NEW YORK CITY
CENTRAL LABOR COUNCIL AFL-CIO

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NYCCLC AFL-CIO
Working...for all New Yorkers

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New York City Campaign Finance Board
40 Rector Street, 7th Floor
New York, NY 10006

Dear New York City Campaign Finance Board:

In October of last year we expressed significant concern with your proposed rules, drafted as a result of the amendment to the City Charter passed by New York City voters requiring the disclosure of independent expenditures by individuals and groups to persuade voters on candidates and referenda on the ballot.

We commend the Board for your work revising the October draft of the regulations to more accurately reflect the mandate and intent of the Charter amendment. However, after reviewing the revised regulations released earlier this month, we have two principal concerns that we feel must be addressed to avoid unintentionally decreasing citizen participation in the political process – an outcome that would run counter to your mission as a Board. The first is the retention of some coverage of internal union membership communications; the second is the broadening of the content definition of "electioneering communications" rather than deleting that communications category. (We or other labor organizations may also raise other specific concerns with the revised proposal in separate comments to the Board.)

The voters overwhelmingly voted to set up a system where individuals and organizations that were communicating to the **public** would have to disclose that spending. The Charter Revision Commission, the ballot question and the official voter guide all spoke only in terms of public communications, and they did not suggest that internal membership communications would be affected by the amendment. We support a system of disclosure about public communications. But our members know when they are communicating with each other. Regulation of membership communication is unnecessary and counterproductive. When our members communicate with each other about politics, it **increases** political participation, which is a stated goal of the Campaign Finance Board.

The Charter Amendment permits regulation of only communications that "are in support of or in opposition to" candidates and ballot proposals. But the revised definition of electioneering communications — any communication in the regulated time period which "refers to one or more clearly identified ballot proposals and/or candidates"— clearly encompasses communications beyond the scope of the amendment. The result is an effective ban on such communications if they are in any way coordinated with a candidate since they will be considered "in-kind contributions" subject to the campaign contribution limitations of $2,750, $3,850 or $4,950 (depending on the office the elected official runs for). Moreover, each amount is cumulative per "candidate" throughout a 4-year election cycle. For example, if two public officials, who are opposing candidates attend a union contract rally within the 60-day primary window, a union leaflet announcing the event that mentions their attendance would be an in-kind contribution.to both campaigns.

This proposal, then, treats membership organizations as if we are the same as political candidates in the current system. Under this rule, if our organizations spend as little as $1,000

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communicating with our members about an elected official's stand on legislative issues (if the elected official happens to be a candidate), we would have to file extensive financial reports and many of these communications would be limited to comply with the in-kind contribution limits.

There can be little question that given the high costs -- both in the complexity of CFB filing and the need to retain accounting and legal counsel – and the risks of erroneous reporting, that many membership organizations would respond to the CFB's proposed rules by limiting their own speech, including to their own members. Such a result would be completely at odds with the CFB's broad goal of increasing participation in the democratic process. Smaller unions would be especially hard hit and deterred. That would be an unacceptable consequence of a City law that was designed to inform the general public about the identities and funders of secretive groups that are trying to persuade them how to vote.

The CFB can fulfill the City Charter Amendment's goal of bringing transparency and accountability to independent political expenditures without stifling speech that is critical to the democratic process. The solution is to limit its proposed rules to spending that targets the *public* with speech that clearly supports or opposes candidates in elections. When organizations and wealthy people spend money communicating with the general public and say "Vote for Candidate X" or "Defeat Candidate Y," they should disclose who they are, how much they spent, and who else financed that advertising. That's what the Charter Amendment was aimed at.

In addition, reporting is not a simple process that our often small staffs can add to their current responsibilities. During an election year, there would be as many as 11 scheduled reports, plus up to 14 more just before the primary and up to 14 more just before the general election. Each report would require a great deal of information and documentation. Failure to report, or reporting incorrectly, could lead to lengthy investigations, $10,000 fines and even criminal prosecution.

Notably, such disclosure is in many cases duplicative, as organizations that spend money to influence policy decisions must already file lobbying disclosure reports (though such reports are far less complex and difficult to file than the proposed filing system).

Strict rules and meaningful punishments may be appropriate for the independent PACs and expressly political groups whose spending the Charter amendment was meant to shine a light on. But the same regulation becomes onerous when applied to groups whose clear intention is public education, advocacy, or member service and representation.

When union members communicate with each other about politics, it increases participation in the political process. Several recent studies have shown that when unions communicate with their members about politics – and why elections matter – those members are more likely to participate in the electoral process. The same is presumably true of other membership organizations as well.

The CFB should not interfere with membership relationships, impose onerous and chilling requirements on legislative and issue advocacy, or force organizations to report irrelevant private information just because they exercise their First Amendment rights.

Sincerely,

(Signatures attached on pages 3 & 4)

Cc: Mayor Michael Bloomberg
City Council Speaker Christine Quinn
Campaign Finance Board Executive Director Amy M. Loprest

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Michael FishmanPresident,
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