New York Hotel and Motel Trades Council, AFL-CIO • 707 Eighth Avenue, New York, NY 10036 • Telephone: (212) 245-8100 • Fax: (212) 977-5714

October 13, 2011

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

Dear New York City Campaign Finance Board:

In November of 2010 New York City voters approved an amendment to the City Charter requiring the disclosure of independent expenditures by individuals and groups to persuade voters on candidates and referenda on the ballot.

But we believe your proposed rules go well beyond the mandate and intent of the Charter amendment and run counter to your mission of increasing citizen participation in the political process.

Rather than simply regulating speech by wealthy individuals and groups intended to sway the public and directly affect an election, you are also regulating speech intended to educate the public on the decisions and policies of elected officials and communication by organizations with their own members. And, the rule can't be defended as simply requiring "more disclosure" – it would also limit or prohibit much of our membership and public advocacy, and our normal engagement with public officials, by treating it as a so-called "in-kind contribution" to a "candidate."

This threatens the ability of a wide range of non-partisan and not-for-profit organizations to communicate with the public about legislative issues, participating effectively in policy debates, and communicating with their own members and supporters about politics. And that is surely not the result City residents intended when they voted for the Charter amendment.

How We're Affected

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 our 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), we would have to file extensive financial reports for the first time. The same would be true if we were communicating with our own members about an election.

Reporting is not a simple process that our often small staffs can 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. 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,. All of this means, in practice, that nearly all groups subject to the new rules would either forgo speaking out or, if they can afford it and are willing to take the risks, incur significant new accounting and legal costs just to comply in the first place.

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."

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 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.

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 proposed rule is especially onerous because it goes beyond simply requiring new disclosures. If a covered communication were "coordinated" with an elected official, it would be deemed an "in-kind contribution" and, if it cost at least $2750, $3850 or $4950 (depending on the office the elected official were running for), it would be illegal and prohibited. (And, each amount is cumulative per "candidate" throughout a 4-year election cycle.) For example, if a union engages with a key public official, who happens to be a candidate for reelection in the next 90 days, to support its contract campaign, and the union holds a contract rally or sends out a contract flyer and tells its members about that official's support, that "public communication" under the proposed rule could be an illegal in-kind contribution to that candidate.

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 groups would respond to the CFB's proposed rules by limiting their own speech, including to their own members – an outcome at odds with the CFB's broad goal of increasing participation in the democratic process. Smaller unions and groups would be especially hard hit and deterred. That would be an unacceptable consequence of a City law that was designed instead 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 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. And, the rule should focus on disclosure of funding that actually relates to the communications themselves. That's what the Charter amendment was aimed at.

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,

Peter Ward
President, Hotel Trades Council

Cc: Mayor Michael Bloomberg
City Council Speaker Christine Quinn