

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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January 16, 2013  
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HELD AT: Council Chambers  
City Hall

B E F O R E:  
GALE A. BREWER  
Chairperson

COUNCIL MEMBERS:  
Council Member Eric Martin Dilan  
Council Member Rosie Mendez  
Council Member Domenic M. Recchia, Jr.  
Council Member Peter F. Vallone, Jr.

## A P P E A R A N C E S (CONTINUED)

Amy Loprest  
Executive Director  
New York City Campaign Finance Board

Susan Lerner  
Executive Director  
Common Cause, New York

Adam Skaggs  
Senior Counsel  
Brennan Center for Justice

Alex Camarda  
Director of Public Policy and Advocacy  
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Jesse Layman  
Representative  
Citizen Action of New York

Gene Russianoff  
Chief Attorney, Spokesman  
New York Public Interest Research Group

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2 CHAIRPERSON BREWER: So good  
3 afternoon, my name is Gale Brewer, and I'm the  
4 Chair of the Committee on Governmental Operations.  
5 And we're here also with Council Member Dilan from  
6 Brooklyn, who's Chair of the Housing and Buildings  
7 Committee. And we're, as I think everyone knows,  
8 to discuss Proposed Intro No. 978-A. It's  
9 legislation introduced by Council Member Rosie  
10 Mendez, and I think like a lot of folks she's over  
11 at the Hurricane Sandy hearings, but I know she's  
12 on her way. Other members will be here, also. So  
13 during the independent--[background comment] Oh,  
14 good, Council Member Domenic Recchia is here.  
15 He's from Brooklyn, and he's head of Finance, and  
16 he's definitely here. During the independent  
17 expenditure disclosure rulemaking process last  
18 year, the New York City Campaign Finance Board,  
19 known as CFB, conducted extensive outreach before  
20 finalizing its rules. The vast majority of the  
21 rules that emerged from that process were targeted  
22 to ensure that voters know the source behind  
23 political messages that target them. And I thank  
24 the Board for these rules, I think all New Yorkers  
25 do. They help to improve transparency and open

1  
2 government and along with the thank yous, I want  
3 to make sure that the transparency, open  
4 government, good government groups, are definitely  
5 thanked. I think some of them will be testifying  
6 later. During the CFB hearings, I testified to  
7 express concern that the rules appear to cover  
8 internal, member-to-member communications, that  
9 are integral methods of communication for  
10 membership organizations. Member-to-member  
11 communications are not intended to influence the  
12 general public, so the public's interest in  
13 sourced disclosure in this communications is  
14 significantly reduced. As the Charter Revision  
15 Commission, the last one, put in its final report,  
16 independent expenditure disclosure is intended to  
17 help the public, and I'm quoting, "evaluate  
18 advertising messages aimed at influencing their  
19 votes." In the end, the Board chose to exempt  
20 some types of member-to-member communications but  
21 not others. The bill being considered today, the  
22 A version 978-A, would exempt all member-to-member  
23 communications, as well as company-to-shareholder  
24 communications, from independent expenditure  
25 requirements. This bill will lighten the

1 regulatory load on membership organizations and  
2 protect their First Amendment right of association  
3 while ensuring that the public remains aware of  
4 who is trying to influence their votes. As some  
5 of you know, this bill has existed in many  
6 variations and permutations. It was initially  
7 drafted in response to concerns about a 2012  
8 Campaign Finance Board advisory opinion,  
9 specifically a footnote in that opinion, which  
10 implied that the Board was considering much more  
11 activity to be "coordination" than anyone had  
12 previously thought. Many were fearful that this  
13 would have a chilling effect on discussion between  
14 membership organizations and candidates. To their  
15 credit, the Campaign Finance Board heard these  
16 concerns, and released an advisory opinion last  
17 week, that in my view, and I think many on the  
18 Council, but most of these concerns to rest and  
19 we're very appreciative. The bill that we are  
20 hearing today is the result of extensive, I  
21 underline extensive, discussions with the Board,  
22 affected membership organizations, and other  
23 stakeholders. And I think everyone, we all do,  
24 for their input in this process, and we look  
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1  
2 forward to today's testimony, and I certainly want  
3 to thank David Seitzer who's Counsel to the  
4 Committee; Tym Matusov, who's across the street at  
5 the Hurricane Sandy, he's our Legislative Policy  
6 Analyst; Rob Newman, who seems to be in charge of  
7 everything at the City Council; and Wilco Grove  
8 [phonetic] from my office. Without further ado,  
9 I'd love the Campaign Finance Board to come up,  
10 introduce yourself, and we look forward to your  
11 testimony. Thank you.

12 [pause, background noise]

13 AMY LOPREST: Ready? Okay. Good  
14 afternoon, Chair Brewer and Members of the  
15 Committee. I'm Amy Loprest, Executive Director of  
16 the New York City Campaign Finance Board. With me  
17 today are Eric Friedman, Director of External  
18 Affairs; and Sue Ellen Dodell, our General  
19 Counsel. Thank you for the opportunity to testify  
20 today about Intro 978 as amended. As you know,  
21 the Board had serious concerns about the original  
22 version of Intro 978, which would have allowed  
23 outside groups to closely coordinate their  
24 spending with candidates, and we are pleased to  
25 see that the bill has been amended to address

1  
2 those concerns. Others have raised cautions about  
3 the Board's enforcement standards in this area,  
4 and we hoped Advisory Opinion 2013-1, which was  
5 issued last week by the Board, has helped to  
6 clarify the Board's approach to coordination  
7 between candidates and outside groups. The  
8 current bill addresses only the disclosure of  
9 independent expenditures in City elections.

10 Though we reiterate that the changes have improved  
11 the bill, we cannot support it. Early in 2010,  
12 the U.S. Supreme Court issued its controversial  
13 ruling in Citizens United, which held that federal  
14 government could not restrict independent spending  
15 by corporations or unions in elections. The  
16 impact of Citizens United reverberated broadly,  
17 raising the prospect of a flood of new outside  
18 spending washing through elections at every level  
19 of government. In New York City, voters responded  
20 by approving an amendment to the City Charter  
21 aimed and bringing greater transparency to  
22 independent spending in New York City elections.  
23 Pursuant to the Charter, the Board engaged in an  
24 open, deliberative process to promulgate rules for  
25 the disclosure of independent expenditures. As

1  
2 the Charter states, the rules require independent  
3 expenditures of \$1,000 or more to be reported; an  
4 organization that makes more than \$5,000 of  
5 independent expenditures to support or oppose a  
6 candidate must also make public disclosures of the  
7 contributions it receives. Those rules, which  
8 took effect in May 2012, require labor unions,  
9 membership organizations and corporations to  
10 disclose some of the spending they make to send  
11 campaign related messages to their members or  
12 shareholders. Intro 978 would shield that  
13 spending from public view, overturning the rules  
14 carefully drafted by the Board concerning those  
15 expenditures. This will impact the quality of  
16 disclosure available to the public. There are  
17 five points I would address here in order to  
18 explain the Board's opposition to the bill.  
19 First, the disclosure of money in politics is  
20 fundamental to the democratic process. Candidates  
21 must make public the names of their contributors  
22 because through thorough disclosure provides  
23 valuable information for voters and protects the  
24 public from potential abuses of the political  
25 process. Without disclosure of a candidates'



1 contributors, voters may feel as if they are  
2 unable to make a truly informed choice at the  
3 polls. All candidates who participate in the  
4 Campaign Finance Program have been required to  
5 make disclosures to the CFB since the program was  
6 created in 1988. The City Council affirmed the  
7 value of disclosure in 2004, when the disclosure  
8 requirement was extended to all candidates who  
9 compete for City office. With Local Law 59 of  
10 2004, the Council stated that the lack of  
11 disclosure for nonparticipating candidates,  
12 "deprives the voting public of relevant  
13 comparative information." The Council declared  
14 that detailed public campaign finance disclosure  
15 helps safeguard against the risk that large  
16 campaign contributions will gain undue influence  
17 over government decision making and sheds light on  
18 campaign spending practices. Those same  
19 rationales apply to the disclosure of independent  
20 spending by outside groups. Independent  
21 expenditures can provide an avenue for wealthy  
22 interests to influence election outcomes. Most  
23 candidates know who funds the television ads or  
24 mailers that support them or oppose their  
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1  
2 competitors. In some cases, the spenders may not  
3 even hide their identity. But without robust  
4 disclosure, the general public cannot know the  
5 details of the spending. In short, there are two  
6 equally important aims for disclosure of  
7 independent expenditures. First, disclosure  
8 provides information that helps voters identify  
9 who is speaking to them; second, it empowers  
10 voters to hold candidates accountable for their  
11 policies and supporters by providing information  
12 about the individuals and groups who spend money  
13 to aid their campaigns. The Board is aware that  
14 groups play an important role in City politics.  
15 A central goal of the Campaign Finance Program is  
16 to provide candidates with the ability to speak  
17 for themselves. At the same time, this City has a  
18 long and proud tradition of citizens gathering to  
19 make their voices heard on every sort of issue.  
20 While the program amplifies the collective voice  
21 of individual small dollar donors in City  
22 elections, civic organizations, single issue  
23 groups and labor organizations all can serve to  
24 aggregate the voices of likeminded New Yorkers in  
25 the political process. We believe that these

1  
2 concepts are not mutually exclusive. New York  
3 City has a robust campaign finance system, with  
4 public funding, reasonable limits on  
5 contributions, and with the Charter amendment,  
6 disclosure of independent spending. The rules  
7 that make our system strong should not and do not  
8 prevent groups from participating fully in the  
9 public discussions about elections, politics and  
10 policy in New York City. The rules for disclosure  
11 of independent expenditure were written narrowly  
12 in this area to cover the most widespread and  
13 important election related communications. To  
14 provide the most useful information to the voters,  
15 it is important that the rules for disclosure  
16 reflect the way people in organizations  
17 communicate about elections in New York City. The  
18 rules as adopted do provide exemptions for  
19 internal communications between an organization  
20 and its membership. Spending to print and send a  
21 newsletter or conduct phone banks to members were  
22 exempted from disclosure. Communications among  
23 the organization's membership as part of an  
24 internal deliberations about endorsements were  
25 also protected from disclosure. Campaign mail on

1  
2 the other hand is a medium that is used widely and  
3 effectively to communicate with voters. An  
4 analysis of campaign expenditures during the 2009  
5 elections shows clearly that mailings are an  
6 important mode of communication in City elections.  
7 With a broad electorate to cover campaigns for  
8 Mayor, Public Advocate and Comptroller, devoted  
9 roughly 30 percent of their communications budget  
10 to mass mailings. A larger share, more than 60  
11 percent, went to broadcast media. For City  
12 Council campaigns, which target much smaller  
13 constituencies, mailings are by far the preferred  
14 mode of voter communication. Analysis of a  
15 representative samples of ten Council campaigns  
16 showed that the average candidate devoted almost  
17 two-thirds of his or her communications budget to  
18 mass mailings. That is why the rules were written  
19 to require the disclosure for spending on all mass  
20 mailings no matter the target audience. Intro  
21 978-A would exempt the costs of these campaign  
22 related mailings from disclosure if they are sent  
23 by labor unions, membership organizations, or  
24 corporations, to their members or shareholders.  
25 This broader exemption could potentially allow a

1  
2 significant amount of spending in New York City  
3 elections to go undetected. Our current rules as  
4 implemented provide the public with a complete  
5 picture of election related spending. The rules  
6 for disclosure of independent expenditures were in  
7 effect for the November 2012 special election for  
8 the City Council seat in District 12 in The Bronx.  
9 For the first time, New Yorkers had a  
10 comprehensive access to disclosure of spending in  
11 a City election. Our electronic, online  
12 disclosure system was operational for the special  
13 election. From the feedback we received, it is  
14 easy to access and to use. Via our website, it  
15 provides the public with the identity of the  
16 spender, the amount spent, information about the  
17 payees and a view of the communication. There  
18 were three expenditures reported in the District  
19 12 race, for a total of \$12,442, all supporting  
20 the winning candidate. All three were marked as  
21 membership communications. This sum equals more  
22 than ten percent of all funds spent on his behalf.  
23 So one out of every ten dollars spent in support  
24 of the winner came from an independent spender.  
25 It seems clear that independent expenditures as

1  
2 currently defined in board rules, comprise a  
3 significant part of the election related spending  
4 in City elections. If Intro 978-A were enacted,  
5 voters would be deprived of information about this  
6 spending. For these reasons, and given the  
7 Board's longstanding position on the issue, we  
8 oppose the bill. The Board has consistently taken  
9 the position that campaign spending should not be  
10 categorized based on target. A campaign message  
11 is a campaign message, no matter where or to which  
12 audience it is aimed. Feedback we received during  
13 the rulemaking process helped focus the board's  
14 approach in this area. As a result, we believe  
15 our current rules provide the public with the  
16 best, clearest and most comprehensive information  
17 about spending in City elections. The program  
18 spending limits can magnify the importance of  
19 outside spending in our system. Candidates who  
20 agree to limit their spending may be opposed by  
21 outside groups who face no limits on their  
22 activities. New Yorkers voted to require those  
23 independent actors to reveal the details of their  
24 spending. Intro 978-A would narrow that  
25 requirement, blocking New Yorkers' access to

1  
2 complete information about the interests  
3 supporting candidates for City office. Thank you  
4 for the opportunity to testify and I welcome your  
5 questions.

6 CHAIRPERSON BREWER: Thank you very  
7 much. I'm sure there are questions, but we're  
8 delighted to have the main sponsor of the bill,  
9 Council Member Rosie Mendez, here, and she'd like  
10 to make a statement.

11 COUNCIL MEMBER MENDEZ: Thank you,  
12 Madam Chair. My apologies to everyone, I was  
13 still across the street trying to get my questions  
14 in to the Deputy Mayor. In January of 2010, the  
15 United States Supreme Court held in Citizens  
16 United v. the Federal Election Commission, that it  
17 was unconstitutional to limit independent election  
18 related speech by corporations, associations and  
19 unions. This ruling has fostered the creation of  
20 super PACs, which operate as independent  
21 expenditure only committees, that engage in  
22 unlimited political fundraising and spending  
23 independently of candidates and campaigns. Most  
24 agree that this ruling has subverted the  
25 meritorious intent of all previous campaign

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2 finance laws, and substantially increased the  
3 influence of money in politics. In 2010, as part  
4 of the New York City Charter revision process,  
5 voters passed a measure that requires public  
6 disclosure of expenditures made by individuals and  
7 entities that are independent from candidates that  
8 attempt to influence an election outcome. In  
9 response, the New York City Campaign Finance Board  
10 promulgated rules finalized in March of last year,  
11 specifying the classes of expenditures that would  
12 be covered under this provision. The intent of  
13 the independent expenditure provision in the  
14 Charter is to ensure that organizations cannot  
15 remain anonymous when they make public attempts to  
16 influence an election. When the public sees an  
17 advertisement against a candidate, for example,  
18 they should be able to identify exactly who is  
19 behind it. Of course, when a membership  
20 organizations, such as a union, communicates with  
21 its own members, the issue faces away as there is  
22 no anonymity. If a union communicates with its  
23 members about an election, the members know where  
24 it is coming from. Recognizing this, the Board  
25 exempted many communications between membership



1  
2 organizations and their members, in a subsequent  
3 rulemaking. However, the Board did not accept all  
4 comm--exempt all communications. That is where  
5 Intro 978-A comes in. This bill ensures that the  
6 associational rights of membership organizations  
7 are respected by exempting communications between  
8 members from the Board's independent expenditure  
9 reporting requirements. It is a narrow and  
10 targeted bill, and I expect that it will have  
11 widespread support among good government groups  
12 and membership organizations. I look forward to  
13 hearing testimony from the public on this ,and I  
14 thank Campaign Finance Board for being here today.  
15 Thank you, Madam Chair.

16 CHAIRPERSON BREWER: Thank you very  
17 much. And I appreciate the Campaign Finance  
18 Board's testimony, and I think in general this is  
19 really an esoteric discussion, 'cause the public  
20 understandably wants to know that politics, as  
21 much as possible, is as corruption free as  
22 possible. But if I think, if you think that the  
23 public understands what "independent expenditure"  
24 is or any of these other terms, I think it's good  
25 that we're here, because we're advertising it,

1 we're trying to educate people, but it's hard.  
2 And obviously the public might think there's a  
3 conflict of interest. We've got elected  
4 officials, right, they're running for office; at  
5 the same time, I think the public is often members  
6 of many of these organizations. I mean, obviously  
7 they're tenants, there are union members, there  
8 are people interested in different single issues  
9 that have PACs and who want to communicate to  
10 their members. So, and I think there's always  
11 this argument that we want to make sure that  
12 around the discussion of elections, there is  
13 energy and there is discussion, and there is, in  
14 my opinion, member to member discussion. And so  
15 it's a hard issue to try to come to a medium  
16 about, and an agreement. And I really appreciate  
17 that these discussions have taken place. 'Cause  
18 it's hard, it's the same issue that we have,  
19 should there be posters up around election time?  
20 And of course, we all get fined for that, if we--  
21 On the other hand, you know, is there any  
22 discussion about the election unless you see the  
23 posters? It's that, it's a back and forth of how  
24 do you get excitement about an electorate that  
25

1  
2 unfortunately doesn't register a lot, maybe it has  
3 something to do with the candidates, I don't know.  
4 I'm being facetious. But at the same time, how do  
5 you engender, you know, excitement. And that's  
6 the same thing with, I think, on the most basic  
7 level, what we're trying to do, we want no  
8 corruption in politics, we want transparency, we  
9 also want discussion and excitement and all that  
10 goes with it. So, it's a hard balance and I  
11 appreciate the discussions that have gone on. But  
12 to me that's kind of the overall viewpoint that I  
13 would have. So, I just, the Charter Revision  
14 Commission, we've all spent a great deal of time  
15 on the Charter Revision Commission, and I think  
16 one of my questions would be: Do you find any  
17 significance in the fact that the Revision  
18 Commission did not mention member-to-member  
19 communication in its final report? And instead  
20 they referred specifically to insuring that the  
21 public know who is attempting to influence their  
22 vote. Again, we're back to this balance issue of  
23 how do you do both? And I just want to know if  
24 you had any influence, maybe, in how the Charter  
25 Revision Commission was written, or if you--I know

1  
2 you were at a lot of the hearings. So I just want  
3 to know if you could answer that question.

4           AMY LOPREST: Well, I mean, we of  
5 course testified at the Revision Commission  
6 hearing and I guess, I mean, what--you know, the  
7 Board did have extensive hearings on the rules  
8 before they issue them, and I think that my  
9 testimony today is that the Board thinks that we  
10 came out with the right balance. The Charter  
11 revision, the question that voters were asked to  
12 approve in 2010 said whether the Charter should  
13 require the disclosure of expenditures made to  
14 influence the outcome of City election and  
15 referendum. The language in the Charter says,  
16 requires the disclosure of spending in support of  
17 or in opposition to a candidate referendum. As  
18 you mentioned, the report does not specifically  
19 mention the audience of any particular, it doesn't  
20 mention member-to-member, it doesn't mention the  
21 audience. I think the Board, in their drafting of  
22 the rules, tried to create an appropriate balance  
23 between internal communications and the public's  
24 need to have disclosure. And I think that, as I  
25 said in my testimony, that really two aims for

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2 disclosure, one is that the person receiving it is  
3 able to identify who is speaking to them; and also  
4 that the public can know who is supporting or  
5 opposing a candidate, as an overall matter. And  
6 so we, the Board's rules tried to balance those  
7 two issues, and exempted many member  
8 communications. But the most important, which as  
9 our research shows, mass mailings were not  
10 exempted from the disclosure requirements.

11 CHAIRPERSON BREWER: Okay. Then, I  
12 think there was an--all versions, and do you  
13 support the carve out in the bill for political  
14 clubs, and other groups, who's primary purpose is  
15 influencing elections? And the reason I'm asking  
16 this is, again, it's back to trying to educate  
17 people what is or isn't in the bill. And if you  
18 could answer that.

19 AMY LOPREST: Yes, I mean, we're  
20 happy that the latest version of the, of 978-A  
21 uses the language that I think comes from  
22 basically from our rules, that ensures that  
23 spending by political parties and clubs is not  
24 considered the same as other membership  
25 communications.

1  
2 CHAIRPERSON BREWER: I appreciate  
3 that because I think without saying that, people  
4 don't know that.

5 AMY LOPREST: Okay.

6 CHAIRPERSON BREWER: My other  
7 question is, can you talk a little bit in this  
8 past elections, when you talked about the large  
9 amount that went to mailings, that was under which  
10 version of independent expenditures? It's a  
11 little confusing.

12 AMY LOPREST: Okay, sorry to  
13 confuse you.

14 CHAIRPERSON BREWER: That's okay.  
15 No, and then also, I mean, you mentioned that  
16 there's a lot of mailings that go on in a local  
17 election, and I think that's true. But I also  
18 think, again, it's back to my issue of balance,  
19 that's a way to let a certain group of people know  
20 what's going on, because there really isn't any  
21 other way to communicate.

22 AMY LOPREST: Oh, and I guess, I  
23 mean, just to be clear at the outset, the Board  
24 obviously, you know, this is about disclosure,  
25 it's not about whether people can do something or

1 not. And of course mailings are an important  
2 part, way that anyone communicates about an  
3 elections. So, I mean, that's very important. To  
4 clarify the point about the numbers is it's two  
5 different, I guess, they're two different things.  
6 One is we, and when we were developing the rules,  
7 we looked at our, the experience in the 2009  
8 election, which obviously was before the Charter  
9 revision, before there was just disclosure  
10 independent expenditures. So, we used as a proxy,  
11 the way that candidates spend their communication  
12 budgets. And that's the numbers that I cited in  
13 my testimony that for citywide candidates, about  
14 30 percent of their communication budget is spent  
15 on campaign mailings, and in--sorry, I got to get,  
16 make sure I say the right number--in City Council  
17 campaigns, it's almost two-thirds of their  
18 communications budgets are spent on campaign  
19 mailings. The other numbers that I was talking  
20 about is really just--and the one example that we  
21 had when the rules were in existence for the  
22 District 12 special election that occurred this  
23 past November, where about \$12,442 in independent  
24 spending was reported, all for mailings, all for  
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2 mailings that were marked as membership  
3 communications. And that \$12,000 was about ten  
4 percent of all the funds spent on behalf of the  
5 winning candidate. So including the money that he  
6 spent on his campaign, that is about ten percent  
7 of the spending that was spent.

8 CHAIRPERSON BREWER: The issue of  
9 mailings, I think we've dealt with. What other  
10 kinds of member-to-member communication, again  
11 mostly for education of the public, would be  
12 allowed under the current bill that we're  
13 proposing here today? That you may have already,  
14 you know, been part of the old bill, also. What  
15 other kinds of member-to-member communication  
16 would be allowed?

17 AMY LOPREST: Well, the bill allows  
18 all members, allows all members--

19 CHAIRPERSON BREWER: And  
20 disclosure, right, but just in terms of  
21 disclosure, disclosure, disclosure.

22 AMY LOPREST: Yes, disclosure. But  
23 the bill also allows all, exempts the disclosure  
24 of any kind of member-to-member communication.

25 CHAIRPERSON BREWER: Right.



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2                   AMY LOPREST: The rules that the  
3 Board have promulgated already exempted some kinds  
4 of member-to-member communications. So, our, we  
5 exempted the internal communications between an  
6 organization and it's memberships, to print and  
7 spend, send a newsletter, to conduct phone banks  
8 of their membership, and that communications as  
9 part of the membership organizations' internal  
10 process to deliberate on who to endorse, were also  
11 exempted from our rules. And so, it would be  
12 exempted whether or not this bill passed.

13                   CHAIRPERSON BREWER: Okay. And  
14 going forward if the A version is to pass, how  
15 would you go about monitoring it, enforcing it,  
16 all the things that CFB does? And I know it would  
17 be similar, I assume, to what you do generally  
18 with candidates, but just to be clear.

19                   AMY LOPREST: Well, the rules have,  
20 provide for a web enabled disclosure system, which  
21 was in effect for the--

22                   CHAIRPERSON BREWER: Special.

23                   AMY LOPREST: --District 12 special  
24 election. It's a web-based disclosure system,  
25 that, you know, from all reports, from the people

1  
2 who used it and the people who have been trained  
3 on it, is a very easy to use disclosure system.  
4 So, you disclose, if you meet the thresholds, you  
5 disclose the payee, the candidate that you're  
6 supporting or opposing, and you submit a copy of  
7 the actual communication that you have--so, the  
8 actual--so, if you look on our website right now,  
9 at the Council District 12 special election,  
10 you'll see actual copies of the communications  
11 that were mailed.

12 CHAIRPERSON BREWER: Thank you.

13 Council Member Dilan?

14 COUNCIL MEMBER DILAN: Yeah, just a  
15 very brief question. It sounds to me, just by  
16 listening, you have issue only with one type of  
17 communication, and that's mass mailing, as it  
18 relates to the current bill. Is that accurate?  
19 Am I understanding your position correctly?

20 AMY LOPREST: Yes, that's the main  
21 change that the bill would have, you know, the  
22 thing that--the main type of spending that would  
23 be, that is already not exempted that would be  
24 exempted under the bill.

25 COUNCIL MEMBER DILAN: So every

1  
2 other form of communication, you believe is  
3 consistent with the rule except for mass mailing;  
4 and, if that's accurate, why do you feel that mass  
5 mailing specifically should be disclosed above the  
6 threshold amount that you indicated earlier in  
7 your testimony?

8 AMY LOPREST: Well, rules require  
9 disclosure of--we weren't just talking about  
10 membership organizations, the rules require  
11 disclosure of all the, just exception for members  
12 of--just to be clear--

13 COUNCIL MEMBER DILAN: Well, I'm  
14 talking about the relevant rule in question, yeah.

15 AMY LOPREST: So, when the board, I  
16 mean, the reasons are, the reason I gave in my  
17 testimony, which is that mass mailings are a very  
18 large percentage of the way candidates communicate  
19 with their, with voters, about elections. And  
20 when the Board conducted its hearings and did the  
21 analysis to determine what should be concluded in  
22 the rules, it was decided that because mailings  
23 are such a large portion of communication, that  
24 those should be included. Broadcast communication  
25 is also a large portion of communication, but

1  
2 broadcast is always necessarily public and couldn't  
3 just be member-to-member, you couldn't have a TV  
4 ad that was only for, to your members of your  
5 organization.

6 COUNCIL MEMBER DILAN: But  
7 oftentimes, let's say labor union will send out  
8 direct mail to its members. Would there be an  
9 issue with that, if it went just to its members?  
10 Or is the issue that a labor union, for say, could  
11 do a mailing to an entire Council district, per  
12 se. Is there a differentiation in the objection,  
13 or you object to both forms?

14 AMY LOPREST: Well, right now, if  
15 the--as the rules are written, both of those  
16 things would have to be disclosed. The mailing  
17 that went just to their members, and the mailing  
18 that went to everyone in a Council district.

19 COUNCIL MEMBER DILAN: I get that.

20 AMY LOPREST: And under the  
21 proposed law, only the mailing that went to the  
22 entire Council district would have to be  
23 disclosed. And the Board feels that those are  
24 both important types of communications, that there  
25 are two reasons for disclosure--One, being that the

1  
2 person receiving the message understands who it  
3 came from; and the other being that the public  
4 know how much support and where from a candidate  
5 is getting that.

6 COUNCIL MEMBER DILAN: So, just for  
7 my own clarity, the item before the Committee for  
8 consideration today would only prevent disclosure  
9 from a union to its own membership. Is that--?

10 AMY LOPREST: Yeah. I realize that  
11 it's a very narrow issue, but--yeah, yeah.

12 COUNCIL MEMBER DILAN: No, no, I  
13 just want to make sure that I understand it, just  
14 so it's correct, that's the way you see it.

15 AMY LOPREST: Yes.

16 COUNCIL MEMBER DILAN: Thank you,  
17 Madam Chair.

18 CHAIRPERSON BREWER: I appreciate  
19 that, Council Member, 'cause you know, it is  
20 complicated, it is nuanced, and it's good to have  
21 it clear for the public.

22 COUNCIL MEMBER DILAN: I mean, I  
23 think it's pretty simple, but I just want to make  
24 sure I'm not--

25 CHAIRPERSON BREWER: No, I

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appreciate it.

COUNCIL MEMBER DILAN: --confusing-

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AMY LOPREST: And I guess I, no,  
just to be perfectly clear, the law includes the  
parallel for corporations and shareholders, which  
is also part, you know - -

COUNCIL MEMBER DILAN:

[interposing] Yeah, I just used unions as an  
example because I believe they're more likely to  
do it than corporations are; however, with the,  
you know, the emergence of super PACs, certainly  
corporations may decide to do it as well. But I  
just, in my experience, it's been the labor unions  
that are more likely to be the entity that has  
done it. Thank you, Madam Chair.

CHAIRPERSON BREWER: I want to  
thank you. I don't have any more questions. I  
think that Council Member Dilan was helpful, you  
were helpful, in not only explaining it to us and  
what your concerns are, but also for the public.  
Yay, webcasting. Anyway, thank you very much.

AMY LOPREST: Thank you.

CHAIRPERSON BREWER: I really

1  
2 appreciate it. Our next panel, Susan Lerner, Adam  
3 Skaggs, Alice Camarda, and Jesse Layman. [pause,  
4 background noise] And if anybody else wants to  
5 testify, please fill out a slip with the Sergeant-  
6 at-Arms. Gene Russianoff is also here. How could  
7 anyone forget Gene Russianoff? You can go right  
8 to the panel, sir. [laughs] [pause, background  
9 noise] Whomever would like to go first.

10 SUSAN LERNER: I will start, Madam  
11 Chair, I'm Susan Lerner, I'm the Executive  
12 Director of Common Cause, New York. We've  
13 submitted written testimony, I'm not going to read  
14 it. But rather I'd like to make a few points.  
15 Common Cause consistently has been a strong  
16 proponent of disclosures of independent  
17 expenditures. Simultaneously and throughout the  
18 rulemaking process, in front of the Campaign  
19 Finance Board, we have consistently taken the  
20 position, as we have around the country, in  
21 helping to draft broad independent disclosure  
22 statutes, in states like Rhode Island and in  
23 Connecticut, as well as some of the statutes at  
24 the federal level. Our consistent position is  
25 that independent expenditures are communications

1  
2 made to the public, they do not encompass  
3 membership communications. And it makes us, quite  
4 frankly, nervous for the government to be deciding  
5 how an organization, whether it's the National  
6 Rifle Association, Planned Parenthood, the Sierra  
7 Club, a union, or a corporation, would be  
8 permitted to communicate with its own members.  
9 And so, we felt that the Campaign Finance Board  
10 rule was not appropriate. We don't think that a  
11 regulatory agency should be favoring one form of  
12 membership communication over the other, saying  
13 this has to be disclosed, this doesn't. We are  
14 concerned consistently about a chilling effect.  
15 We testified to that effect as part of the  
16 rulemaking, and we know there were other groups,  
17 as well as members of the City Council who  
18 testified along those lines. The CFB chose a  
19 different route and we think it's perfectly  
20 appropriate, as part of the general oversight of  
21 our representational government structure, for the  
22 Council to take up the question of whether the CFB  
23 got it right or not. We believe that Proposed  
24 Introduction 978-A is a good bill, and we support  
25 its passage. I'd also like to point out that it's



1  
2 my understanding that prior to the rule in the  
3 spring of 2012, the membership-to-membership  
4 communications were never examined by the CFB.  
5 And therefore, this bill, in essence, should it be  
6 adopted, simply continues the practice under our  
7 very strong campaign finance regulations and our  
8 strong campaign finance law, that was in place for  
9 the decades that we have had a successful system.  
10 And therefore, we see this bill as simply  
11 preserving the status quo ante, and not making a  
12 substantial change or undercutting the campaign  
13 finance law in any way. Thank you.

14 CHAIRPERSON BREWER: Thank you very  
15 much. Who would like to go next?

16 ADAM SKAGGS: I'll be happy to  
17 speak next. Thank you, Chair Brewer and the other  
18 Members of the Committee. I'm Adam Skaggs, I'm  
19 Senior Counsel at the Brennan Center for Justice.  
20 And like Ms. Lerner, I've also submitted written  
21 testimony, and in the interest of brevity and  
22 allowing everybody here to have a chance to speak,  
23 I will not read that testimony, but just refer it  
24 to your attention. And will be very brief. The  
25 Brennan Center throughout the process of the

1  
2 Campaign Finance Board's development of these  
3 rules has testified that we support an exemption  
4 from regulation for communications which are  
5 exclusively aimed at and received by members of  
6 membership organizations that are not coordinated  
7 with candidates or their campaign staffs, and that  
8 are not directed towards the general public.

9 Because we have taken this position, we support  
10 the proposal Intro No. 978-A, and we would urge  
11 the Committee and the Council to adopt it. Happy  
12 to answer any questions, but I'll--

13 CHAIRPERSON BREWER: Thank you very  
14 much, who would like to go next.

15 ALEX CAMARDA: I can go next. Good  
16 afternoon, Chair Brewer and Members of the  
17 Government Operations Committee, my name is Alex  
18 Camarda, I'm the Director of Public Policy and  
19 Advocacy at Citizens Union. We support Intro 978-  
20 A, believing communications between an  
21 organization and its members, or corporations and  
22 its shareholders, should not be impeded in any  
23 way, when those communications are not coordinated  
24 with a candidate and the entity in question does  
25 not exist primarily for the purpose of influencing

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2 elections. The bill before the Committee today is  
3 the product of several years of discussion and  
4 negotiation that occurred in response to the  
5 Citizens United decision in January 2010, that  
6 accelerated unlimited contributions to and  
7 spending by outside entities, operating  
8 independently of candidate committees. The 2010  
9 Charter Revision Commission addressed the issue of  
10 independent spending by political committees and  
11 nonprofit organizations, by putting before the  
12 voters a ballot question calling for the disclosure  
13 of independent spending by any entity spending  
14 \$1,000 or more in the year preceding an election,  
15 and the disclosure of donors for any entity  
16 spending \$5,000 or more in the year preceding an  
17 election. Following the voters' overwhelmingly  
18 approval of the referendum, the CFB promulgated  
19 rules on the referendum, soliciting input through  
20 three hearings in 2011 and 2012. During the  
21 hearings, the Board heard from good government  
22 groups, unions, member organizations, and others  
23 on the proposed rules, in particular on the issue  
24 of member-to-member communications. Citizens  
25 Union testified then, consistent with our position

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2 today, that member-to-member communications need  
3 not be disclosed if there is a disclaimer on the  
4 communication, indicating the targeted audience is  
5 the members of the organization. The CFB's rules  
6 ultimately exempted most member-to-member  
7 communication from disclosure, organizations today  
8 under the current rules can communicate with their  
9 members without disclosure, through routine  
10 newsletters and periodicals, telephone calls,  
11 hand-delivered printed materials, email and text  
12 communications, social media postings, member  
13 mobilization activities, and posting for free on a  
14 website. They also do not need to disclose  
15 internal deliberations about candidate  
16 endorsements, or discussions of in-person  
17 meetings. In fact, the only required disclosure  
18 of member-to-member communications that actually  
19 occurs in practice is mass mailings between  
20 organizations and their members. This will simply  
21 extend the exemption to include mass mailings  
22 sent by member organizations to its members.  
23 Intro 978-A represents a consensus approach  
24 between those organizations that would like to  
25 freely communicate with their members even while

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2 coordinating with candidates in recognition of  
3 their First Amendment rights of free speech and  
4 association, and those who want to ensure that our  
5 candidates do not rely too heavily on assistance  
6 provided to them by large membership  
7 organizations, and consequently may feel an  
8 unwarranted obligation to them after the election.  
9 Citizens Union believes the proper balance between  
10 these two important goals is to allow member  
11 organizations to communicate with their members in  
12 an unfettered manner, when done independently; but  
13 to count as a contribution any coordination with a  
14 candidate, that it goes beyond ministerial  
15 cooperation. Intro 978-A addresses the former  
16 while the recently released CFB opinion clarifies  
17 permissible communications between candidates and  
18 member organizations, so the line is more clearly  
19 drawn between routine and informative  
20 communications, and those in which candidates are  
21 campaigning directly to those members of the  
22 organizations. Thank you for the opportunity to  
23 testify today, and for the Council's engagement on  
24 this issue in general. I welcome any questions  
25 you may have.

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CHAIRPERSON BREWER: Thank you.

Who would like to go next?

JESSE LAYMAN: I'm happy to. I'm Jesse Layman, here representing Citizen Action of New York. Citizen Action of New York also supports Intro 978-A, I also submitted written testimony and I'll spare you from reading all of it, but I do want to summarize what we think is the essential point here. And that is that New York City's Campaign Finance System truly is a model for the nation. We support the system as it is, we think it's done outstanding work in the City and we support it so much we're trying to expand it to the State level. And the reason that we think that New York City's system is such a success is that it encourages participation in our local democracy, by candidates who know that they can get public matching funds; by donors who understand that their \$50 contribution really makes a difference here in New York City, because it counts as \$350 for the candidates; by grassroots activists and volunteers who understand that these people powered candidates are turning to them for support; and ultimate by the voters,

1  
2 who see that their Council Members are answerable  
3 to them, and not to a deep pocketed lobbyist. And  
4 so, we think that that essence, participation, is  
5 what makes this system so great. And we were  
6 concerned that the interpretation of the rules  
7 that would have potentially had a chilling effect  
8 on the participation of membership organizations,  
9 would have run counter to the essential essence of  
10 this very successful system. And instead, we  
11 think that the system should continue to encourage  
12 maximal participation by individuals and  
13 organizations, you know, in our local democracy,  
14 in such a way as to have the most informed and  
15 active and engaged electorate possible. And so we  
16 support Intro 978 and believe that exempting  
17 member-to-member communications within  
18 organizations is an essential part of preserving a  
19 very effective campaign finance system.

20 CHAIRPERSON BREWER: Gene

21 Russianoff?

22 GENE RUSSIANOFF: I'm Gene

23 Russianoff with the New York Public Interest  
24 Research Group. You have a copy of my written  
25 statement, and I would summarize my comments by

1  
2 saying that of the four previous groups who spoke,  
3 I would use the word "ditto." [laughter] And  
4 that's it.

5 CHAIRPERSON BREWER: Gene, you're  
6 too much. I think people, if you had spoken  
7 first, everybody would say ditto to you, so  
8 [laughter] for many years of all your work. Thank  
9 you. I have a couple questions. Council Member  
10 Mendez, do you have questions? All right. I  
11 mean, I guess my first question is, some of you  
12 are organizations that either maybe do  
13 preferential, we prefer this candidate, or some of  
14 you endorse candidates, so you have two roles here  
15 today, you're both policy, you know, and then also  
16 thinking about how you would act in a membership-  
17 to-membership way. So, for those of you who do  
18 that, my question is, do you think this will  
19 impact how you communicate, do you think this  
20 gives you enough leeway? Etc. In other words,  
21 you've all testified in support of this, and I  
22 appreciate that. But I'm just wondering, on the  
23 ground, how will that, if at all, impact how you  
24 communicate, if at all. If this bill should pass.  
25 This is the preference guy, right, you do



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preference.

ALEX CAMARDA: We do preferences during the primary endorsements--

CHAIRPERSON BREWER: I don't know what that is.

ALEX CAMARDA: --during the general election. We try to distinguish between the two.

CHAIRPERSON BREWER: Uh-huh.

ALEX CAMARDA: I think sometimes we just confuse people.

CHAIRPERSON BREWER: Yes.

ALEX CAMARDA: But anyway, we have been running an endorsement process at Citizens Union for over 100 years. For the most part, I don't think the existing rules or this bill change that. I think the advisory opinion that the CFB recently issued was helpful in that we now know which communications we can make to candidates related to our endorsement process, and we know that they won't count as a contribution because our communications are limited to telling candidates whether we've endorsed them or not. We also provide them with a questionnaire which they complete and they send back to us, that's strictly

1  
2 on policy issues. And we ask questions related to  
3 that questionnaire during interviews of  
4 candidates. So all of that's permissible, not  
5 counted as coordination and thus not an in-kind  
6 contribution.

7 CHAIRPERSON BREWER: Anybody else--  
8 Citizen Action, you do endorsements, right, or  
9 whatever it's called.

10 JESSE LAYMAN: Yes, we do. We just  
11 call it endorsements--

12 CHAIRPERSON BREWER: Great, okay.

13 JESSE LAYMAN: --we're not too  
14 fancy about it. Yes, and you know, it's certainly  
15 some of what Alex said is also true, I don't know  
16 how much we would be directly affected because of  
17 the size of our organization. I would like to  
18 imagine some world in which 100,000 more New  
19 Yorkers decided to become members of Citizen  
20 Action next week. Probably the only effective way  
21 for us to communicate with our 100,000 new members  
22 would be through the mail. And I think that we  
23 would have just as much of a right to communicate  
24 with our members if we were that much larger, as  
25 we do have a right to communicate with our members

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2 now, which maybe I can do in meeting room. So, I  
3 think that, you know, preserving that is important  
4 and speaks to the necessity of this bill. I also  
5 just think in terms of the conceptual questions  
6 that have embedded in your question, that  
7 membership organizations provide a useful service  
8 to their members and to our elections here in New  
9 York City. I give the example of, let's say you  
10 are in environmentally concerned voter, and you  
11 want to vote for candidates that you think are the  
12 best candidate in their given race on  
13 environmental issues. But every four years you  
14 have to choose between several high profile  
15 mayoral candidates, but also candidates for public  
16 advocate and comptroller and borough president and  
17 your local city council district, and because of  
18 our effective system in New York City, you may  
19 have four or five candidates to choose from, in  
20 each of those races. It may be very difficult for  
21 you on your own to figure out which of them is the  
22 best on the environment. They may have websites  
23 but they may say all the same thing on their  
24 website. And that's where an environmental  
25 membership organization provides you with an

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2 outlet you can choose to join, they can conduct  
3 questionnaires and interviews with the candidates  
4 and decide, you know, based on their experience  
5 and the information they glean from that process,  
6 who's the best; and then they can communication  
7 that, perhaps repeatedly, to their members. "We  
8 think this candidate is the best on our issues."  
9 That's a service, that's very valuable for us as  
10 voters in New York. And that's something we  
11 should encourage more of and not in any way  
12 discourage or have a chilling effect on.

13 CHAIRPERSON BREWER: Okay. Gene  
14 Russianoff, even though you did ditto, and I know  
15 that straphangers and NYPIRG don't endorse, but  
16 you certainly educate people. So my question is,  
17 do you think that this bill--and I think you do,  
18 but I wanted to get your more than ditto input--is  
19 consistent with a desire to ensure that voters are  
20 able to know who is attempting to influence their  
21 votes? In other words, we do want them to be  
22 educated, we don't want, we do want disclosure, we  
23 want transparency, we want education. What is the  
24 balance here?

25 GENE RUSSIANOFF: I think you

1  
2 stated it during the opening, which is there's a  
3 tension here between not having undue burden and  
4 stifling communications among members of an  
5 organization and the public, so I, no, I think the  
6 bill balances that, but I don't think there's any  
7 absolute answer.

8 CHAIRPERSON BREWER: Council Member  
9 Mendez?

10 COUNCIL MEMBER MENDEZ: Thank you,  
11 Madam Chair. Susan Lerner in her testimony went  
12 into this, and I don't know if ditto suffices, but  
13 I want the gentleman, all the gentlemen to tell me  
14 about do you support the political, the carve out  
15 for the political clubs that currently exist in  
16 their rules?

17 ALEX CAMARDA: Citizens Union  
18 supports it, it's something we requested in the  
19 bill. I think there's a distinct difference  
20 between an entity such as a union, that does not  
21 exist solely for the purpose of influencing  
22 elections--they engage in contractual bargaining,  
23 they have a relationship with their members that  
24 goes beyond influencing elections. And our  
25 concern about not disclosing communications that

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2 would be between a political club and its members  
3 or some other entity created solely for the  
4 purpose of influencing elections, is, that's not,  
5 that's an entity that I don't think their  
6 communications ought to be hidden from the public  
7 because this is their, this is their sole point,  
8 this is the reason they exist.

9 GENE RUSSIANOFF: We would share  
10 that view. Not saying ditto. [laughter]

11 COUNCIL MEMBER MENDEZ: That's  
12 another way of saying ditto, right? [laughs]

13 JESSE LAYMAN: I'm really not sure,  
14 I think I'd have to examine the question further.  
15 No, because I can see both sides of it, I think,  
16 that Alex makes some very strong points. I think  
17 it's also the case that, you know, if a political  
18 club truly were based on political interests of  
19 their members who had chosen to join, you could  
20 make the case for communication with them being  
21 exempt, as well. I think we have to study it  
22 further and decide whether that specific element  
23 was essential.

24 COUNCIL MEMBER MENDEZ: Thank you.

25 CHAIRPERSON BREWER: And then, this

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2 is more operational, but from your, you all have a  
3 lot of experience with campaign finance and with  
4 the bigger picture of the policy, but also  
5 operational. Do you think that this is something  
6 that the groups that are perhaps smaller will be  
7 able to understand well enough, even though we're  
8 sitting here, we've been through I don't know how  
9 many meetings, how many hearings, how many phone  
10 calls and how much discussion. So, independent  
11 expenditure is literally part of our DNA at this  
12 point. But that is not true of the public, it's  
13 not true of the small organizations. So, I don't  
14 know if anybody wants to just talk a little bit  
15 about whether you think, again, this balance that  
16 we're trying to create, is actually there in terms  
17 of what I'm trying to articulate. CFB is great,  
18 we understand it, not the world does.

19 SUSAN LERNER: Well, I think  
20 actually that the public, based on their  
21 perception of what's happened at the federal  
22 level, actually has a pretty good idea. And I  
23 think that Citizens United, the publicity around  
24 it, and our experience in the 2012 federal  
25 elections, both at the congressional level and the

1  
2 presidential level, with the prominence of super  
3 PACs, gives the public a pretty good idea of what  
4 independent expenditures are. And I personally,  
5 although we've not had an opportunity to focus  
6 group or do any polling on it, I'd be very, very  
7 surprised if any member of the public thought that  
8 hearing from a organization of which they were  
9 actually a member, would be, fall in the general  
10 category of independent expenditure as it is  
11 commonly used in the press, in political  
12 discussions, and in discussions around dinner  
13 tables here in New York City and elsewhere. So, I  
14 think in line with our position nationally and in  
15 other states, that's why we support a general  
16 exemption for membership communications, because  
17 the public doesn't think of membership  
18 communications as an independent expenditure.  
19 They think of them as a organization talking to  
20 their members and the member knows, number one,  
21 who is speaking; and the member also has a way to  
22 find out how much is spent, in speaking to them,  
23 which is different from the situation that you  
24 have with a true independent expenditure where  
25 some unknown or perhaps identified but not



1  
2 familiar speaker is trying to communicate, and the  
3 public doesn't have a means to identify who the  
4 speaker is or how much they're spending, and  
5 whether to credit that communication or not. When  
6 a union or a membership organization communicates  
7 with their members, that individual knows how they  
8 feel, and it's not always positive, about the  
9 organization that's communicating to them. And I  
10 think it's very different, and the public  
11 understands that.

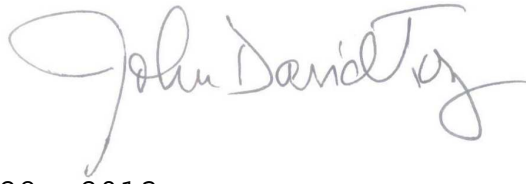
12 CHAIRPERSON BREWER: Well, that's a  
13 great way to end the hearing, and to indicate that  
14 New York City is way ahead of what's going on  
15 nationally, we're doing it a much more transparent  
16 way. So ditto to what was just said. Thank you  
17 very much. This hearing is now ended.

18 [gavel]

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "John David Tong". The signature is written in dark ink and is positioned to the right of the printed word "Signature".

Date February 28, 2013