



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the New York City Campaign Finance Board on the
Disclosure of Independent Expenditures
March 10, 2011

Good morning, members of the New York City Campaign Finance Board (Board). My name is Alex Camarda, and I am the Director of Public Policy and Advocacy for Citizens Union of the City of New York. I am joined by my colleague Rachael Fauss, our Policy and Research Manager. Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. Given that the voters approved via ballot proposition the charter language that authorizes the drafting of these regulations, giving the public the opportunity to weigh in on this issue before drafting begins is both appropriate and welcomed. We thank you for the opportunity to offer our comments in this important area.

Citizens Union supported the ballot proposition to require disclosure of independent expenditures, having first recommended this action in our June 2010 report to the City Charter Revision Commission, "Increasing Avenues for Participation in Governing and Elections in New York City." At the time, we recommended that there be increased disclosure and reporting on independent expenditures to ensure that voters have sufficient information about which organizations and individuals are supporting a given candidate, particularly in light of the *Citizens United v. FEC* decision. Below are Citizens Union's comments on the issues for consideration by the Board, as presented in your public documents provided in advance of this hearing.

1. Scope of regulated activity

Regarding the scope of activity that is regulated by the Board, Citizens Union believes that it should be expansive rather than narrowed to express advocacy (which would only include "magic words" such as "vote for" or "vote against") to ensure that all communications that are intended to sway voters are disclosed. While we recognize that the language in the Charter relates to "support" or "opposition," we believe that the Board can interpret this similar to California's Fair Political Practices Commission which defines as independent expenditures communications "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure."¹ We believe that the context of the communication is particularly important to consider for issue ads, such as the proximity to the election (such as 30 days prior to the primary and 60 days prior to the general election, if following the federal model for electioneering communications). It should be the goal of the Board to tailor its regulations to include "sham issue ads," which

¹ See the staff memo to the Fair Political Practices Commission, October 13, 2010, available at: <http://www.fppc.ca.gov/agendas/10-10/18225SuppMemo.pdf> or the full text of the regulation at <http://www.fppc.ca.gov/agendas/10-10/18225.pdf>

urge a particular choice by voters but do not contain language such as “vote for” or “vote against.” Capturing these types of issue ads could also be accomplished by giving examples of such ads to be covered in its regulations, as was done in California.²

As discussed in the Board’s briefing paper for this hearing, we support efforts to include other electioneering activities such as online communications, robo-calls, and door-to-door canvassing, in addition to what might be commonly thought of as independent expenditures, such as advertisements and literature. Regarding volunteer activities, we believe that the Board should err on the side of strict adherence to the language in the Charter so as to not discourage citizens to volunteer their time on independent campaign efforts. The Charter currently provides that the following activities are not considered independent expenditures: the value of services that are provided without compensation, and unreimbursed travel expenses of less than \$500.³

2. Required information to be disclosed to the Board

Citizens Union support requiring the following information, in addition to the dollar value of the expenditure, to be provided in disclosure report to the Campaign Finance Board:

- a. the name and address of the entity making expenditures, and for individuals, their occupation, employer and address (we recommend that the Board not publicly release the full address for individuals, as is done in its database for campaign contributions);
- b. the entity or entities contributing funds used to make the expenditures, including address and name, and for individuals, their occupation, employer and address;
- c. the name of the entity receiving payments, including the detailed purpose of the expenditure, name, address, type of business, or for individuals, occupation and employer and limited address information; and
- d. the target (candidate or ballot measure) of each expenditure, along with whether the expenditure sought to support or oppose the target.

It is important to note that the current reporting of independent expenditures to the State Board of Elections does not clearly link independent expenditures to their targets, as the expenditures and targets are provided on separate schedules. The Board’s regulations in this area, therefore, could serve as a model for clearer linking at the state level for independent expenditures affecting state elections. We believe that this linking will provide a complete picture of the intent of the expenditure and the groups or individuals financing it.

Regarding timing of reporting, Citizens Union supports matching periodic filing of expenditures with the current schedule for campaign committees. For expedited reporting, we support the requirement for expenditures to be disclosed within 24 hours in the last ten days before the election. In addition to expedited reporting, disclaimer requirements will help to ensure that the public is informed in a timely way about the source of advertisements

² Examples provided include “Assemblymember Nancy Brown needs to be tough on criminals. Call her and tell her to stand firm on AB 100;” “Poor children need a home too. Support the Mayor’s stance against more 4 budget cuts;” and “Thank you, Supervisor Smith, for continuing to support our farmers.”

³ See NYC Charter Section 1052 (a)(15)(a)(1)-(3)

that might occur early in the year before the election that would not trigger expedited reporting, but be captured in a periodic report.

On the timing for disclosure of donors to expenditures of \$5,000 or more, we believe that the \$1,000 threshold for disclosure of contributors in the Charter is sufficiently high to require the names of such contributors to be reported in initial disclosure, particularly considering that lesser expenditures of \$1,000-\$4,999 would also be required to be disclosed in that time frame.

3. Exemptions

Citizens Union believes that an exemption for the media and press is appropriate for reporting and editorial content. We believe that the federal definition which excludes such communications but for those owned or controlled by any political party, political committee or candidate is appropriate.⁴

Regarding whether contributions to independent expenditures should be disclosed only for those that are ear-marked or for all contributions \$1,000 or more, we believe that the preferred way of handling this item would be to have individuals designate the purpose of the contribution and potentially opt-out of giving their funds for political communications. For those that do not opt-out, their contributions of \$1,000 or more would be eligible for use in campaign communications and thus disclosed.

4. Enforcement

In order to ensure effective enforcement, we believe that the Board's regulations should both allow for complaints to be considered by the Board as well as allow it to initiate its own investigations into violations of the requirements. We also support the use of fines or penalties for those who do not meet the reporting, disclaimer or other requirement established in regulation, provided that necessary notice is first provided for corrections to be made, as is currently done for campaign finance violations. The Charter currently allows for fines up to \$10,000, as well as misdemeanor charges for violations.

5. Disclaimer requirements

Citizens Union supports requirements for disclaimers to be provided with communications, whether they are on mailing, radio or television advertisements, emails, websites or other communications that serve to influence the public and meet the \$1,000 or \$5,000 threshold. The language required in disclaimers should be standardized to ensure that voters are able to easily scan and compare communications with each other and to determine their sources. Specifically, disclaimers should state in a font and manner that ensures legibility or be broadcast for a sufficient length of time the following information:

- a. A statement that the communication is not authorized by any candidate or committee.
- b. The name of the organization or individual that has funded the expenditure, including address, website and telephone number. For individuals, employer and

⁴ 2 U.S.C. §431 (9)(B)(i)

occupation information could potentially be disclosed in a disclaimer in lieu of an address if there are safety or privacy concerns.

We believe that small items such as buttons should be excluded from the disclaimer requirements, as is done in Los Angeles. Los Angeles' Campaign Finance Ordinance excludes from the definition of political communication the following items: small promotional pens, pencils, clothing, mugs, etc.⁵

6. Outreach by the Campaign Finance Board

Given that independent expenditures are made outside of campaign activities by candidates and entities that the Board currently has contact with, it is crucial that sufficient outreach be performed to ensure compliance. In addition to providing information on its website and current outreach materials to candidates and voters, the Board should examine using the Doing Business Database for outreach to organizations and individuals who are involved in City Government and may make independent expenditures, as well as the list of political committees that report to the State Board of Elections and are designated as unauthorized campaign committees and located in New York City. In addition, the Board could provide information to bar associations for outreach to election lawyers. Civic associations, community groups and other non-profits could also be notified, such as groups like Citizens Union, who are active in City Government and have provided commented on ballot propositions.

Lastly, Citizens Union urges the Board to consider the value to the public of the information disclosed, and how to distinguish independent expenditures from contributions already contained in its online database. It would be advisable to both allow for separate searching of independent expenditures in addition to providing independent expenditures in the larger list of contributions received by candidates. We also assume that the Board will report to the public on the spending of independent expenditures in its post election reports, and encourage the Board to also release separate reports on independent expenditures to inform the public about their prevalence and impact on City elections.

We thank you for the opportunity to provide comment, and are available to answer any questions you may have.

⁵ Los Angeles Municipal Code, §49.7.26.3 (E).