's rules since their release on  
12 September 8, 2011. I'm troubled by their  
13 expansive scope, the focus on member to  
14 member communications, severe penalties for  
15 violations and the granted seemingly  
16 unchecked auditing to the Campaign Finance  
17 Board by this proposal. These rules, if  
18 adopted as proposed, will result in the  
19 chilling effect on political speech and  
20 speech of membership organizations.

21 Perhaps the most troubling aspect of  
22 your proposed rules is the lack of a  
23 meaningful distinction between communications  
24 directed at the public at large and the  
25 internal member to member communications of

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1  
2 membership organizations. Although the  
3 proposed rules do specify a limited  
4 membership of an exemption, that exemption  
5 only extends to routine newsletters,  
6 periodicals and (inaudible,) it fails to  
7 cover significant amount of member to member  
8 communications. The text to the Charter  
9 amendment makes no reference to member to  
10 member communications and its legislative  
11 history demonstrates a purpose wholly  
12 unrelated to regulating such member to member  
13 communications.

14 I submit that monetary public purpose is  
15 severed by regulating member to member  
16 communication in the same manner as  
17 independent expenditures aimed at the public  
18 at large. The rationale for requiring  
19 disclosure would cost of directing electoral  
20 communications to the public at large is to  
21 ensure transparency through the source of the  
22 communications and to avoid confusing members  
23 of the public. These concerns are simply not  
24 raised by member to member communications.  
25 The proposed rules, to the extent they

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2 purport to require disclosure of member  
3 organizations' communications with their own  
4 memberships, invade areas of voluntary  
5 associations in which the public really has  
6 no justifiable interest.

7 Capturing member to member  
8 communications within the definitions of  
9 express advocacy communications and  
10 electioneering communications and coupled  
11 with potential penalties, both civil and  
12 criminal, for violations of proposed rules  
13 certainly would chill the speech of  
14 membership organizations.

15 Given the confusing distinctions  
16 contained in the proposed rules in the  
17 Campaign Finance Board's guide to the  
18 proposed rules amongst various types of  
19 member to member communications that would be  
20 regulated as independent expenditures.  
21 Various membership organizations,  
22 particularly the smaller and less  
23 sophisticated ones, are going to chose not to  
24 engage in these activities. They're going to  
25 just be hoping to avoid potential penalties.

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2 This is a perverse result that would not  
3 advance the mission of the Campaign Finance  
4 Board, which is to encourage, promote and  
5 facilitate voting by all residents of New  
6 York City. The organizations are going to  
7 refrain from communicating with their members  
8 regarding electoral issues. A lot of people  
9 just view the message that's coming from  
10 these proposals as very clear, it's, "Just  
11 shut up."

12 Having advised a lot of clients, both  
13 political committees and candidates in  
14 connection with the Campaign Finance Board  
15 oversight in the past, I'm familiar with the  
16 scope and duration of the Campaign Finance  
17 Board audit. According to your own  
18 administrative report, the median time to  
19 complete a notice of alleged violations for a  
20 final audit is 26.8 months when the election  
21 cycle was completed in 2008-2009. Based on  
22 that fact, no membership organization looks  
23 forward to CFB desk and field audits. The  
24 prospect of having the CFB auditing the  
25 financial records of voluntary membership

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1  
2 organizations, which can potentially reveal  
3 highly sensitive information wholly unrelated  
4 to political and electoral activity is quite  
5 alarming. Compliance with desk and field  
6 audits is an extremely burdensome task in  
7 both terms of time and money. The audits are  
8 appropriate for participating candidates for  
9 receiving taxpayer money, but as the CFB  
10 scheduled post election audits of candidates'  
11 committees demonstrates, the process can take  
12 years to complete.

13           It's just as troubling, to me, you've  
14 got an untimed threat of authority to audit  
15 entities suspected to be independent  
16 spenders. When the basis of the Campaign  
17 Finance Board's reason to believe that a  
18 membership organization violated the Charter  
19 amendment, made independent expenditures  
20 without filing a necessary disclosure  
21 statement, even if it has not made any  
22 communications, the CFB, backed up by  
23 substantial criminal and civil penalty  
24 options appears to be empowered to begin a  
25 desk and field audit of that organization's

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2 financial records to verify such a belief.

3 Again, that's very chilling a fact.

4 In light of the foregoing, I  
5 respectfully request, in considering  
6 amendments to the proposed rules, that you  
7 consider the intent of the Charter amendment  
8 and give an entire exemption to the member to  
9 member communications. I thank you very much  
10 for the opportunity given to me to testify.

11 MR. PARKES: Thank you, Robert. You're  
12 very welcome. Any questions?

13 MR. CHANG: Thank you very much for your  
14 testimony. I think it's definitely useful to  
15 have you here since you represent so many  
16 different associations and non-profits.

17 Can you sort of give me a sense what  
18 percentage of the associations that you  
19 represent have websites?

20 MR. BISHOP: Probably half.

21 MR. CHANG: Are you familiar with the  
22 media exemption of the proposed rules?

23 MR. BISHOP: Yes, sir.

24 MR. CHANG: What percentage of the  
25 members of these associations have access to

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2 the Internet?

3 MR. BISHOP: Most of them do these days,  
4 if not themselves directly, through their  
5 family members.

6 MR. CHANG: Terrific.

7 MR. BISHOP: We have, for example, one  
8 union that I represent with about 6,000  
9 members, I would say of that union, 4,000 of  
10 them don't know how to turn a computer on,  
11 but they all have children.

12 MR. CHANG: That's absolutely very  
13 useful. And what percentage of the members  
14 of these organizations have access to cell  
15 phones?

16 MR. DBISHOP: All of them.

17 MR. CHANG: And what percentage of them  
18 do you think actually use text messaging?

19 MR. BISHOP: That's something for a  
20 younger generation I think.

21 MR. PARKES: Well, the statistics are  
22 very interesting. I think it's over 90  
23 percent of Americans actually send or receive  
24 a text message every month.

25 Now, I just want to draw your attention

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2 to the exemptions and rules for  
3 communications that fall below the dollar  
4 thresholds, which includes things like email,  
5 other forms of digital communications, and  
6 also the providing information via the  
7 exempted media which include websites. I  
8 just ask you to look at your -- talk to your  
9 membership about whether those exemptions  
10 actually still allow you to retain speech  
11 without expenditure disclosure.

12 MR. BISHOP: One of the groups I  
13 represent are the postal employees, and they  
14 like to use mail.

15 (Laughter)

16 MR. PARKES: Conflict of interest. Any  
17 other questions?

18 (No response)

19 MR. BISHOP: Thank you very much,  
20 Robert. Next I'd like call Mark Ladov of the  
21 Greenwich Center for Justice where he serves  
22 as counsel.

23 MR. LADOV: Good afternoon, and thank  
24 you very much, Chairman and to the members of  
25 the Board, for having this hearing and for

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2 letting us speak.

3 We certainly recognize that the Board is  
4 engaged in a very difficult task here. The  
5 Board must implement the City Charter in a  
6 manner that captures meaningful information  
7 for voters and does not create loopholes for  
8 secretive political spending, and at the same  
9 time the rules have to be sufficiently clear  
10 to allow individuals and organizations to  
11 comply with the law and easily report the  
12 required information. We understand the  
13 difficulty of maintaining that balance, and  
14 we certainly applaud the Board and its staff  
15 for their very thoughtful and diligent  
16 efforts, especially, I think as everybody  
17 here has said, for the transparency  
18 accessibility of the Board and its staff  
19 throughout this whole process.

20 We've submitted written testimony which  
21 goes into some of these points in some more  
22 detail. Just very quickly, the first thing  
23 that we would urge the Board to do is to  
24 apply a very robust and objective definition  
25 of express advocacy. We don't think that

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2 express advocacy should be limited to the  
3 so-called "magic words test." The definition  
4 that's in the proposed rules tracks the  
5 Federal rules, it's a long definition but the  
6 Federal courts have been able to apply it in  
7 a way that's subjective but also that it's  
8 able to capture the functional equivalent of  
9 express advocacy in a way that certainly  
10 voters can understand, you know, in a way  
11 that shows that communications that voters  
12 will understand that support or oppose a  
13 candidate.

14 I also want to talk about the definition  
15 of electioneering communications and public  
16 communications. We support the inclusion of  
17 an electioneering communications definition,  
18 although we would also urge the Board to  
19 consider narrowing the current definition  
20 somewhat. The Board's draft rules recognize  
21 that Federal law includes this electioneering  
22 communication definition. It relies on  
23 bright-lined rules concerning the timing of a  
24 communication, its audience, whether it  
25 promotes or disparages a candidate, to

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1  
2 determine whether communication is intended  
3 influence voters on election day. The reason  
4 for this is because of the proliferation of  
5 sham issue ads, which are understood easily  
6 by voters as supporting or opposing  
7 candidates but which are tweaked to try to  
8 avoid the legal lines. I would certainly  
9 urge the Board, I think before this process  
10 is finished, to build more of a public record  
11 explaining what sham issue ads are. I think  
12 that that's a piece that has been missing  
13 from this and I think will help the public  
14 understand the motivation behind some of the  
15 proposals the Board has put forward.

16 You know, we have said that states and  
17 localities shouldn't be restricted to  
18 defining electioneering communications in the  
19 same way that the Federal government does it  
20 as broadcast ads. You know, at the same  
21 time, we would urge the Board to draw the  
22 lines carefully so as not to require the  
23 disclosure of genuine issue advocacy such as  
24 advocacy around the City budget or union  
25 contract negotiations or the like. We

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2 believe that such communications, when they  
3 objectively do not support or oppose a  
4 candidate or ballot measure, should not be  
5 subject to disclosure.

6 In our written testimony, we have a  
7 handful of suggestions that we urge the Board  
8 to consider. Like some other groups here, we  
9 would consider shrinking the 90-day window to  
10 something more like the 30 or 60 days in the  
11 Federal rules.

12 We would also support a 501(c)(3)  
13 exemption. I will, I guess, preemptively try  
14 to address the "Understanding Jobs, Inc."  
15 question, and I think I would actually go  
16 back to the discussion you had with  
17 Councilwoman Brewer. I think that we would  
18 agree that what you're describing is a  
19 political communication as she said, it is  
20 also something that a 501(c)(3) is risking  
21 it's tax status if it's doing it in the lead-  
22 up to an election. That creates an  
23 enforcement problem certainly and it  
24 certainly creates a bigger problem for the  
25 (c)(3) that's engaging in that, but we're not

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1  
2 sure that that's where the disclosure rules  
3 here should be pitched. We're not sure that  
4 you should be drafting these rules primarily  
5 to capture the information that's being put  
6 out by an organization that's already  
7 breaking the law by -- or violating it's tax  
8 status rules -- by putting that information  
9 out.

10 You know, arguably there are benefits in  
11 terms of capturing that information, but  
12 there's clearly also costs, which we've heard  
13 about today. For example, you know, we would  
14 certainly agree that the position of a (c)(3)  
15 of reporting to the Campaign Finance Board  
16 some its spending, even if it's not actually  
17 saying that it's supporting or opposing a  
18 candidate, puts them in a position that is  
19 awkward, to say the least. So, we think for  
20 that reason we would encourage that exemption  
21 to be added to the rules.

22 We have some additional suggestions for  
23 narrowing the definition of public and  
24 electioneering communications. One thing is  
25 that you point out that the Federal

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1  
2 definition includes a requirement that  
3 communications be targeted at 50,000 voters.  
4 We're not sure of what the exact number that  
5 would be analogous to a City election would  
6 be, but we would at least urge the Board to  
7 consider something like that to ensure that  
8 what's being captured are generally public  
9 communications and not private, sort of the  
10 communications aimed at a much smaller,  
11 private audience.

12 We have supported a broader exemption  
13 for member to member communications. We'd  
14 urge the Board to consider that further. I  
15 guess in suggesting that member  
16 communications are different from public  
17 communications, I think we're largely  
18 agreeing with the Board's existing approach.  
19 The Board, for example, has suggested that  
20 internal deliberations should be exempted, as  
21 well as certain types of membership  
22 communications such as routine newsletters or  
23 telephone calls. We think that additional  
24 exemptions could be appropriate. And we do  
25 think that if the Board decides at the end of

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2 the day to require disclosure of member  
3 communications that it ought to consider at  
4 least an approach of iterating what is  
5 reportable, for example, flyers that are  
6 being sent to both members and non-members  
7 and creating a list that's clear and easy to  
8 follow rather than assuming all member  
9 communications are public communications and  
10 then exempting and kind of carving out and  
11 trying to sort of back away from some of  
12 those concerns which I think the Board agrees  
13 with about what ought to be disclosed. It  
14 seems like that approach has resulted in some  
15 ambiguity and concerns and we think that that  
16 is -- sort of a list of what is being  
17 disclosed would be a clearer way to do that.  
18 We have some other stuff but it's in our  
19 written testimony.

20 MR. PARKES: Thanks very much, Mark.

21 MR. DAVIS: You answered me as to the  
22 501(c)(3) point, but now, assuming if it's  
23 not a 501(c)(3), and I'm not actually sure  
24 that it would actually technically violate  
25 the tax status. But putting that aside for a

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2 moment, it's not a 501(c)(3), and two weeks  
3 before the election they send -- Version 1:  
4 Is attacking specific members for their vote  
5 on the Knightsbridge Armory vote and costing  
6 people jobs.

7 Version 2: They attack them for not  
8 supporting something that's -- it's not a  
9 501(c)(3), and it goes two weeks before the  
10 election to every voter in the council  
11 district, should we cover that under  
12 electioneering?

13 MR. LADOV: I'm reluctant to sort of do  
14 a hard answer on a hypothetical where I think  
15 there's another question that needs to be  
16 asked. But if an organization, a 501(c)(4)  
17 say, or a pact, is spending the amount of  
18 money that would be required to send a mass  
19 mailing to every voter in New York City or  
20 every voter in a councilmanic district two  
21 weeks before the election commenting on that  
22 councilman's reference, then yes, we would  
23 agree that that is electioneering  
24 communication. And I guess that's sort of  
25 again why I would urge the Board to provide

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2 more specific details about the record of  
3 sham issue ads in New York City. I don't  
4 think that -- you know, these rules, which  
5 are obviously going to be very substantial  
6 and significant and hopefully provide a lot  
7 of information to voters, which everybody --  
8 this should be developed on a record of  
9 evidence about what's happening in New York  
10 City elections rather than hypotheticals  
11 which you can sort of tweak in different  
12 ways. I would agree that that's  
13 electioneering communication, but I think  
14 that, you know, if that's happening and I  
15 think that we agree with the Board that  
16 that's an issue, then we would just sort of  
17 urge the Board to make that clear to the  
18 public and provide that evidence.

19 MR. DAVIS: Thank you.

20 MR. PARKES: Okay. Thank you very much,  
21 Mark. Next, Robert McCarthy a member of  
22 Insulators Local 12.

23 (No response)

24 MR. PARKES: Philmore Brown please,  
25 another member of Insulators Local 12. We

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2 have two more members of that local, Paul  
3 Anderson and Kyle Robertson. Welcome,  
4 Philmore.

5 MR. BROWN: Hi. How are you? Philmore  
6 Brown, Insulators Local 12 member. As a  
7 member of the Heat and Frost Insulators Local  
8 12, we are here today to voice our concerns  
9 regarding today's proposed regulations. I  
10 speak for many of the members who happen to  
11 agree that prior to taking interest in our  
12 union, we have never thought that our vote  
13 mattered, and frankly, never had any  
14 intentions of actually participating in any  
15 portion of the political process. It was  
16 only when the leader of Insulators Union  
17 approached us about some particular City and  
18 State elections that would affect us and  
19 thoroughly explained the political process,  
20 this was when we saw firsthand how the  
21 electoral process works, why the elections  
22 are so important for our members.

23 Typically, when we go home after a long  
24 day's work, there's little time to read every  
25 paper, watch every news program, or even try

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2 to reserve various candidates' positions on  
3 the Internet. We all have families and  
4 that's what takes up the majority of our  
5 time. We rely on the unions to research  
6 political races and tell us about candidates  
7 and where they stand on the issues that  
8 impact us directly.

9 Now we vote regularly and with an  
10 informed and thoughtful vote, one that will  
11 be the voice of the people who have exercised  
12 their rights as residents. The purpose is to  
13 enrich the quality of life for everyone,  
14 regardless of what political affiliation they  
15 choose to follow.

16 Although our union is strong, we are  
17 relatively small and do not have the  
18 resources or time to comply with onerous  
19 reporting requirements. Our leaders will  
20 simply be forced to stop communicating with  
21 their members about political races. If this  
22 proposal was adopted, it would greatly  
23 diminish our ability to assemble  
24 collectively and participate effectively in  
25 the political process.

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2 We strongly urge you to consider these  
3 points as you draft these new regulations.

4 Thank you.

5 MR. PARKES: Thank you very much,  
6 Philmore. Any questions?

7 MR. CHANG: What's your name?

8 AMIR BROWN: My name is Amir Brown.

9 MR. CHANG: Thank you very much for your  
10 testimony. I have a couple questions for  
11 you. How many texts do you think you guys  
12 send or receive every day?

13 PHILMORE BROWN: Personally?

14 MR. CHANG: Yes.

15 PHILMORE BROWN: Myself personally,  
16 approximately 10.

17 MR. CHANG: Mr. Brown?

18 AMIR BROWN: A lot, I don't even keep  
19 track.

20 MR. CHANG: 20, 30, 40? You guys also  
21 have email?

22 AMIR BROWN: Right.

23 MR. CHANG: Do you access your email on  
24 your phones, at home?

25 PHILMORE BROWN: Mostly on my phone.

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2 MR. CHANG: And you?

3 AMIR BROWN: Not that much.

4 MR. CHANG: Do either of you use  
5 Twitter?

6 AMIR BROWN: I do.

7 PHILMORE BROWN: I do.

8 MR. CHANG: So, if we told you that your  
9 union could actually communicate with you via  
10 Twitter and email or website and there's no  
11 barrier to them doing that, would that affect  
12 how your testimony is today?

13 PHILMORE BROWN: You're saying our union  
14 can use Twitter to promote themselves?

15 MR. CHANG: That's right, or email.

16 PHILMORE BROWN: Right, and you're  
17 saying if they do that, will it affect --

18 MR. CHANG: Well, those forms of  
19 communication are exempt and they are free to  
20 communicate with you to provide the  
21 information that your testimony is supporting  
22 that you need to have.

23 PHILMORE BROWN: Would that affect our  
24 testimony?

25 MR. CHANG: Yes.

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2 PHILMORE BROWN: No, not really. I  
3 think I got into the union about five years  
4 ago, right out of high school. And I mean,  
5 they hired and recruited a few young men and  
6 women also, but I don't think they all use  
7 Twitter or Facebook to communicate with each  
8 other. A lot of them are discreet, they  
9 don't like to share too much information  
10 between each other.

11 But we do have a website. I don't know  
12 how often each member goes on it. And I've  
13 been on it a few times when I'm by myself,  
14 and they just try to let each member know how  
15 we can make the union stronger and a little  
16 better for everyone else. So, I can't say  
17 the majority of the members use Internet or  
18 Facebook or Twitter to communicate with each  
19 other, and there should be something.

20 MR. CHANG: That's very helpful. Thank  
21 you very much.

22 MR. PARKES: Thanks a lot, Philmore and  
23 Amir. Next up, Charles Jenkins of the  
24 Transit Workers Union.

25 (No response)

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2 MR. PARKES: Okay. So, next, Wanda  
3 Williams, District Council 37. Welcome,  
4 Wanda.

5 MS. WILLIAMS: Thank you. Good  
6 afternoon, my name is Wanda Williams. I'm  
7 the director of Political Action and  
8 Legislation for DC 37, District Council 37.  
9 As you may know, DC 37 has the largest  
10 municipal labor unions in New York City. We  
11 represent close to 120,000 members, people  
12 who make every City agency in New York City  
13 run.

14 When elected officials make decisions  
15 about the City's budget or how a City agency  
16 will operate, it directly impacts our  
17 members, not only as residents and taxpayers,  
18 but precisely because these decisions  
19 directly impact their jobs.

20 DC 37 has always prioritized and made  
21 public education and activity an integral  
22 part of its mission, and we have always done  
23 so in a public way. Indeed, educating and  
24 promoting political activity is essential to  
25 what we do and who we are.

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2 When DC 37 endorses a candidate, we do  
3 so publicly. The folks you see on the street  
4 corners on election day from DC 37 are  
5 undeniably from DC 37. How do you know?  
6 Because we make sure that every DC 37 member  
7 wears their green T-shirts. When DC 37 or  
8 another local contributes to a campaign, that  
9 information, as it should be, is disclosed to  
10 the CFB.

11 We support the goals making the  
12 financing of campaigns transparent to the  
13 public, but the ambiguity and overreach of  
14 these proposed rules creates more questions  
15 than answers and will impact DC 37 in a way  
16 that most memberships will not have to face.  
17 The results will be, during the election  
18 cycle, every single communication or action  
19 DC 37 or one of its affiliated locals takes  
20 will require approval from a lawyer and  
21 disclosure to the CFB. The proposed rules  
22 require disclosure within 24 hours in some  
23 cases.

24 DC 37 is an umbrella organization of 55  
25 separate and distinct locals. Each of the

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2 locals have their own constitution and its  
3 own elected executive board. One of the  
4 greatest strengths of DC 37 is that we share  
5 resources among each other, like supplies, a  
6 communications director, and my office which  
7 is political action.

8 As you know, DC 37 has a political  
9 action committee. But many other locals have  
10 their own political action committees. The  
11 individual locals in DC 37 do not always  
12 endorse the same candidates or have the same  
13 political views. So, while there are lawyers  
14 who work for DC 37, not every local,  
15 particularly smaller ones, have access to  
16 people who can tell them whether or not a  
17 particular flyer or mailing falls within the  
18 new disclosure rules of CFB.

19 We recognize that the goal the CFB is  
20 not to stifle political speech and  
21 discussion, but if these new rules are  
22 promulgated, this is exactly what will  
23 occur. If, for example, one of our small  
24 locals wanted to mail out a flyer denouncing  
25 a particular candidate's position on an issue

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1  
2 that directly impacts its members, these  
3 rules could very well make them think twice  
4 about doing so. Why? Because now this local  
5 would have to potentially hire a lawyer or  
6 other individual to review the mailing, and  
7 if appropriate, prepare the disclosure  
8 paperwork. This small local may very well  
9 say it, "It isn't worth it." The end result  
10 is a stakeholder would be barred from  
11 expressing its views about important issues  
12 that impact it's membership.

13 Let me give you a real example of how  
14 confusing this will be for DC 37. What  
15 happens if there's a proposed cut to an  
16 agency like ACS? These cuts could concededly  
17 impact over 10 locals of our 55. Local 371  
18 represents Social Services employee; Local  
19 1549 represents clerical employees; Local  
20 2627 represents computer and technical  
21 support titles; Local 375 represents  
22 engineers, architects and city planners.

23 Historically, these locals have taken  
24 political positions, operate independently  
25 and have endorsed different candidates. Each

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2 local may want to do its own mailing to its  
3 members with a unique message. DC 37 may also  
4 want to do a mailing. If the printing and  
5 mailing is done by the center print shop and  
6 a mail room within DC 37, who has the  
7 expenditure? What if the copying is done  
8 with the photocopier owned by the local but  
9 the paper is from DC 37?

10 If the DC 37 communications director  
11 contacts the press or coordinates a radio  
12 show with an elected official who is running  
13 for office, is this a contribution? Who is  
14 responsible for filing the disclosure; DC 37  
15 or the local? And if the local, which local?

16 What happens at a rally where five  
17 candidates appear to speak about the  
18 importance of providing service to needy  
19 children and 15 different DC 37 local  
20 presidents speak at the rally? The cost of  
21 the literature and sound truck and logistics  
22 would have to be disclosed according to the  
23 proposed rules. Which local made the  
24 expenditure? If it is considered coordinated  
25 activity because someone from DC 37 invited a

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2 candidate to speak about a matter of public  
3 importance, which candidates perceive the  
4 beneficiary of the activity?

5 What happens at a joint municipal labor  
6 coalition rally? Unions exist to help  
7 working people have their voices heard  
8 through the power of collective organizing.  
9 Trying to pinpoint who did what and place a  
10 dollar amount or risk \$10,000 in fines and  
11 years of investigation can tie up union  
12 resources in a way that is contrary to the  
13 goals encouraging their voter participation.

14 While DC 37 supports any effort to level  
15 the playing field in electoral politics, the  
16 overreach of these proposed regulations will  
17 leave the union to have to devote significant  
18 resources solely to correspond with the CFB.  
19 There is nothing secretive about what DC 37  
20 does. We believe the current rules in place  
21 meet the objective of letting the public know  
22 who supports a candidate and the type of  
23 grassroots and member to member lobbying done  
24 by labor unions should be exempt from these  
25 regulations.

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2 Thank you for allowing me the  
3 opportunity to be able to testify before you  
4 today.

5 MR. PARKES: You're welcome. Thank you,  
6 Wanda. Questions?

7 MR. CHANG: I have a question. Thank  
8 you for your testimony. I want to just recap  
9 some of the questions that I asked Mr. Bishop  
10 earlier about the prevalence of Internet  
11 usage and email among your members.

12 MS. WILLIAMS: Yes. My members are  
13 mostly single women, single heads of  
14 household, minority women who on average make  
15 \$17,000 a year. Many of them don't have a  
16 computer in their home. They have computers  
17 at the workplace which they're prohibited, as  
18 you know, political activity or  
19 communications that are personal or  
20 political.

21 Most of our members younger in  
22 generation, and we have many retirees, have  
23 access to a computer either through the union  
24 or through some of their locals, but the  
25 issue you asked earlier, particularly around

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2 the question of texting, we do not have many  
3 of our members that use it. We have been  
4 trying to have that as a form of  
5 communication for the last five years, and I  
6 can tell you it's a huge challenge. And the  
7 challenge that we face is that, as you know,  
8 is on the recipient's end, the cost issue.  
9 So, I have a communication database as an  
10 operation of our political communications  
11 with our members, but invariably, I get  
12 people who receive more than one of those  
13 text messages who has a problem and calls and  
14 ask that we take them off of the list because  
15 they're incurring a cost at the expense of  
16 the communication that they're receiving from  
17 the union.

18 In addition, you know, I think the other  
19 thing to consider is how many emails or texts  
20 do people receive that they do not open that  
21 are sent to them that they are incurring that  
22 cost to? I mean, I know personally, I was  
23 just sitting here when you asked the  
24 question, I have 595 on my phone right now,  
25 messages, emails, and only 50 of them are

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2 open. So, the idea of the communication I  
3 think for us is that as a union is something  
4 for me personally that I've been involved in  
5 trying to expand is not something that we've  
6 been able to do. And the old fashioned way  
7 of phone and mail is what is most effective  
8 and what most of our members are engaged in.

9 MR. CHANG: Thank you.

10 MR. PARKES: Thank you very much.

11 MR. HALL: I'd just like to say, thank  
12 you, everyone. I have to leave right now,  
13 but thank you for everyone's testimony, it's  
14 been wonderful, and we'll take these under  
15 consideration.

16 MR. PARKES: Thank you, Courtney.

17 MS. WILLIAMS: Thank you very much.

18 MR. PARKES: Our next speaker is the  
19 Political and Legislative director of the  
20 Retail, Wholesale and Department Store  
21 Union. And lest I butcher the name, I would  
22 like that speaker to come up and introduce  
23 himself or herself.

24 (No response)

25 MR. PARKES: So we do not have Ademola

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2 Oyefeso?

3 (No response)

4 MR. PARKES: Okay. So, next up then  
5 would be, we have a group from Local 3 of the  
6 Electrical Workers of the International  
7 Brotherhood of Electrical Workers. Albert,  
8 Jonathan, Maria, Cornelius, Ed and Mike, are  
9 all or any of you here? Could you please  
10 come up. If you could please introduce  
11 yourself when you speak. Thank you.

12 MR. SKEAHAN: Good afternoon. First,  
13 I'd like to thank the Board for hearing  
14 testimony today. My name is Cornelius  
15 Skeahan. I'm a member of the International  
16 Brotherhood of Electrical Workers Local 3.

17 My concern about the Charter amendment  
18 is the language proposing disclosure when an  
19 organization spends \$1,000 on one or more  
20 letters to its members informing them of  
21 candidate endorsement, when media giants and  
22 multinational corporations can contribute  
23 unlimited sums of money to campaigns without  
24 disclosure. What is the necessity to  
25 interfere with member to member

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2 communications?

3 Many times, policy issues and campaign  
4 platforms can be ambiguous. The membership  
5 depends on Local 3 to provide accurate  
6 information on policy issues that will  
7 directly or indirectly affect its  
8 membership. This language in the amendment  
9 will inhibit internal communications,  
10 discourage participation in the political  
11 process, and possibly intimidate First  
12 Amendment rights. I, therefore, respectfully  
13 request the omission of this language in the  
14 Charter amendment. That concludes my  
15 testimony.

16 MR. PARKES: Thank you very much,  
17 Cornelius.

18 MR. COMERON: Jonathan Comeron, and I  
19 didn't have anything written down, I'll  
20 mostly speak from the heart, in that  
21 basically I agree with him, because as a  
22 youth member in my union, as youth guys, you  
23 know, we don't really get involved that much,  
24 but however, my union has encouraged us to  
25 get involved, you know, in our community and

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2 politics and things like that. Also like  
3 myself in my community, I'm on the board  
4 there in the housing.

5 And you shouldn't discourage. I think  
6 the Board should do more things to encourage  
7 young people like myself to get involved, not  
8 to discourage. And you discourage things by  
9 making them a little bit harder for the  
10 people who are, you know, coaching me, to  
11 give me information. You know, I think that  
12 that's why I agree with my brother over here  
13 and what he's saying, that, you know, I just  
14 feel that if we work with more ways to get  
15 our young people involved and not discourage  
16 them by adding extra things on to it.

17 You know, like I tell my daughter with  
18 her homework, "Don't make it more excessive  
19 than what it has to be." You know, let's do  
20 things to help us. We pay our dues, they  
21 help us. They give us information, you know,  
22 and we go and then make our own decisions.  
23 Thank you.

24 MR. PARKES: Thank you very much,  
25 Jonathan.

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2 MR. NUSSA: Good afternoon, members of  
3 the New York City Campaign Finance Board.  
4 Thank you for the time to testify on proposed  
5 regulations.

6 My concern is that it will make it  
7 difficult in communication between my union  
8 and its members like myself. We receive  
9 valuable information from my union, and I'm  
10 worried that these rules make it harder for  
11 me to make an informed decision in politics.  
12 We should be able to communicate and openly  
13 contact each other through conversation or  
14 other means.

15 We pay dues and attend meetings to get  
16 information on candidates come election day.  
17 If a member is not be able to attend a  
18 meeting, they should know about the upcoming  
19 elections. We need to know that this  
20 communication is not interrupted. Thank you.

21 MR. PARKES: Thank you very much.

22 MS. LOPREST: And your name? I'm sorry.

23 MR. NUSSA: Ed Nussa.

24 MR. FERRIOLI: Good afternoon and thank  
25 you very much for this chance to testify. I

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1  
2 am a dues-paying member of my local and I  
3 want to be kept informed about the issues  
4 which will help me make a living. And I've  
5 always been taught that an informed voter is  
6 a good voter, and anything less than that  
7 would discourage me, because I don't want to  
8 walk into the voting booth come election day  
9 and have questions about the candidates. And  
10 the fact that my union keeps me informed on  
11 issues which I find to be interesting helps  
12 me come to an educated decision.

13 And I just wanted to say, if you take  
14 away that right and keep people in the loop,  
15 you would end up discouraging them more than  
16 helping them come to these decisions and feel  
17 excited about going to the voting booth come  
18 election day. Thank you.

19 MR. PARKES: Thank you very much. Mike?

20 MR. FERRIOLI: Michael Ferrioli.

21 MR. PARKES: Thanks very much, guys.

22 Any questions?

23 MR. CHANG: I want to make one comment.

24 This is to Mr. Comeron's point about  
25 engagement and encouraging youth to

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2 participate. One thing that you may or may  
3 not know is that the Campaign Finance Board  
4 also houses a thing called the New York City  
5 Voter Assistance Advisory Committee, called  
6 VAAC. Our mission is to expand voter  
7 awareness and increase engagement with the  
8 electoral process. What I would encourage  
9 you to do and encourage your daughter and  
10 spread the word is, on Tuesday we have  
11 partnered WNYC and the Brian Lehrer Show to  
12 do a two-hour segment about civic engagement  
13 and voter participation, and they'll  
14 (inaudible) a conversation about Occupy Wall  
15 Street, trying to tie those things together,  
16 and they'll be available on Twitter, it'll be  
17 available on Facebook, you can find it on the  
18 WNYC website. And I encourage you to spread  
19 the word among your members and youth out  
20 there to participate in this, because this is  
21 one of those ways you'll be able to get your  
22 voices heard.

23 It's a completely open playing field,  
24 and Brian Lehrer does a tremendous job taking  
25 calls in and encouraging people to

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2 participate. So, please do that and that  
3 would actually go a long way to help out our  
4 cause. Thank you.

5 MR. COMERON: Thanks a lot.

6 MR. PARKES: Thanks for keeping the  
7 lights on for us, too, guys. We don't take  
8 it for granted.

9 And Jonathan, we should have an award  
10 for you. We've had great speakers today,  
11 you're the only one who did it without  
12 anything in front of him. Congratulations.

13 MS. LOPREST: Both Maria and Albert are  
14 not here; is that correct?

15 MR. COMERON: Right.

16 MR. PARKES: Our next scheduled speaker  
17 is Althea Ericson, advocacy and policy  
18 director of the Freelancers Union. Welcome,  
19 Althea.

20 MS. ERICSON: Hi. Thanks for letting me  
21 speak. My name is Althea Ericson. I'm the  
22 advocacy and policy director at Freelancers  
23 Union. We're a national non-profit  
24 organization that represents the interest of  
25 independent workers, the self-employed folks,

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2 independent contractors, temps, part-timers,  
3 those types of people. And we do that  
4 through advocacy, education and service. We  
5 have about 90,000 members in New York City  
6 and we regularly communicate with our members  
7 about upcoming elections, the candidates  
8 running in their districts and their stances  
9 on freelancer issues.

10 Due to the nature of independent work,  
11 many of our members do not have sort of  
12 connections to traditional institutions and  
13 they really rely on us to let them know about  
14 opportunities to engage in the democratic  
15 process. You know, in a world where many  
16 people can't name their congressional  
17 representative, we actually give our members  
18 a reason to care about who their City Council  
19 member is and local politics related to  
20 actual issues in their daily lives. I have  
21 no doubt that our communications with our  
22 members increase their participation in the  
23 electoral process.

24 So, while we certainly support the  
25 intent of the amendment in the City Charter,

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1  
2 requiring greater disclosure and transparency  
3 of independent expenditures, we believe it  
4 should not be done at the expense of  
5 membership organizations' ability to educate  
6 their members. Unfortunately, the  
7 Administrative burdens proposed under these  
8 rules would hamper our ability to communicate  
9 with our members, likely reducing their  
10 overall civic participation.

11 If we spend as little as \$1,000  
12 communicating with our members about a  
13 candidate's stance on legislative issues, we  
14 would have to file extensive financial  
15 reports for the first time. Financial  
16 reporting is not a process that we can easily  
17 accommodate with our staff, given their  
18 current responsibilities. We would likely  
19 have to incur additional accounting and legal  
20 responsibilities costs to comply.

21 Each report would require a great deal  
22 of information and documentation. For  
23 instance, we would have to keep track of  
24 staff time dedicated to designing and  
25 disseminating a leaflets. Failure to report

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2 a reporting concurrently could lead to  
3 lengthy investigations, \$10,000 in fines and  
4 even criminal prosecution, a risk that we are  
5 reluctant to take.

6 And overall, these proposed rules would  
7 make it onerous for us to encourage our  
8 members to participate in the process. We  
9 believe that by excluding communications that  
10 are only directed to an organization's  
11 membership from the proposed rule, the  
12 Campaign Finance Board can fulfill the City  
13 Charter amendment's goal of bringing  
14 transparency and accountability to  
15 independent political expenditures without  
16 stifling the speech that's critical to our  
17 democracy.

18 MR. PARKES: Thank you very much,  
19 Althea. Rich?

20 MR. DAVIS: Quick question. While I  
21 know it doesn't address your concern, I'm  
22 just curious, with certain communications,  
23 usually do you just communicate what the  
24 positions are, or range of issue, or do you  
25 evaluate those positions?

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2 MS. ERICSON: We do political  
3 endorsement for our 501(c)(4) organizations,  
4 so, we have a pretty thorough endorsement  
5 process that takes into account candidates'  
6 positions on our issues and then we put the  
7 word out.

8 MR. CHANG: I have a question also.  
9 What are the primary forms of communication  
10 you have with your members?

11 MS. ERICSON: I'd say we don't do too  
12 much on the text messaging front, but  
13 definitely email, phone and mailers.

14 MR. CHANG: Do you know what your open  
15 rate is on email sent to members?

16 MS. ERICSON: I'd say on an amazing  
17 email it would be 18 percent. It's usually  
18 around 10.

19 MR. CHANG: Do you have any sense of  
20 what your activation rate is on print sent to  
21 your members?

22 MS. ERICSON: It's hard to say exactly.  
23 I don't know offhand. We certainly  
24 prioritize --

25 MR. CHANG: 2 percent?

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2 MS. ERICSON: Right. We prioritize  
3 mailers for our district that we are  
4 particularly interested in, and we find, at  
5 least my anecdotal experience is when I make  
6 phone calls when I sent them a mailer, they  
7 are much more likely to have opened it and  
8 seen it.

9 MR. CHANG: Multi-level.

10 MS. ERIKSON: Yeah.

11 MR. PARKES: Thank you very much,  
12 Althea.

13 MS. ERICSON: Thank you.

14 MR. PARKES: And next we have scheduled  
15 Cheryl Todmann or Barry Newmark of Brooklyn  
16 Community Relations. They do not seem to be  
17 here. Do we have any other speakers?

18 MS. LOPREST: Unfortunately, we went a  
19 little bit faster than we thought, and so  
20 there is someone who signed up and left, and  
21 we called her and told her to come back, so,  
22 we would give her a few minutes to see if she  
23 returns, and I guess we can just take a short  
24 break while we do that.

25 (Brief recess taken.)

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2 MS. LOPREST: We're going to go back  
3 and just give our closing statement.

4 MR. PARKES: We will now conclude our  
5 hearing on the Campaign Finance Board's  
6 proposed rules for the disclosure of  
7 independent expenditures in New York City  
8 elections. With this hearing complete, we  
9 are one step closer to providing New Yorkers  
10 with full disclosure of outside funds being  
11 spent to influence their elections. Still,  
12 as I said at the start, it is clear to us  
13 that our work is not yet done. We have heard  
14 from a range of interested parties and their  
15 feedback will be valuable as we consider  
16 these difficult and important issues before  
17 approving a final version of these rules.

18 I want, on behalf of all of our Board  
19 members, to extend our gratitude to those  
20 members of the public who have contributed  
21 testimony to these proceedings, whether here  
22 in person or in written form.

23 I would like to note for the record the  
24 names of those who have submitted written  
25 testimony but were unable to appear in

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1  
2 person. Angel Aybar; Benjamin Dulchin and  
3 Association for Neighborhood Housing and  
4 Development, Inc.; Desiree Fraser; Serge  
5 Jeudy; Patrick Markee, Coalition for the  
6 Homeless; Barry Newmark, Brooklyn Community  
7 Services; Aleksandra Nosel; Judith Seemungal;  
8 Yanela Tamayo; Peter Ward, Hotel Trades  
9 Council; Ha Chhao Yi; Doug Sauer, New York  
10 Council of Non-Profits, Inc.; Arthur  
11 Cheliotas, Communications Workers of America  
12 Local 1180; Lawrence Laufer, Genova, Burns  
13 and Giantomasi; Ketny Jean-Francois,  
14 Community Voices Heard New York; New York  
15 County Lawyers Association; Actors' Equity,  
16 Rick Berg; and Transportation Alternatives.

17 I would also like to thank those members  
18 of the staff who worked very hard to prepare  
19 these proposed rules as well as the materials  
20 and logistics for today's hearing.

21 I think this was a great New York City  
22 day. We've heard from many, many great  
23 organizations representing the broad spectrum  
24 of New York City.

25 Again, thanks to all. This hearing is

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now closed.

(Time noted: 1:53 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 October 27, 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 27th day of October 2011.

CASEY MARTIN

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E R R A T A

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