



**Campaign Finance Board  
October 27, 2011  
Public Comment**

Thank you for the opportunity to offer comments about proposed independent expenditure regulations.

My name is Michelle Jackson, General Counsel for the Human Services Council of NYC. HSC is a coalition of nearly 200 not-for-profits strengthening the human services sector's ability to serve New Yorkers in need. As a non-partisan intermediary between government agencies and member organizations, we passionately champion the sector. We proactively negotiate with State and City government for mutually beneficial, solutions-based budget, policy, and legislative reform that improve our constituents' work and the lives of the individuals they serve.

The not-for-profit community is committed to meeting the needs and enriching the lives of New York's residents through a broad array of high quality services. Good communication between policy makers and service providers is a fundamental component of the development of sound service systems. Advocacy is one of our most effective tools to achieve our organization's goals. It is critical for nonprofits like ours to take part in the democratic process - alongside business and other private interests.

Given the increasing role of independent expenditures in American politics, the Charter amendment's passage was a significant step forward for New York City's pioneering effort to bring transparency to the political process and limit the role of high-dollar campaign contributors in city elections. In the wake of the Supreme Court's *Citizens United* case, transparency is particularly important and we strongly support efforts to require the disclosure of independent expenditures.

Unfortunately, the Board's proposed rules go beyond the mandate and intent of the Charter amendment and run counter to the Board's mission of increasing citizen participation in the political process. We strongly believe these new rules will hinder 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 homeless shelters from closing, and protected funding for vital community programs.

This rule treats non-profit advocacy and membership organizations as if we were the same as political candidates in the current system. Under this rule, if organizations spend as little as \$1,000 communicating with the public about an elected official's stand on legislative issues (if the elected official happens to be a candidate), they would have to file extensive financial reports for the first time. The proposed rule is troubling because it identifies allowable 501c(3) activities as "campaign activities."

We encourage you to exempt 501c(3) organizations from reporting electioneering communications to the Campaign Finance Board because they are already regulated by the IRS. Alternatively, we ask you to adopt the parameters laid out by the IRS which allow nonprofits to continue issue based advocacy even during an election. If nonprofits are forced to comply with these proposed rules, many will cease to engage in allowable activities because they do not want to be seen as participating in the campaign process and risk their tax-exempt status, the disclosure process will add a huge administrative burden to already stretched organizations, and the reality is that reporting to the Campaign Finance Board jeopardizes how nonprofits are seen by the public and their ability to fundraise.

501c(3) organizations are barred from making endorsements by the IRS, putting them 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. Under the IRS code, nonprofits are allowed to engage in issue specific advocacy even during an election provided they meet certain criteria, so capturing these activities as "campaign" activities is not only in opposition to federal standards, but is also unnecessary. One especially troubling requirement that we would have to contend with 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.

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. Reporting is not a simple process our often small staffs can easily add to their current responsibilities. There would be 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. Notably, such disclosure is in many cases duplicative, as organizations that spend money to influence policy decisions must already file lobbying disclosure reports.

Organizations that spend more than \$5,000 would have to report and make public almost all of their sources of funding, including foundation grants, previously anonymous charitable giving, investment earnings and even membership dues as campaign "contributions." It is difficult for nonprofits to secure grants for advocacy, and many funders will not want to be associated with giving grants for campaign activities. Additionally, the public, who support nonprofits both as volunteers and donors, may view the filing of activities with the Campaign Finance Board as meaning nonprofits are taking a public stance in an election, contrary to their mission, and trying to express to the general public the nuance of these rules will be difficult.

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 by limiting its proposed rules to "express advocacy," the 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 summary, nonprofit organizations have a unique and essential role to play in the policy process. 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 we live in. Our advocacy leads to more effective policies enacted to address the underlying causes of societal problems. 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.