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**Comments of Christine C. Quinn
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Revised Proposed Rules for Disclosure of Independent Expenditures in City Elections

**New York City Campaign Finance Board
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I commend the Board for issuing revised proposed rules in response to the many comments it received regarding its initial proposed rules for the disclosure of independent expenditures in October 2011. At the Board's public hearing on the initial proposed rules, you heard many concerns from a broad spectrum of witnesses, including civic groups, labor and membership organizations, not-for-profit organizations, and individual citizens. These individuals and groups raised very serious and legitimate concerns about the tremendous burden imposed by the initial proposed rules on those seeking to participate in the democratic process. I am pleased that you responded appropriately to many of these concerns, including by adopting a more narrowly tailored definition of "electioneering communications" that will be much less likely to capture genuine issue advocacy, and by exempting 501(c)(3) organizations.

There remains one critical area, however, that still requires further revision: the exemption for member-to-member communications. At the hearing on the initial proposed rules, there was near unanimity amongst the organizations and individuals who testified regarding this issue that the Board should adopt either a blanket or broader exemption for

member-to-member communications. This position was not only advocated strongly by the many labor organizations who testified, but also by almost every civic organization, including the Brennan Center for Justice, Citizen Union, Common Cause, and NYPIRG.¹ It was also advocated by myself and other elected officials.² Yet, despite this near universal support for a broader exemption for member-to-member communications, the Board did not revise this provision.

The Board declined to broaden the exemption for member-to-member communications because CFB maintains that “the language of the Charter does not suggest a broad ‘carve-out’ for any entity or group based on the intended audience for a communication.”³ This position conflates two wholly separate types of activity: independent expenditures and member-to-member communications. As I have argued repeatedly, the Charter Amendment itself provides no basis for treating member-to-member communications as if they were independent expenditures. The few other jurisdictions that require limited disclosure of member-to-member communications recognize that they are a distinct category of activity from independent expenditures. For instance, under federal law, communications from a membership

¹ See Brennan Center for Justice, Testimony of Mark Ladov before the New York City Campaign Finance Board, October 27, 2011; Citizens Union of the City of New York, Testimony to the New York City Campaign Finance Board on the Disclosure of Independent Expenditures, October 27, 2011; Common Cause/NY, Testimony by Deanna Bitetti to the Campaign Finance Board of New York City Re: Requirement for Disclosure of Independent Expenditures, October 27, 2011; NYPIRG, Testimony of Gene Russianoff before the New York City Campaign Finance Board Hearing on Independent Expenditures, October 27, 2011.

² See Testimony of Christine C. Quinn, Speaker, New York City Council, Proposed Rules for Disclosure of Independent Expenditures in City Elections, October 27, 2011; Testimony of Council Member Gale A. Brewer, Chair, Committee on Governmental Operations, Proposed Rules for Disclosure of Independent Expenditures in City Elections, October 27, 2011; Statement by Bill de Blasio, Public Advocate, Campaign Finance Board – Hearing on Independent Expenditures, October 27, 2011; Assemblyman Keith Wright, Congressman Joseph Crowley, Assemblyman Carl Heastie, Assemblyman Vito Lopez, Testimony to the New York City Campaign Finance Board, Proposed Independent Expenditure Rules Public Hearing, October 27, 2011.

³ Campaign Finance Board, “Disclosure of Independent Expenditures in New York City Elections,” February 2012, at 14.

organization to its members are not considered to be independent expenditures.⁴ Rather, membership organizations are subject to separate and distinct reporting requirements for a limited category of membership communications.⁵ Similarly, in Los Angeles, which – like New York City – has a public campaign financing program for its municipal elections, membership communications are also reported separately from independent expenditures.⁶ Thus, CFB’s position that the term “independent expenditure” in the Charter Amendment encompasses member-to-member communications runs counter to the commonly understood meaning of the term.

At no point during the Charter Revision Commission’s consideration of the Charter Amendment, or the information provided to voters for their consideration, was there any indication that the Charter Amendment was meant to capture anything other than communications directed to the general electorate.⁷ The primary purpose behind the disclosure of information about independent expenditures is ensuring transparency of the source behind a message. This purpose is not served by the disclosure of information about member-to-member communications, since it is perfectly clear who is delivering the message when members receive a communication from the organization to which they have chosen to belong.

⁴ See 2 U.S.C. § 431(9)(B)(iii).

⁵ For example, whereas “independent expenditures” must be reported via FEC Form 5 (“Report of Independent Expenditures Made and Contributions Received”), member-to-member communications are reported separately via FEC Form 7 (“Report of Communication Costs by Corporations and Membership Organizations”).

⁶ L.A. Mun. Code § 49.7.26.

⁷ The Final Report of the New York City Charter Revision Commission, which constitutes the sole legislative history of the Charter provision, makes clear that the intent of the Charter provision is to capture only expenditures directed to the general electorate. See Final Report of the 2010 New York City Charter Revision Commission, August 23, 2010, at 13 (“Requiring that expenditures of this nature be reported to the CFB, and that those making significant expenditures be identified in advertising materials, would provide critical information and context for *members of the public* and help them to evaluate advertising messages aimed at influencing *their* votes.”) (emphasis added); Final Report, at 15 (“To provide the *citizens of the City* with more complete and timely information so that *they* can properly assess the content of political communications intended to influence *their* behavior at the polls, the Commission recommends that the Charter be amended to require the disclosure of independent expenditures.”) (emphasis added).

Moreover, the proposed rules go well beyond the federal reporting requirements for membership communications. The federal reporting requirements apply only to communications that contain *express advocacy* and are not primarily devoted to other subjects.⁸ The CFB's proposed rules would apply to electioneering communications as well as express advocacy, and regardless of whether the communication is also devoted to other subjects. The federal reports are also significantly less burdensome than what would be required under the CFB's proposed rules. Whereas federal law requires only five reports and limited information to be reported (the type, date and cost of a communication; the candidate named; and whether he or she was supported or opposed) the CFB's proposed rules would require up to two times the number of reports, including reports that may be due within twenty-four hours, and extensive information regarding a membership organization's internal activity.

Perhaps the most significant burden is the requirement to report the costs associated with "other printed materials." The revised proposed rules' coverage of this amorphous category is of greatest concern with respect to membership organizations. As I noted in my prior testimony, printed materials are oftentimes handed out within a membership organization at work-site meetings during which members are educated about candidates' positions on issues of concern to the organization's members, and can sometimes include express advocacy. This is the most sensitive type of member-to-member activity and goes to the very heart of a membership organization's relationship with its members. I am aware of no legitimate purpose served by public disclosure of this type of activity. I strongly urge you to, at the very least, include "other printed materials" within the member-to-member exemption.

CFB has expressed concern that in the event it receives a complaint regarding a communication from a membership organization that it will be placed in the difficult position of

⁸ 2 U.S.C. § 431(9)(B)(iii).

having to determine whether the communication is a member-to-member communication or an independent expenditure directed to the general electorate. This concern assumes unnecessarily that the organization will willfully attempt to circumvent the reporting requirements for independent expenditures. And the CFB's solution – to require disclosure of member-to-member communications – throws the baby out with the bathwater. Yet, there is a simpler, less invasive solution: require printed materials distributed to members to include a disclaimer denoting the material as a member-to-member communication not to be distributed outside the organization's membership. This idea was first proposed by Citizens Union in its testimony regarding the initial proposed rules, and would likely receive broad support.

I once again commend the Board for your dedication and hard work in promulgating rules for the disclosure of independent expenditures. I strongly believe that we need transparency regarding independent expenditures in our city's elections so that we can continue to have the nation's very best campaign finance system. But I also strongly believe that in crafting rules, we should focus on those expenditures that influence the general electorate. With these few – but extremely important -- recommendations offered above, I am certain that we can achieve this goal while serving the true purpose of the Charter Amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine C. Quinn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christine C. Quinn
Speaker