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**Testimony of Council Member Gale A. Brewer
Chair, Committee on Governmental Operations
New York City Council
Proposed Rules for Disclosure of Independent Expenditures in City Elections
New York City Campaign Finance Board
October 27, 2011**

Thank you for the opportunity to testify regarding the Campaign Finance Board's proposed rules for disclosure of independent expenditures. My name is Gale A. Brewer and I represent the Upper West Side and northern Clinton in the New York City Council. I am currently the Chair of the Committee on Governmental Operations, which has oversight responsibility for the CFB and issues related to the conduct of elections, including the City's campaign finance laws.

Since March 2011, when the CFB began this public process of promulgating rules for implementing the new Charter amendment relating to independent expenditures, I have closely monitored these efforts. I want to commend the CFB for the openness and transparency they have exhibited throughout the process.

The new reporting requirements apply to activity that is at the very heart of our democracy: the ability of individuals and groups of individuals to band together so that their voices can be heard, and their viewpoints reflected, during an election. I have no doubt that CFB fully appreciates the importance and legitimacy of such activity. The Charter amendment, as proposed last year by the Charter Revision Commission and approved by the voters, seeks to ensure that this activity is transparent so that voters can understand the source behind the messages they are receiving. While this is a laudable goal, it is of the utmost importance that the law is not implemented in such a way as to quell or discourage anyone from exercising their right to engage in robust political speech.

This is especially important with respect to small, less sophisticated civic groups and clubs. Whereas large organizations like political parties and unions have the knowledge and resources to navigate complex reporting requirements, CFB must carefully guard against these reporting requirements becoming a trap for those who are unwary, unknowing, or simply hapless. If even one individual or small group of citizens is discouraged by the rules from participating in an election, then CFB will have not only failed to properly implement the law passed by the voters in November 2010, but will have failed in its separate but equally important mission of increasing participation in our City's elections.

So how can we make sure this doesn't happen? I have a few suggestions; some that can be incorporated into the CFB rules, and others that should be done through day-to-day operations.

1. *Outreach and education:* Once these rules are finalized, it is imperative that CFB conduct extensive outreach to ensure that every individual and group affected by the rules is cognizant of the new requirements. This should include workshops and mailings that clearly explain who has to file and the process for doing so. Again, this must involve not only reaching out to large organizations, but to small ones as well.
2. *Assistance and support:* The campaign finance laws are incredibly complex. As any candidate who has participated in the public campaign finance program knows, one's ability to comply with the law is only as good as the advice and assistance they receive – oftentimes from high-priced lawyers or consultants. No individual or group should have to hire a lawyer to comply with these reporting requirements. The CFB's candidate services unit has done a commendable job in recent years in providing assistance and support to candidates; CFB should create a similar unit of staff dedicated to providing support and assistance to individuals and groups who must file under the independent expenditure rules. In the most recent budget, at a time when many agencies were being scaled back, CFB was granted authorization for two new positions. These positions should be used for this purpose.

CFB must also make sure that the reporting software is simple and easy to use. Many organizations that may have to file do not have the staff or resources to devote to filing multiple periodic reports. Filers should not have to spend hours of their time compiling information and filling out forms.

3. *Common sense enforcement:* No matter how much outreach CFB does, and no matter how much assistance is provided, it is inevitable that there will be groups that file late, or neglect to file something that they should have filed, or leave out information that should have been included. In all but the rarest of instances, such failure will not be willful, but rather a predictable result of the newness of the procedures, the complexity of the law, or the gap between the requirements of the law and the reality of election-related activity. CFB's enforcement of the law and the discretion they have been afforded to impose penalties must take this into account. The administrative code requires CFB to adopt a schedule of penalties for violations and infractions. I urge CFB to include in the independent expenditure rules the following with respect to the penalty schedule:

1. No penalties shall be imposed for failing to file or for late filing unless such action was willful, so long as the filing is made within a reasonable period of time after being notified by CFB that such filing must be made.
2. No penalties shall be imposed for a first-time offense by any individual or group, unless such offense was willful and involves an expenditure greater than \$5,000.
3. In no instances shall a penalty be larger than the amount of the expenditure at issue.

My reason for suggesting these rules is not to let bad actors off the hook; rather, it is to set in place what should be CFB's prime objective: to encourage disclosure and to bring people into the system, not to seek out derelicts and misbegots. If CFB chooses to focus on the latter, it will only serve to alienate people and keep them out of the system, as well as leave the public without the level of transparency they sought with the passage of this Charter amendment.

4. *Distinction between issue advocacy and electioneering:* A number of non-profit groups have raised concerns about whether their advocacy will be subject to the proposed disclosure requirements. Their concerns need to be addressed, and a clear distinction needs to be drawn between legitimate advocacy and activity that is meant to influence an election. The primary issue is with the proposed 90 day window within which all "electioneering"

activities will be subject to disclosure. The example given in the guide to the proposed rules for what constitutes electioneering is "Tell Candidate X that her position on budget cuts is wrong." Groups are clearly concerned about the impact such a statement will have on their outreach during the City's budget season. It is my hope and belief that the rules have been crafted in such a fashion as to exclude legitimate advocacy work by non-profit groups, but this needs to be clarified and clearly explained to all groups that may be subject to these regulations. CFB needs to do everything in its power to ensure that the effect of the disclosure rules does not dissuade groups from contacting their Elected Officials about budget cuts and other areas of concern. That would be a tragedy of the highest order, and one I would not support. It is my strong belief that 501(c)3 groups should be exempted from these rules, as they are already subject to restrictions on electioneering activity by the IRS.

I would also like to bring to CFB's attention the written testimony submitted by Speaker Christine Quinn. The Speaker has been very involved in this process since the beginning, and I commend her for her efforts. One of the issues she has been particularly involved with is that of member to member communications. The Speaker and I are in agreement that member to member communications, which are not meant to influence the general electorate, should be completely exempted from disclosure.

Finally, on a separate note, I urge CFB to work closely with the State to achieve consistency between the City's and State's regulations with respect to independent expenditures. As you know, the Public Integrity Reform Act passed by the State Legislature and signed into law by Governor Cuomo in June 2011, includes a provision that mandates the State Board of Elections to promulgate rules clarifying the State's independent expenditure reporting requirements. As reflected in CFB's efforts to conform the City's and State's reporting requirements for candidates, and as we've recently seen with the Lobbying Commission's recommendations to synthesize the City's and State's lobbying reporting requirements and systems, wherever possible we should avoid duplicative City and State regulations that add complexity and confusion, yet provide no added public benefit. While I understand that CFB has little control over the timing of the State's work, I ask that their progress is monitored, and, as they move further along toward enacting new rules, consider whether any changes should be made to the City's rules in order to promote consistency and clarity.

I am happy to answer any questions that you may have. Thank you.