

BRENNAN  
CENTER  
FOR JUSTICE

Brennan Center for Justice  
at New York University School of Law

March 1, 2012

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*Via Electronic Mail (IEMail@nyccfb.info)*

Ms. Amy Loprest  
Executive Director  
New York City Campaign Finance Board  
40 Rector Street, 7th Floor  
New York, NY 10006

*Re: In the Matter of the Revised Proposed Independent Expenditure  
Disclosure Rules in New York City Municipal Elections*

Dear Ms. Loprest:

I write on behalf of the Brennan Center for Justice at N.Y.U. School of Law<sup>1</sup> to comment on the revised proposed independent expenditure disclosure rules. The Brennan Center applauds the Board for its efforts to encourage transparency in politics and to address the concerns raised by members of the public in response to the initial draft rules. We believe the revised rules greatly improve upon a number of areas of concern raised by the Brennan Center and others, including at the October 27, 2011 public hearing on the issue, and commend the Board for its thoughtful and detailed approach to revisiting the draft rules.

We believe the Board was correct to narrow the proposed definition of “electioneering communication,” particularly with regard to the types of communication media that are covered. The revised rules will offer greater clarity for individuals and organizations required to report information, while providing important information about political spending to New York City voters. For example, by defining electioneering communications to include broadcast media, paid advertising and mass mailings – but not a broader array of written communications – the revised rule focuses more narrowly on the types of communication most likely to pose a “sham issue ad” problem. This definition strikes an appropriate balance, empowering voters by improving the transparency in political spending while being cognizant of the need to encourage

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Brennan Center’s Money and Politics project works to reduce the real and perceived influence of special interest money on our democratic values. Project staff defend federal, state, and local campaign finance and disclosure laws in court around the country, and provide legal guidance to campaign finance reformers through counseling, testimony and public education.

political activity and minimize any administrative burdens created by these reporting requirements.

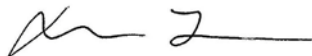
We also wholeheartedly agree with the Board's conclusion that "[t]o provide useful information to the voters, it is important that the rules reflect the way people and organizations communicate about elections in New York City."<sup>2</sup> For this reason, the Board's decision to expand upon the federal definition of "electioneering communications" by including mass mailings makes good sense. As the Board's data show, mass mailings are a critical piece of city council campaigns, accounting for the majority of money spent by city council candidates in 2009.<sup>3</sup> This finding fully supports the Board's efforts to adapt the federal definition for the particular needs of our City's elections.

The revised rules also address concerns that the draft rules would have created a reporting dilemma for 501(c)(3) non-profits by forcing them to disclose advocacy as "electioneering communications," even though the tax code prohibits such groups from supporting or opposing candidates for public office. By exempting 501(c)(3) organizations from disclosure requirements for "electioneering communications" associated with candidates, the revised rules recognize this prohibition, and provide appropriate clarity for non-profit organizations.

We commend the Board for carefully addressing the need for greater transparency, and for crafting rules that aim to be clear while avoiding loopholes. The latest revisions address valid concerns, while providing voters with the information they need to make educated decisions. We also commend the Board for producing supporting information along with the revised rules that educates the public about the problems that the rules address and provides examples of the type of information that the Board wishes to capture.

The Board's responsiveness to public comments and strong commitment to public education provide a model for the shared work of implementing these rules as we move forward.

Respectfully Submitted,



Mark Ladov  
Counsel  
Democracy Program

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<sup>2</sup> N.Y.C. CAMPAIGN FINANCE BD., DISCLOSURE OF INDEPENDENT EXPENDITURES IN NEW YORK CITY ELECTIONS 12 (2012).

<sup>3</sup> *Id.* at 13.