



October 27<sup>th</sup>, 2011  
New York City Campaign Finance Board  
40 Rector Street  
7<sup>th</sup> Floor  
New York, NY 10006

**NYCON Written Testimony, 10/27/2011 CFB Hearing**

Thank you for the opportunity to submit written comments about the rules under consideration this morning. Let me preface my testimony by noting that, conceptually, we are in complete agreement with attempts to limit the influence of money on the electoral landscape. Unfortunately, that is about the extent to which we can express our support for these proposed regulations regarding independent expenditures.

My name is Doug Sauer, and I am the Chief Executive Officer of the New York Council of Nonprofits, Inc. (NYCON). For those who may be unfamiliar, NYCON is the only statewide association of nonprofit organizations in New York and currently represents a membership of approximately 3,000 member organizations. Over 1,000 of our members are in the New York City area and that number grows every day, most recently with the addition of over 130 members of the Staten Island nonprofit association.

We pride ourselves on being the “soapbox and toolbox” for the nonprofit industry in New York and are proud to once again be partnering with our colleagues at the *Human Services Council* and other nonprofit leaders, this time to voice our significant objections to these proposed independent expenditure rules. **Execution of the proposed regulations would place a stranglehold on the ability for nonprofit organizations in the conduct of their constitutionally protected right to participate in advocacy.**

Advocacy is one of our most effective tools to achieve our organization's goals, and the goals of our member organizations. It's critical for nonprofits like ours to take part in the democratic process - alongside non-charitable business and other private interests. This is not only our First Amendment right - *it is our responsibility to the individuals and communities we serve and represent.*

Through our advocacy work we help ensure the public interest is represented in critical debates that determine public policy and help shape the kind of City and State we live in. Our advocacy leads to more effective policies enacted to address the underlying causes of societal problems. At NYCON, our advocacy also helps to promote a political and economic climate that is supportive, and conducive to the success, of all nonprofit charities in New York State. Nonprofits are often strategically positioned to provide critical guidance to City leaders because they are direct service providers and have developed close relationships with their clients and other direct service agencies.

**Community Focus ♦ Statewide Impact ♦ National Network**

272 Broadway, Albany NY, 12204 p. (800) 515-5012 f. (518) 434-0392 [www.nycon.org](http://www.nycon.org) [info@nycon.org](mailto:info@nycon.org)

New York City Office  
305 7th Avenue @ 27th, 11th Floor  
New York, NY 10001

Hudson Valley Office  
85 Cannon Street  
Poughkeepsie, New York 12601

Central New York Office  
101H Alumni Hall, SUNY Oneonta  
Oneonta, New York 13820

Western New York Office  
295 Main Street, Suite 106  
Buffalo, NY 14203

We strongly believe these new rules will decimate non-profit, grassroots and member-to-member legislative advocacy programs that have successfully rescued childcare funding for thousands of working families, stopped critical senior centers and firehouses from closing, and protected weekend library service at branches across the City. **Nonprofit advocacy, in many cases, is the only avenue that allows the voices of the disenfranchised to be heard.**

Additionally, implementation of these requirements would create significant barriers for non-profit membership organizations to communicate with their members about politics. When organization members communicate with each other about politics, it increases participation in the political process and mobilizes them to action. Several recent studies have shown that when organizations communicate with their members about politics – and why elections matter – those members are more likely to participate in the electoral process.

The rules presented by the CFB will have undesired impacts well beyond the mandate of the Charter amendment and run counter to your mission of increasing citizen participation in the political process. Instead of simply regulating speech intended to sway the public and directly affect an election, **you are regulating speech intended to educate the public on the decisions and policies of elected officials and communication by organizations with their own members.**

These regulations can't be defended as simply requiring "more disclosure" – the costs and added regulations associated with these rules would limit or prohibit much of our membership outreach and public advocacy, and our everyday engagement with public officials, by treating it as a so-called "in-kind contribution" to a "candidate."

**Moving forward with these regulations threatens our ability to communicate directly with the public about legislative issues and participating effectively in policy debates. Stifling the constitutionally protected speech of nonprofits is surely not the result City residents intended when they voted for the Charter amendment.**

Advocacy allows organizations to serve their constituencies and promote their causes through educating the public and policymakers, conducting research, litigating, organizing, lobbying, and more. City Council members depend on nonprofits (often experts in their fields) to surface the impacts of proposed legislation, policies and budgeting on New York City communities. As frequent contractors with City and State government, nonprofit leaders are often called upon to present testimony as to the effectiveness of various policies that have already been put in place.

**We are not political campaigns and shouldn't be required to file campaign disclosures** – as these rules would require if we spend as little as \$1,000 communicating with the public about an elected official's stand on legislative issues. Nonprofits are legally barred from the very type of advocacy that the charter amendment intended to regulate, *creating rules that go beyond the scope of what voters supported is unnecessary and detrimental to the charities that many of them support with their time, money and energy.*

**There can be little question that given the high costs -- both in the complexity of CFB filing and the need to retain legal counsel -- and the risks of erroneous reporting, that many groups would respond to the CFB's proposed rules by limiting their own speech -- an outcome at odds with the CFB's broad goal of increasing participation in the democratic process.**

As I indicated at the outset of this testimony, we are entirely supportive of limiting the undue impact of moneyed interests on the electoral process. **Strict rules and meaningful punishments are entirely 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.

Reporting is not a simple process small or medium size nonprofit staff can add to current responsibilities. We're looking at as many as 12 scheduled reports, plus up to 14 more just before the primary or general election. Failure to report, or reporting incorrectly, could lead to lengthy investigations, \$10,000 fines and even criminal prosecution, which in practice would mean nearly all groups subject to the new rules that are willing to take these risks would need to pay for legal counsel to ensure proper filing. We can't afford to damage our reputation by subjecting ourselves to a potential CFB investigation.

We already disclose money we spend to influence policy decisions through lobbying disclosure reports (though such reports are far less complex and difficult to file than the proposed filing system). This is the proper place for nonprofits to disclose lobbying expenditures -- not through the campaign finance board.

One especially troubling requirement that we would have to contend with in complying with these regulations is the requirement to declare our advocacy spending as "supporting" or "opposing" particular candidates. Again, we are not political campaigns or committees -- we do not make such endorsements.

As mentioned above, 501c(3) organizations are barred from making endorsements by the IRS, **which would mean we would be in the difficult position of either having to violate City law, violate Federal law or stop informing the public about important issues** if the issue happens to be discussed by the City Council within three months of an election. Several prominent attorneys in the nonprofit sector have stated that even filing with the Campaign Finance Board could put our nonprofit status in jeopardy because of the IRS restrictions on nonprofits participating in campaign activity.

There are over 100,000 nonprofits in New York State. 65,000 of them identify as charitable organizations, many of them in New York City. The predominance of them operate as small- to medium-size nonprofit corporations who absolutely do not have the resources to add these onerous and unnecessary levels of compliance to their business model. I can't stress enough that **if you are to adopt these regulations, charitable**

**nonprofits that lend a voice to those in need and perform critical functions to  
taxpaying citizens will be silenced.**

In summary, nonprofit organizations have a unique and essential role to play in the policy process. The CFB should not interfere with our right to participate in legislative and issue advocacy. The consequences of these actions run counter to the CFB's broad goal of increasing participation in the democratic process.

Thank you again for the opportunity to offer testimony.

Respectfully,



Doug Sauer  
Chief Executive Officer  
New York Council of Nonprofits, Inc.

**About the New York Council of Nonprofits, Inc. (NYCON).** NYCON has been working to help strengthen nonprofits and communities in New York State for over 84 years. NYCON is a statewide, membership-based charitable nonprofit organization specializing in bringing nonprofits across New York State the services and training they need to achieve their nonprofit missions and goals. The Council's diverse menu of programs and services includes training for nonprofit boards of directors, administration, and staff; providing insurance; legal services; information on public policy and ethics; financial management assistance; community needs assessments and planning; and a wide array of group purchasing programs. NYCON has offices in Albany, Buffalo, Poughkeepsie, Rochester, Oneonta and New York City. To learn more about NYCON, visit [www.nycon.org](http://www.nycon.org).