New York City Council Committee on Standards and Ethics
November 21, 2016
Hearing on Bills 1345, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1358, 1361, 1362, 1363, 1364
Testimony of Henry Berger, Special Counsel to the Mayor

Good afternoon Chair Maisel and members of the Committee on Standards and Ethics. My name is Henry Berger and I am Special Counsel to the Mayor. Thank you for having me here today and for holding a hearing on these important initiatives.

The Campaign Finance Board, or CFB, is a nonpartisan, independent City agency overseen by five members, each of whom is appointed to a five-year term. The Mayor and Speaker of the City Council each appoint two members, and the Chairperson is chosen by the Mayor in consultation with the Speaker.

The CFB is responsible for administering the New York City Campaign Finance Program, which was established in 1988 by the New York City Campaign Finance Act. Under the City's campaign finance program, one of the strongest in the country, candidates for Mayor, Public Advocate, Comptroller, Borough President, and City Council who meet certain requirements are eligible to receive public funding for their campaigns.

This highly successful program provides candidates with a strong incentive to finance their campaigns by engaging with average New Yorkers instead of seeking large contributions from special interest groups. The program empowers more candidates to run for office, even without access to wealth. Anyone can build a viable, competitive campaign for office by relying on small donations from neighbors or colleagues. The City's voluntary public financing program matches small-dollar

contributions. Currently, participating candidates may qualify to receive public matching funds at a $6-to-$1 rate for contributions up to $175 from individuals who reside in New York City.

For example, if a New York City resident makes a $100 contribution to a participating candidate, it is actually worth $700 to the candidate's campaign. The matching funds program helps to amplify the voices of New Yorkers in City elections. Candidates desiring public funding are subject to strict contribution and expenditure limitations, and extensive record-keeping and disclosure requirements. In the 2013 elections, more than 44,500 New Yorkers — half of all New York City contributors to participating candidates — made a contribution to a City candidate for the first time. Three-quarters of them made small contributions of $175 or less. In the aftermath of *Citizens United v. Federal Election Commission*, and other campaign finance decisions that have made it more difficult to regulate money in politics, advocates of campaign finance reform have turned to New York City as a model worth emulating in other cities and states.

Before I discuss the specific legislation, I want to note again that the CFB is a non-partisan, independent agency and thus, for many of these proposals they will set forth their own position on these bills. I am glad that Amy Loprest has joined us today to outline CFB's position. Nevertheless, I am happy to share with you the Administration's thoughts on some of these bills.
My testimony on these bill should be viewed in the context of my prior testimony on the 8 bills proposed by the CFB. All of these bills together constitute a package of reform to the CFB legislation.

Intro. 1345 (Speaker)

This bill would require donor disclosure for all non-governmental entities affiliated with an elected official of the City, a concept which is defined by the bill to encompass several different circumstances

including for example where an elected official is a principal owner or officer of the entity. This information would be available on the website of the Conflicts of Interest Board, which would be responsible for administering the law.

This bill would also prohibit donations above $400 per year from people who are lobbyists, have city contracts, or who otherwise do business with the city or their close relatives, to non-governmental entities affiliated with an elected official. However, this limit would only apply to organizations that spend or expect to spend 10% or more of their annual budget on public-facing communications that include the name or picture of the elected official affiliated with them.

Speaking on behalf of the Administration only, we are generally supportive of the intent of this bill, but have concerns about the definition of "organization affiliated with an elected official", and which organizations would be covered. For example, as currently drafted, it's not clear whether an organization that has some, but not all board members, appointed by the Mayor, would be covered under this definition. Also, certain organizations whose members are appointed by the Mayor do not engage in fundraising but would be required to register and disclose under the bill as drafted. I note that some of the organizations potentially subject to this bill are already subject to extensive reporting requirements under other laws. In short, the current definition is overbroad and may be problematic. The relationship between the bill's potentially broad scope of coverage and its targeted purpose could also raise additional legal concerns given that the bill addresses the speech and governance of private entities. These concerns would need to be addressed in future discussions at a staff level.

Also, the definition of persons "with business dealings with the city" is expanded to include family members. Mayor's Office of Contract Services thinks this will be a logistical and technical issue

because it expands the current definition of "doing business" that is in the Campaign Finance Act. For MOCS, the current database doesn't accommodate the new data points required by the bill and the current process for collecting, processing, storing and reporting the data will have to be evaluated by MOCS/DoITT/COIB and potentially revamped.

It is important for the City Council to hear from the actual organizations and foundations that will be directly impacted by this legislation and I cannot speak on behalf of any of those organizations.

Intros. 1349 (Garodnick)

Intro 1349 would strengthen the requirements that the CFB software be compatible with the State Board of Elections software and would require that if the CFB disclosure software does not enable users to meet their disclosure requirements under State law then the CFB shall prepare a compliant electronic file for any requesting candidate and shall issue a report. This legislation will require CFB to be fully compatible with state law and we are supportive.

Intro. 1350 (Garodnick/Greenfield)

Intro. 1350 would require that candidates, at their own discretion, have the right to select a hearing before a tribunal of the Office of Administrative Trials and Hearings for alleged violations and proposed penalties. Currently, while the CFB clearly has the right to bring a case before OATH, it is not clear that accused candidates have the right to bring their case to OATH. We think it's fair to give both the candidate and the CFB this option.

Intro. 1351 (Greenfield)

Intro. 1351 would extend the time to deposit contributions from ten to twenty business days of receipt, except that cash contributions would be required to be deposited within ten business days of receipt. We think this is a fair amendment.

Intro. 1352 (Greenfield)

Intro. 1352 repeals the requirement that inquiry be made of each contributor whether they do business with the city. Every campaign is already required to check each donation greater than the "doing business' limit against the doing business data base. It requires only that candidates/campaigns have a form that sets forth the doing business limits. We have no objection to this.

Intro. 1354 (Greenfield)

Intro. 1354 requires the Board to provide a review of any disclosure statement at least 30 days before the next disclosure is required, giving the campaign an opportunity to make corrections as necessary. The bill also restricts the Board from invalidating matchable contribution claims in later reviews unless the Board obtains new information not available in the initial review. We think this is a fair amendment.

Intro. 1355 (Greenfield)

Intro. 1355 does three things: (1) specifies what documentation is required for contributions; (2) allows campaigns to fill out a contribution card when a card is required and have a donor sign the card; and (3) removes the obligation to collect a contributor card when the name and address of a donor are on a check or money order. We are generally supportive of the first two pieces, but oppose the third piece. It could potentially lead to fraud, and there is other important information a contributor card contains that should be captured.

Intro. 1356 (Lancman)

Intro. 1356 authorizes that a uniform standard be applied to the transfer of funds between a candidate's City campaign accounts *if* those accounts are filing timely disclosure statements. We have no objection to this amendment.

Intro. 1358 (Lander)

Intro. 1358 would permit use of campaign funds for activities related to holding office, provided that public funds could not be used for that purpose. We think this is a fair amendment.

Intro. 1361 (Salamanca)

Intro. 1361 requires the doing business database to provide the *dates* the person on the list is considered "doing business" and it would require a list of people removed from the doing business list in the past 5 years to be posted on the City's website. We think this is a fair amendment.

Intro. 1362 (Salamanca)

Intro. 1362 would require that contributions in a special election be counted, both for the threshold for eligibility and for matching, the same as contributions in a primary or general election. We support this change.

Intro. 1363 (Salamanca)

Intro. 1363 would permit candidates to rescind their written certification of participation in the matching funds program until the ninth Monday preceding the primary election, or until they have received public funds, whichever comes first. This will permit a candidate to determine whether to

participate after designating petitions have been filed by potential opposing candidates. Currently, once a candidate opts in they cannot opt out. We think this is a fair amendment.

Intro. 1364 (Van Bramer)

Intro. 1364 prohibits CFB staff, other than an independent clerk hired for the specific purpose – to attend executive sessions of the Board. We have no objection to this bill.

3 other proposals

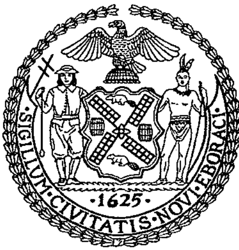
I would also like to note that the current CFB proposals do not address CFB's longstanding reliance on post-election auditing and post-election enforcement procedures, which threaten the proper administration of public matching fund payments. We would like to discuss with the Council legislation that would enable completion of CFB enforcement and payment determinations earlier in the election cycle. CFB's current deferral of all final enforcement actions creates an unduly burdensome and lengthy CFB post-election audit process. Indeed, the CFB did not even begin to issue final audit reports for public fund recipients in the 2013 elections until May 2015. Rather than piecemeal adjustments, the City needs a comprehensive overhaul to give every candidate a full and fair opportunity to respond to and resolve specific allegations in a timely manner before the election. No candidate should be deprived of any public matching funds he or she has earned on the basis of unresolved allegations. This would also assure that post-election audits are concluded in a timely fashion.

Second, when a candidate has to respond to an issue raised by the CFB, the costs for legal fees for responding to that issue are not currently exempt from the expenditure limit. So, if the CFB raises an

issue about a filing and the compliance lawyer responds, his/her fees count against the spending cap. We believe this should be changed.

Third, candidates who face a primary and a general election need to raise money for the general during the primary season. Those fundraising expenses, since they are made prior to the primary, count against the primary cap, not the general cap. We believe these funds should be attributed to the general election cap, not the primary cap.

We look forward to working with the Council on these proposals and welcome your questions.



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD
2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400
(212) 437-0705 (Fax)

Richard Briffault
Chair

Fernando Bohorquez
Board Member

Anthony Crowell
Board Member

Andrew Irving
Board Member

Erika Thomas
Board Member

Carolyn Lisa Miller
Executive Director

Wayne G. Hawley
Deputy Executive Director & General Counsel

Julia Davis
Special Counsel & Director of Annual Disclosure

Michele Weinstat
Director of Enforcement

Alex Kipp
Director of Training & Education

Varuni Bhagwant
Director of Administration

Derick Yu
Director of Information Technology

Testimony before the New York City Council
Committee on Standards and Ethics
Concerning Int. No. 1345-2016

Carolyn Lisa Miller
Executive Director, NYC Conflicts of Interest Board
November 21, 2016

Introduction

I am the Executive Director of the New York City Conflicts of Interest Board, and I am here today with the Board's Deputy Executive Director and General Counsel, Wayne Hawley. We are here on behalf of COIB to offer testimony about Int. No. 1345-2016, "a Local Law to amend the administrative code of the city of New York in relation to conflicts of interest and organizations affiliated with elected officials."

We at COIB support a legislative approach to addressing the management of City-affiliated not-for-profits. We agree with the call made on July 6, 2016, by the New York City Campaign Finance Board in its "Statement on Determination Regarding the Campaign for One New York": "The Board calls on the Council to pass legislation to close this loophole and amend the law to more closely regulate fundraising by elected officials and their agents for non-profit organizations, especially 5-01(c)(4) entities. In addition to placing clear limits on fundraising solicitations, any reform should include comprehensive public disclosure, and audits to ensure the disclosure is complete and accurate."

Background

In the absence of a legislative approach, COIB has for the past 12 years endeavored to provide guidance to public servants about fundraising for City-affiliated not-for-profit organizations, which the Board defined in its Advisory Opinion No. 2003-4 as entities "closely affiliated with the City" where the "funds are raised [to] support the purposes and interests of the City." Advisory Opinion No. 2003-4 at 2. Since the issuance of that Opinion, COIB has received from City agencies biannual disclosures of donations made to those agencies and their affiliated not-for-profit organizations, as provided for in that

Opinion. Of the reports that the Board collects twice each year, approximately twenty come from City-affiliated not-for-profits. Specifically:

> As an additional safeguard, all City offices and agencies (including, without limitation, those of all elected officials) will be required to publicly disclose twice a year all donations received by them to either the City or to a not-for-profit entity affiliated with that office or agency, which exceed $5,000 in aggregate value from a single donor. More particularly, each office or agency must file a public report with the Board by May 15 and November 15 of each year (commencing November 15, 2003), disclosing (a) the name of each person or entity making a donation in the six-month period ending March 31 and September 30 respectively, (b) the type of donation received from each such person or entity (i.e., money, goods, or services), (c) the purpose of the donation (e.g., renovation of Gracie Mansion), (d) the estimated value of all donations received during the reporting period from each such person or entity, and (e) the cumulative total value of gifts received from each such person or entity over the past twenty-four (24) months. If the agency is unable reasonably to estimate the value of a donation of goods or services, then the agency may describe the goods or services with sufficient particularity to enable readers of the disclosure statement to make a judgment as to the value of the gift. Monetary values shall be reported as being within one of the following categories: A if it is $5000 to under $20,000, B if it is $20,000 to under $60,000, C if it is $60,000 to under $100,000, D if it is $100,000 to under $250,000, E if it is $250,000 to under $500,000, F if it is $500,000 to under $1,000,000, and G if it is $1,000,000 or more.

Advisory Opinion No. 2003-4 at 22-23.

We at COIB commend the Council's effort to codify and expand the limited reporting scheme the Board implemented in Advisory Opinion No. 2003-4. We further support the effort to place some limitation on the types of contributions to City-affiliated not-for-profits, an element that was not part of the Board's Advisory Opinion. Finally, we support the implementation of an administrative enforcement mechanism both for the reporting and the contribution-restriction components of the regulatory plan, something beyond the scope of COIB's authority in its issuance of Advisory Opinion No. 2003-4.

COIB's Concerns about the Proposed Legislation

However, we at COIB have a number of specific and substantial concerns with the proposed legislation as drafted. We will list a number of those concerns individually and with particularity to enable the Council both to most fully appreciate COIB's perspective on this matter and for possible use in any amendments to Int. No. 1345-2016. Although COIB remains

uncertain whether we are the right agency to administer this legislation, we offer this list in the spirit of readiness and willingness to work with the Council and the Administration on making this legislative approach as clear, effective, and successful as it can be.

The list that follows tracks the issues as they arise in the language of the proposed legislation Int. No. 1345-2016:

1. The title of the Chapter is "Chapter 9. Organizations Affiliated with Public Officials." Given the content of the legislation, it should read "Organizations Affiliated with Elected Officials."

This is a small point, but it is illustrates a larger issue that concerns COIB with this legislative approach. The legislation appears intended to regulate only a subset of organizations affiliated with public servants, namely, only those affiliated directly with elected officials. Based on our reading of the legislation – and if this is not what is intended by the legislation, the legislation is unclear – the reporting requirements would not apply to organizations affiliated with other high-level public servants, like the Fund for Public Schools or the Fund for Public Health, each of which currently provides biannual reports to the Board pursuant to Advisory Opinion No. 2003-4. If, on the other hand, the bill is intended to apply to all City-affiliated not-for-profits, then the current title should stay, but, as discussed further herein, the definition of affiliated organizations must be modified to plainly include not-for-profits affiliated with any City agency, not just the offices of the electeds.

2. The definition of "donation" includes a "loan." Thus, by the terms of the legislation, an organization affiliated with an elected official that spends or reasonably expects to spend 10% of its expenditures on elected official communications would be prohibited from receiving a loan of $400 from almost any major financial institution, since most such institutions have business dealings with the city. This seems unduly prohibitive and an unintended result.

3. The definition of "elected official communications" is unworkable for a variety of reasons. It is absolutely critical to clearly define the entities that would be subject to the contribution limits, and the definition in the proposed legislation does not seem to be capable of reasonable interpretation. This would thus leave the responsibility of defining the scope of covered communications and of calculating their costs to the unchecked discretion of an independent administrative body (here, COIB). It may well be that there is a regulatory scheme elsewhere – from tax laws, lobbying laws, or charitable corporation laws – that not only has a more precise standard for distinguishing a subset of not-for-profits from the universe of not-for-profits, but also has a body of standing precedent that could assist in the interpretation of that standard. Such a scheme does not appear to be present here, and, without it, COIB, or any other entity overseeing this regulatory regime as drafted, would be at sea.

4. The definition of "organization affiliated with an elected official" does not include the wide range of City-affiliated not-for-profits that are controlled not by an elected official

but by an appointed official, such as the Schools Chancellor, who has long headed the DOE's Fund for Public Schools.

5. The definition of "organization affiliated with an elected official" fails to define the covered organizations by the purpose of the organization. A covered organization should have as its purpose the furtherance of the official duties of that public servant's City position. Under the current definition, if a Council Member created a local chapter for the alumni of his or her college, that chapter would be covered by this legislation.

6. The definition of "organization affiliated with an elected official" covers organizations created by an elected official during the previous two calendar years. Thus, if a member of the public created an organization for local pet owners, successfully ran for elective office one year later, and then turned full control of that organization over to a fellow pet lover, that organization would still be covered by this legislation.

7. The definition of "organization affiliated with an elected official" covers organizations in which the official is a "principal owner." The legislation is designed to regulate receipt of contributions, which only flow to a not-for-profit organization, of which there is no owner.

8. The definition of "person with business dealings with the city" includes not only those persons listed in the doing business database but also the "domestic partner, spouse, or unemancipated child of such a person." In our view, to extend the definition in this way is bad both as a matter of practice – as will be discussed below – and as a matter of policy, especially as social progress moves forward to an understanding of marriage or domestic partnership in which the partners and spouses are able and expected to function independently of each other, without one's interests or goals subsumed by the other. Furthermore, in light of the prohibition on contributions from corporations, labor organizations, and persons listed in the doing business database, the addition of spouses, domestic partners, and unemancipated children would, as a practical matter, prevent very little in addition – and, in any event, any such contributions would be disclosed.

9. Section 3-903 of the proposed legislation prohibits the acceptance of certain contributions by organizations "that spend or reasonably expect to spend at least 10% of their expenditures in the current or next calendar year on elected official communications." This definition, critical to this legislation, remains unworkably vague, in that it presents great uncertainty about what will be considered an elected official communication, how the cost of that communication will be determined, and how that cost will be attributed to the 10% threshold of expenditures.

10. The timeframe of the 10% threshold determination also seems unworkably uncertain. The contribution prohibition would apply if the organization "spends or reasonably expects to spend" that 10% in the "current or next calendar year." To impose upon relatively small not-for-profit organizations functioning in the City's interest the obligation to assess their expenditures two full years in advance seems unreasonable and unrealistic.

11. The legislation prohibits the acceptance of donations from a person that the organization "knows or should know has business dealings with the city." Since this category should be defined as being listed in the doing business database, there is no need for the "should know" language.

12. COIB strongly recommends that the requirement for a written submission of "business dealing" status found in § 3-903(4) be removed. To be required to ask every person who seeks to contribute $400 whether her spouse or domestic partner does business with the city, and, if the answer is no, to put that fact in writing, and then to be required to maintain that written statement for three years is cumbersome and labor-intensive at best, with little added value to the regulatory framework. This administrative burden would no longer be necessary if domestic partners, spouses, and unemancipated children were removed from the definition of "person with business dealings with the city," as recommended.

13. The legislation does not make clear which "person" is subject to the penalty provisions in § 3-905. In our view, the only person who should be liable for any penalty is the high-level public official controlling the organization – whether that is an elected official or an agency head – and the legislation should so state.

14. The proposed penalties are too high, particularly for offenses with a "not less than" provision. The "not less than" provision is unwise and should be removed.

15. The penalty provision found in § 3-905(3) should be removed once the related requirement for written submissions of "business dealing" status found in § 3-903(4) is removed.

16. The reporting schedule described in § 3-902 is "annually by August 1." The reporting schedule under Advisory Opinion No. 2003-4 is biannual: May 15 for the six-month period ending March 31 and November 15 for the six-month period ending September 30. We see no reason to diminish the frequency of reporting, and the sunlight goals of the legislation will be amplified if disclosure is closer in time to the contributions and expenditures in question. The requirement to report twice a year would also accommodate the requirement to refund donations over $400 from persons added to the doing business database within 180 days of the donation in that a donation would be disclosed in the report for the six-month period in which it is received and a return of any such donation would be disclosed in the report for the six-month period in which it is refunded.

17. Under § 3-902(f), all affiliated organizations, whether or not they meet the 10% expenditure threshold, are required to report the name, address, date of donation, and amount of donation for any donation received from a person known to have business dealings with the city. In our view, only those organizations meeting the 10% threshold should be required to report all donations from persons with business dealings with the city, while all organizations should report donations of $1,000 or more, as described in § 3-902(g).

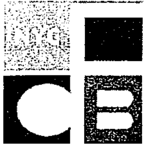
18. The requirement in § 3-902(4) for affiliated organizations to retain donor inquiry responses for three years should be removed once the related requirement for written submissions of "business dealing" status found in § 3-903(4) is removed.

19. It needs to be made clear in § 3-905(3)(a) that "any person who violates" would be the elected official (or agency head) who controls the affiliated organization.

20. Under Section 4 of the proposed legislation, the contribution restrictions would take effect on January 1, 2018, and the reporting and penalty requirements would take effect on January 1, 2019. In COIB's view, only the penalty provisions of this legislation should be delayed; the reporting requirements should take effect at the same time as the contribution restrictions.

Conclusion

In conclusion, COIB salutes and supports the Council's efforts to implement a legislative approach in this arena, but we have a substantial array of concerns about the legislation as currently drafted. We stand ready to work constructively to help craft legislation that effectively advances the goals that we share.



New York City Campaign Finance Board
100 Church Street, 12th Floor, New York, NY 10007
212.409.1800 | www.nyccfb.info

Testimony of Amy Loprest
Executive Director
New York City Campaign Finance Board

City Council Committee on Standards and Ethics
November 21, 2016

Good morning Chair Maisel and members of the Committee on Standards and Ethics. My name is Amy Loprest, and I am Executive Director of the New York City Campaign Finance Board. With me are Sue Ellen Dodell, General Counsel, and Eric Friedman, Assistant Executive Director for Public Affairs.

Today is our first opportunity to appear before this committee. As such, I hope you will permit me to use part of my testimony to talk in some detail about our work, which will provide context for the legislation before you.

First, we commend the Council for addressing the clear danger of influence-seeking raised by the activities of political non-profits connected with elected officials. Under the Campaign Finance Act, a businessman bidding on a city contract can give no more than $400 to a candidate for mayor. As the Board noted in July when it issued its final determination on the Campaign for One New York, the law allows the same businessman to give a six-figure contribution to a political non-profit entity associated with the mayor.

Int. No. 1345 seeks to close this loophole, and the Board is pleased the Council is seeking to strengthen our protections against the possibility and perception of corruption associated with money in city politics.

We note the several concerns regarding the bill's drafting and implementation raised by our colleagues at the Conflicts of Interest Board. We urge the Council to take those into account, and we will be available to assist in any way they or the Council deems appropriate.

Our comments on this legislation are based on our experience administering the strict, low "pay-to-play" contribution limits in the Campaign Finance Act for individuals doing business with city government. Those limits apply to individuals listed in the Doing Business Database, while the limits proposed by Int. No. 1345 would apply also to spouses and children of those individuals.

At present, the database does not include the names of covered individuals' family members. We share the Council's expectation that the penalties established in Int. No. 1345 will deter most questionable contributions. Nevertheless, any successful implementation of the bill as drafted must ensure sufficient information is available to allow the covered non-profit entities to comply with the law, and to provide the oversight body with a basis to identify potential violations.

Again, the Board supports this measure and urges the Council to adopt it once these issues can be resolved.

However, this important piece of legislation is accompanied by several "poison pill" measures that would significantly weaken the CFB's oversight of the matching funds program. These measures should not be the cost of implementing a commendable and necessary reform.

We are disappointed the Council is considering these significant changes to the Campaign Finance Program only ten months before many of its members will appear on primary ballots in 2017.

The Act requires the Board to issue its recommendations for legislative changes three years before the next election. This timeline provides ample time to assess the potential impact of changes, discuss the policy, and ensure their smooth implementation. Those recommendations are informed and supported by comprehensive analysis of data from the previous election and our experience administering the Program. Following the last election, we issued our recommendations on September 1, 2014, and the Council heard some of those proposals on May 2 of this year.

If the proposals under consideration today had been issued on the timeline that applies to the Board's post-election report, there would have been more than sufficient time to do the fact-finding and analysis about the potential impact these bills may have on our system.

We urge the Council to delay consideration of many of these proposals until after the 2017 elections. This would allow for a thoughtful analysis of their impact, and deflect accusations that members are seeking advantage for their own campaigns.

Enacting these proposals now will disrupt the Board's preparations for the election year, and require hasty decisions about implementation.

Because of its oversight role as administrator of the city's public campaign finance system, the Board was created to be nonpartisan and independent.

Through seven citywide election cycles, independence has been key to the success of the Program. This isn't just a talking point; it is an important policy issue. The Board's independence gives the public confidence that enforcement decisions are made based on the facts and the law—not on politics.

Unlike other elections enforcement entities at the state or federal level, the Campaign Finance Board isn't beholden to political parties or elected officials—the Board is accountable to the public, with a primary responsibility to protect city taxpayers' investment in a fairer, cleaner campaign finance system. Several of the proposals under consideration would intrude on the Board's independence.

Int. No. 1364, which would interfere with the proper functioning of the Board's enforcement process, is one of these. State Open Meetings Law allows public bodies like the Board to decide who is allowed into their executive sessions. By preventing the Board from consulting with its own staff during executive session, Int. No. 1364 would deny the Board critical expertise and counsel as it conducts its deliberations.

Continued public support for the matching funds program depends on continued public confidence that those funds are in good hands. To protect the public's investment in cleaner politics, the Board audits campaigns for city office.

The requirements of the CFB's regular audit and enforcement process are rigorous and complex, with many steps between the campaign's first filing and the issuance of its final audit report. Imposing new discrete mandates or deadlines on a particular step in that process can affect all of the others. Several of these bills propose significant changes to various steps of the audit process. The Board believes these changes are likely to produce unanticipated and unwelcome consequences.

Regular audit reviews start as soon as a campaign begins filing disclosures with the CFB. Before the election, auditors review documentation provided by campaigns along with each disclosure statement. These reviews confirm that contributions are consistent with the limits in the Act, and ensure that contributions to be matched with public funds meet the requirements of the law.

The results of these **statement reviews** are sent to campaigns. If information for a particular contribution is missing or incomplete, campaigns have the opportunity to provide documentation that makes the contribution valid for matching funds.

Int. No. 1354 would impose strict, unreasonable deadlines on those reviews. Early in the four-year election cycle, work on the statement reviews coincides with work on the audits from the previous election; the tight deadlines on statement reviews would draw staff resources away from those audits.

During the election year, those reviews are performed on a shorter timeline. In the last few months before the election, as the Board prepares to issue payments of public matching funds, the reviews are performed within four business days as required by the Act.

In our experience, most candidates make an honest effort to comply with the Program's requirements, which can be strict. In rare cases, candidates seek to defraud the city by submitting forged or altered documents in an attempt to obtain public matching funds. A Council candidate in last year's special election in Queens was indicted in just such a scheme.

Int. No. 1355 would make it more difficult for CFB auditors to detect these rare instances of fraud and prevent payment of public funds, by lowering our documentation standards and requiring that CFB staff accept altered or "corrected" documentation from campaigns.

Instead of lowering our standards, the better way to help candidates to document their contributions is through the smart use of technology. We created NYC Votes Contribute, an online fundraising platform for candidates that connects directly to C-SMART, to simplify the requirements for credit card contributions. The Contribute platform collects all the information necessary to ensure eligible contributions are valid for matching funds. Contribute also creates and submits the documentation for credit card contributions directly to CFB.
The platform was launched in February and, to date, 50 candidates have used it to raise over 1,600 contributions totaling more than $320,000.

Shortly after the election, CFB auditors send campaigns an **initial request for documents (IDR)** related to the campaign's spending. Those documents are reviewed to ensure that the campaign's reporting was complete and accurate, and that spending was related to the campaign. For campaigns that received public funds, the documents can show whether the public funds they received were spent on qualified purposes. Campaigns have 30 days to respond to the IDR.

After the staff reviews those documents, we prepare and send most campaigns a **draft audit report (DAR)** that outlines any preliminary findings; the Act requires those reports to be sent to campaigns within eight to ten months of the last disclosure filing for the election cycle. Campaigns can address each finding with an explanation or further documentation; they are required to respond within 30 days, though extensions are often granted to campaigns that request them.

The campaign's response to the DAR is reviewed by CFB staff. Afterwards, if evidence of a violation remains, the staff prepares and sends a **notice of alleged violations (NAV)** with recommended penalties, the amounts of which are based on fixed guidelines that are published and available for review on the CFB's website. Deviations from the penalty guidelines generally are left to the Board's discretion.

Assuming the campaign's responses have been provided timely, the Act requires the NAV to be sent within 14 to 18 months of the last filing of the cycle. If the campaign has requested extensions or missed deadlines to respond, the NAV may be delayed.

The NAV concludes the CFB's investigation, and the adjudicatory process follows. The Charter requires a strict separation of the Board's investigative and adjudicatory powers, and forbids staff members from performing both functions. As there is at many law enforcement agencies, there is a strict separation of these functions within the CFB. As Executive Director, I do not review or participate in the investigative work of the Audit staff, and neither does the General Counsel.

Prior to a hearing, campaigns are given another chance to provide additional materials in response to the NAV. Candidates who wish to contest the staff's findings have two choices: they can appear at an informal hearing before the Board, or participate in a formal adjudication before the Office of Administrative Trials and Hearings (OATH).

Candidates or campaign representatives often appear before the Board without legal counsel, and often request leniency based on the circumstances of their election. A review of Board determinations issued since the start of the 2013 calendar year shows that many of those requests are honored. Of the candidates who appeared before the Board during that time, 65 percent had their penalties reduced. In practically all the other cases, the Board accepted the penalties recommended by staff under the published guidelines.

Int. No. 1364 seeks to correct a problem that doesn't exist. Moreover, by interfering in the Board's deliberations, this legislation would deprive the Board of the expertise of its own staff in those cases where it seeks to reduce penalties without disrupting precedent.

An OATH trial is a more formal proceeding, with stricter rules of evidence and procedure. To initiate a case, the enforcement agency must serve the respondent with a petition. Board practice is to provide campaigns the opportunity to respond before we docket the case with OATH. By placing a new, unrealistic deadline for the Board to docket an OATH proceeding upon request, Int. No. 1350 would effectively deprive candidates of their pre-hearing opportunity to mitigate the penalties recommended by staff.

After the Board hears the candidate's arguments, receives a recommendation from an administrative law judge following an OATH trial, or reviews a set of uncontested findings from staff, it issues its determination.

The staff takes the Board's determination and issues the **final audit report (FAR)**, which is sent to the campaign and published on the CFB website. In a citywide election cycle, there can be between 250 and 300 candidates who receive an audit review. The majority of those candidates receive final audits that reflect substantial compliance with the rules—during a review of the 2009 election cycle, we found that 59 percent of all candidates for City Council were assessed no penalties.

As we've explained, the audit and enforcement cycle is a complex process with many steps, and we understand these complexities pose challenges for candidates. It is necessarily rigorous—we oversee a system that paid more than $38 million in taxpayer funds to candidates in the last four-year cycle. The candidates who receive those public funds should be accountable for their use.

Still, the matching funds program fulfills its objective of maximizing small-donor engagement only if candidates choose to participate, and our oversight should not impose a barrier to participation.

We meet the deadlines mandated by the Act, but we know we must go beyond that. We need to do the audits smarter and more efficiently by doing a better job of prioritizing our staff time and resources by better assessing risk.

This is a goal during every election cycle, across the entire agency. To help candidates better handle compliance, we are improving our trainings to provide more detailed and focused information in more convenient formats—including e-learning and one-on-one consultations. We are improving our software resources for campaigns, including C-SMART.

And we are closely reviewing our audit standards to ensure the next round of post-election audit reviews will be done smarter and better. We recently created a Quality Assurance team in our Audit Unit to help us find ways to meet those goals.

Any significant changes to the audits must take a broad view of the entire audit process, and focus on the essential objective of protecting the public fisc. To audit smarter and better we must simplify, rather than add complexity.

We welcome the Council's thoughtful participation in this conversation, but it is important the Council consider that hastily imposing new mandates on the audit process will likely give rise to unintended consequences.

We address each of the proposals before the committee below. I want to acknowledge that Council staff has consulted with CFB staff on many of these proposals. Many of the introduced bills reflect feedback provided by CFB staff, though many of the objections we've raised remain in the introductions under consideration today.

We appreciate the opportunity to provide our feedback on these bills, and will continue to do so in any forum we are offered.

Specific Comments on the Proposed Legislation

Int. No. 1345: Conflicts of interest and organizations affiliated with elected officials

The bill would prohibit donations above $400 per year from those doing business with the city (matching the limits in the Act) to non-profit political advocacy entities controlled by an elected official; those limits would apply only to entities that make significant expenditures on public communications featuring the public official. It would require disclosure of fundraising activities from a broader range of non-governmental entities controlled by an elected official, whether or not they engage in public-facing communications.

> The Council should be commended for addressing the danger of influence-seeking raised by the activities of political non-profits connected with elected officials. Under the Campaign Finance Act, a businessman bidding on a city contract can give no more than $400 to a candidate for mayor. Under current law, the same businessman can give a six-figure contribution to a political non-profit entity associated with the mayor. The proposed legislation seeks to close this loophole. Though the proposal could be more ambitious, and the Board is pleased the Council is seeking to extend the city's protections against the possibility and perception of corruption in city government.
>
> While the strict, low "pay-to-play" limits in the Campaign Finance Act apply to individuals listed in the Doing Business Database, the limits proposed by the bill before this committee would apply also to spouses and children of those individuals. The current database does not include family members of listed individuals, and any successful implementation strategy must consider a plan to gather information that will allow the covered non-profit entities to comply with the law.

Int. No. 1349: Compatibility of campaign finance board disclosure software

When the CFB's disclosure software, C-SMART, cannot enable candidates to complete and submit their filings to the State Board of Elections (BOE), the bill would require that CFB

prepare and provide to candidates an electronic file that satisfies their BOE filing obligations. It also requires CFB to report to the Council and Mayor on the issue.

The bill does not solve the underlying problem. It makes a new, unprecedented requirement for CFB to report on its operations to the Council and Mayor, which is an invitation to micromanage.

The Act already requires that C-SMART be fully compatible with the State BOE. Many of the places where the two systems were incompatible have been eliminated; one technical issue remains outstanding.

Successful implementation of this requirement is dependent on active cooperation with NYSBOE, which has been elusive and difficult to maintain. NYSBOE is in the process of developing their new disclosure system, which is on schedule to be completed in August 2017. Because of a lack of communication from NYSBOE staff, it is unclear what impact, if any, the new system will have on C-SMART compatibility. Ultimately, it is impossible to direct the state BOE's cooperation through a local law.

Int. No. 1350: Adjudication of campaign finance violations

The bill would codify the right of candidates to contest findings of violation before the Office of Administrative Trials and Hearings (OATH) and require that a case be "docketed by the board within thirty days" of the candidate selecting an OATH adjudication.

The bill imposes an unrealistic deadline on events that are out of the Board's control.

An understanding of OATH procedure makes it clear that 30 days from the candidate's request is not a reasonable time frame to require a case be docketed. Our regular audit process allows campaigns to provide a substantive response to their Notice of Alleged Violations (NAV), which can resolve potential violations before going to OATH or an

informal Board hearing. A more aggressive timeline, such as the deadline proposed here, would deprive campaigns of this opportunity.

Enacting a tight deadline to commence OATH proceedings would advantage candidates with the resources to hire counsel to represent them in a formal OATH adjudication. A more equitable proposal would apply to all candidates, regardless of whether they choose OATH or the more informal Board proceeding.

Int. No. 1351: Deposits of campaign contributions

The bill would extend the time that candidates have to deposit contributions in the bank. It is currently 10 days, with an exception for checks deposited by Council candidates in the first three years of the four-year election cycle. The bill would extend the requirement to 20 days for all contributions throughout the election cycle except for cash contributions, which must still be deposited within 10 days.

The bill would weaken proper controls over campaign funds.

The Act already allows Council candidates 20 days to deposit checks during the first three years of the four-year cycle. During the election year, campaign fundraising traditionally increases, and campaign should want to deposit checks as soon as possible to have the funds available. Further, contributions should be deposited timely, so that funds enter the bank account in a way that CFB staff can properly authenticate the campaign's reporting.

CFB rules now require campaigns to provide copies of their bank statements with their disclosure statements, to provide for a more timely and thorough review of each disclosure statement, which in turn will reduce the post-election audit burden. Allowing candidates more time to deposit their contributions will make those reviews less accurate.

Int. No. 1352: Inquiring if a person or entity is doing business with the city

The bill ends the requirement that candidates ask their contributors if they are doing business with the city. As required by the Act, enforcement of the doing business limits is based completely on the database, so information provided by campaigns is not used to enforce the limit.

> The Board has longstanding concerns about the quality and completeness of the data in the doing business database—especially lobbyist data—but the Mayor's Office of Contract Services and the covered city agencies have taken meaningful steps to improve the database over the past year.
>
> The bill would leave the requirement to notify contributors of the existence of the limits in the Act.

Int. No. 1353: Return of a contribution to protect a reputational interest

Generally, there are limits on campaigns returning contributions after receiving public funds; the bill would allow candidates to return contributions "because of the particular source involved."

> The bill would codify existing practice.

Int. No. 1354: Timing of statement reviews

The bill would set deadlines for the CFB staff to review candidates' disclosure statements.

> **The unreasonable deadlines in the bill do not allow the CFB's audit staff adequate time to perform basic reviews, and it would weaken our ability to protect public funds.**

In the out-years, a filing period is six months. Candidates currently receive their reviews 60 days before the subsequent filing deadline. The bill requires that reviews be sent 30 days after the filing deadline, which is an unreasonable time frame during the out-years. Reviews are already performed on a much shorter timeframe during the election year—with disclosure filings two months apart, 30 days for reviews is sufficient. As the Board prepares to make payments, reviews are performed (as required by the Act) within four days.

A more lenient deadline, with a deadline that requires candidates to respond to the review before the next filing date, would improve the bill.

Int. No. 1355: Required documentation for contributions

The bill would remove the requirement that candidates obtain and provide contribution cards for all types of contributions, except cash. It requires an additional statement of "intent to contribute" for checks not signed by the contributor, and a statement of the contributor's name and address for money orders that don't have this information. It would allow the candidate to complete or correct the card as long as it is "signed or electronically affirmed" by the contributor.

By lowering the documentation standards, the bill makes it more difficult to discover and prevent the rare instances of fraud in the system.

The requirement for CFB to accept contribution cards that are "completed or corrected by the candidate" could enable fraud by creating an affirmative defense for campaigns that submit altered contribution cards to dishonestly obtain public matching funds. These cases are rare, but as recently as September a candidate in last year's special election in Queens was indicted for forging contribution cards in an attempt to qualify for public funds. She was not paid public funds, and the bill would make it more difficult to deny matching funds to candidates whose documentation shows indicia of fraud.

The bill states that the documentation provided “shall be sufficient to demonstrate compliance and validity for matching funds,” which is vague and would prevent CFB staff from requesting additional documentation when necessary.

By encouraging candidates to “correct” the contribution cards for legitimate reasons, the bill would make it more difficult for staff to differentiate and detect documentation that may be altered for fraudulent purposes.

In other areas, the bill lowers standards beyond those established by rules adopted by the Board this month. Those standards should be the starting point for any documentation required for contributions that are claimed for matching funds.

Int. No. 1356: Transfer of non-public campaign funds

Except for transfers from a principal (participant) committee to another principal committee, the Act requires candidates to obtain “evidence of the contributor's intent to designate the contribution for such covered election.” The bill would extend that exemption to cover non-participants who wish to transfer leftover funds to a principal committee without obtaining permission from their contributors. The requirement to obtain permission would still apply to candidates who seek to transfer funds from a non-CFB/state/federal committee.

The existing provision of the Act ensures donors in one election must agree if a candidate uses their funds for a different election. Removing the requirement may encourage candidates to amass war chests, and provide incentives to opt out of the Program. To avoid perceptions of self-dealing for any candidates with existing war chests, the effective date of this bill should be postponed to after the 2017 election.

Int. No. 1358: Expenditures of non-public funds to assist public officers in the performance of their duties

The bill would expand the permissible uses of campaign funds to include "expenditures to facilitate, support, or otherwise assist in the execution or performance of the duties of public office" by adding the language above to the list of allowable campaign expenditures in §3-702(21)(a). Such expenditures related to the holding of public office would not be qualified uses of public funds.

> It is true that some of the spending anticipated by the bill (*e.g.* enhanced participatory budgeting events) may provide some political benefit in addition to the stated governmental purpose. Specifically prohibited spending (*e.g.* clothing, grooming, tickets to sporting events) would still be prohibited by the Act and is not superseded by this new provision.
>
> Though the bill incorporates our feedback, some concerns remain. Allowing incumbents to spend campaign funds on functions related to their elected office would exacerbate inequality between officeholders in wealthy districts and those from poorer neighborhoods, allowing good fundraisers to provide enhanced services to their constituents. Though expenditures to support the duties of public office would not be qualified uses of public funds, the bill would mean that participating campaigns who make these expenditures would have fewer funds remaining after the election, and repayments of leftover public funds to the city's general funds would likely decrease.

Int. No. 1361: Viewing of dates from the doing business database

The bill would require that the public doing business database display the date that individuals entered the database.

> The date is currently not displayed with search results, but doing so would provide useful information for the public, and help candidates better understand which of their

contributors are covered by the doing business limits. This update to the database would be implemented by DOITT, and they should be consulted on its implementation.

Int. No. 1362: Contributions in a special election

Current law requires that for special elections, only the first $87 of NYC resident contributions is matchable, instead of $175 for a primary or general election. The bill would equalize the matching amount, and match up to $175 for special elections.

This would ease administration for CFB by providing a uniform application of the matching rate in special elections and other elections. It is likely this bill will increase the total amount of funds paid to candidates in special elections.

Int. No. 1363: Deadline for rescinding the written certification of participation in the matching funds program

The bill allows candidates who have joined the Program to opt out prior to the deadline to file designating petitions for the primary election (in late July), or prior to the receipt of public funds, whichever comes first.

This bill reflects some feedback from CFB staff; the inclusion of a hard calendar deadline is a necessary provision. Still, the decision to opt in to the matching funds program should not be based on who your opponent may (or may not) be. Predictability is important both for CFB and for candidates in a particular election.

A later opt-out date will create some operational issues. For instance, we advertise which candidates are participants in our Voter Guide and elsewhere; decisions about the allocation of Audit staff time and resources are made based on the number of candidates who certify to join the Program.

Int. No. 1364: Executive sessions of the Campaign Finance Board

The bill would require that "no candidate, representative of a candidate or campaign finance board staff other than a professional clerk hired or retained for such purpose and not otherwise supervised by campaign finance board staff shall be present during an executive session of the board at which an adjudication before the board is discussed."

This bill is an intrusion by the Council into the proper functioning of the Board's enforcement process, and it undermines the independence of the Board's deliberations.

The NY State Open Meetings Law allows the Board to deliberate in executive session, and to decide who can attend its executive sessions. The bill unreasonably limits the right of the Board to consult anyone it believes can be helpful in its deliberations and provide substantive answers to questions about CFB process.

Under current practice, CFB staff members involved in the campaign's audit are barred from attending deliberations over penalties in executive session; only staff with no involvement in the investigations under discussion are allowed to attend.

Perceptions that the Board's deliberation process is unfair to candidates are not supported by a review of the outcomes. A review of candidate appearances before the Board since the start of 2013 shows that the Board reduced the amount of penalties recommended by staff 65 percent of the time. In practically all of the other cases, the penalties remained unchanged from the staff recommendations, which are based on the published penalty guidelines.

###

November 21, 2016

Reinvent Albany

Testimony of

Dominic Mauro, Staff Attorney, Reinvent Albany

before the

New York City Council Committee on Standards and Ethics

Hearing on Int 1345-2016, Int 1349-2016, Int 1350-2016, Int 1351-2016, Int 1352-2016, Int 1353-2016, Int 1354-2016, Int 1355-2016, Int 1356-2016, Int 1358-2016, Int 1361-2016, Int 1362-2016 Int 1363-2016, and Int 1364-2016 on Nov. 21, 2016

Good morning. I am Dominic Mauro, Staff Attorney for Reinvent Albany, an advocacy group that advocates for open and accountable New York State government and co-chairs the New York City Transparency Working Group.

Reinvent Albany does not usually testify before Council about campaign finance issues. We are today because the package of bills being proposed add up to a huge step backwards, and would greatly weaken what is considered the best campaign finance system in New York and the United States—and a model we turn to for New York State.

Many of these bills seem like petty retaliation and an expression of irritation by Councilmembers who are annoyed with CFB nitpicking. CFB is imperfect and there are many improvements that could be legislated, but overall, this package is terrible.

Briefly, here is our view on the various bills, beginning with bills that we have the strongest opinion on.

We support the intent of **Int. 1345**, concerning Conflicts of Interest and organizations affiliated with elected officials, however we do not fully understand how it would work and whether it is too narrow to be meaningful.

We strongly oppose **Int. No. 1352:** ending the requirement that campaigns ask if a person or entity is doing business with the city. That is a key disclosure requirement, and its removal places all responsibility for disclosure on the Mayor's Office of Contracts *Doing Business* database. We are familiar with the *Doing Business* database. That database has giant holes in it and cannot be relied on to be the only source of information for whether a person is doing business with the city. A robust disclosure system should rely on both the *Doing Business* database and campaigns.

We strongly oppose **Int. 1349:** Compatibility of campaign finance board disclosure software. Our group has looked closely at CSMART and State BOE software systems. This bill amounts to intrusive micromanagement and harassment of CFB and does not solve the underlying issue with their disclosure software, which is currently being addressed through collaboration with the NYS Board of Elections.

We strongly oppose **Int. 1350**: Adjudication of campaign finance violations. The thirty day cutoff imposes an unrealistic deadline on events that are outside the control of the CFB. Also, according to CFB, the deadline does not give campaigns time to provide a response to their Notice of Alleged Violations (NAV) and would give an advantage to campaigns with the resources to hire a lawyer.

We strongly oppose **Int. 1364**: Executive sessions of the Campaign Finance Board. This bill is a clear intrusion by the City Council into the functioning of the CFB's operation and directly undermines its independence.

We oppose **Int. 1355**, which changes documentation requirements for contributions, as drafted but support its intent and suggest Councilmember Greenfield work with CFB and issue experts.

Thank you for this opportunity to testify today.

CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council Standard and Ethics On Proposed Changes to the Campaign Finance Law and Conflicts of Interest Law – Intro 5225
November 21, 2016

Good afternoon Chair Maisel and members of the city council. My name is Dick Dadey and I am the executive director of Citizens Union. Citizens Union brings New Yorkers together to strengthen our democracy and improve our City.

Nonpartisan and independent, we seek to build a political system that is fair and open to all, values each voice, and engages every voter. Citizens Union is an independent and nonpartisan democratic reform organization that organizes New Yorkers to strengthen our democracy and improve our city.

Earlier this year, Citizens Union expressed concern over the use of nonprofits formed by or closely aligned with a city elected official. We proposed local legislation that would regulate the operations and reporting of these nonprofits.

We applaud the introduction of T2016-5225 (Mark-Viverito), which is designed to regulate organizations so closely affiliated with an elected City official that they are perceived as extensions of the official and serve to boost the position and profile of that official. Though the efforts of these organizations may well serve the public good, they generally also promote the elected official in ways similar to a political campaign. Yet these organizations operate without any oversight or regulation, with no limits on contributions. Thus, officials who have received the maximum allowable contribution from an individual under the City's campaign financing system – often someone who is doing or seeks to do business with the City – can route limitless additional contributions from this individual through these affiliated organizations. We believe the proposed bill can effectively bring needed oversight to these organizations.

Under the bill, organizations affiliated with an elected official that spend or expect to spend at least 10% of their expenditures in a given year on "elected official communications"

1. shall not accept donations over $400 in a year from any person the organization knows or should know has business dealings with the City at the time of donation or who is added to the database within 180 days of the contribution (the organization can return such contributions without penalty);

2. shall not accept donations from a corporation or labor organization.

Donors of over $400 to an organization affiliated with an elected official must make written submissions on a form prepared by the Conflicts of Interest Board (COIB).

In addition, all organizations affiliated with an elected official (regardless of whether they spend at least 10% on elected official communications) must submit a report annually to the COIB including information about the organization, all contributors of over $1000 and an accounting of expenditures as determined by the COIB.

The contribution limitations provision would take effect January 1, 2018 and the disclosure provisions would take effect January 1, 2019. Civil and criminal penalties would apply to violations. The COIB must prepare regulations to implement the law.

CU has several comments and suggestions regarding the legislation. First, with regard to definition and use of elected official communications in the bill:

1. We believe a key to the effectiveness of the bill is whether the contribution limitations would apply to all organizations that are closely tied to, and help promote, a City elected official. The standard to be applied is that 10% of the organization's expenditures must be made on elected official communications. The definition of elected official communication appears to be relatively broad, covering (with certain exceptions): a broadcast, printed material, telephone communication or paid internet advertising from an organization which includes the name or likeness of the elected officeholder with whom the organization is affiliated. We believe the organization's expenditures on designing and maintaining a website that features the name or likeness of the official should be included.

2. We note that it is not uncommon for these organizations to spend most of their funds on consultants and public relations firms which in turn generate the communications that feature the elected official. We believe any expenditure which ultimately results in elected official communications should be included in determining whether the 10% threshold is reached.

3. It should be made clear in the legislation that an "elected official communication" includes the preparation, publication and dissemination of any such communication.

4. While the 10% threshold seems reasonable, we have not seen information as to whether the Campaign for One New York, for example, devoted at least 10% of its funds, directly or indirectly, to elected official communications. We ask that the Council assure itself that the 10% threshold is low enough to encompass the Campaign for One New York, [One Brooklyn] and any similar organization.

With regard to the definition of an "organization affiliated with an elected official," we note that the definition is framed in general terms. Under the legislation, such an organization is defined as an "entity for which a City elected officeholder, or the officeholder's agent, is a principal owner or officer or otherwise exercises control, or which was created by the officeholder or agent within the previous two calendar years." There are no additional criteria as to what it means to "exercise control" over the organization. We assume this will be fleshed out in regulations and opinions by the Conflicts of Interest Board, and we are comfortable with that approach. As the COIB considers this topic, we suggest consideration of the criteria set forth in the legislation enacted in Albany this June with regard to independent expenditures; specifically, what constitutes a relationship between a candidate and an organization such that expenditures by the organization are not truly independent.

We also believe that the reporting should occur more frequently than annually, and would suggest as a minimum every six months, and most preferably on a quarterly basis.

Finally, as we read the legislation, it does nothing to change the Conflict of Interest Board opinion barring officials from soliciting contributions to an organization from people with whom the official deals in her or his City position. We suggest that this be made clear in the legislative history of this legislation.

We look forward to working with the City Council in finalizing this bill and seeing it enacted into law.

Regarding the other bills that most directly affect the campaign finance program, we have a number of concerns about some of these bills but would like to provide supplemental information and specific thoughts to the council by tomorrow morning.

OFFICE OF THE BROOKLYN BOROUGH PRESIDENT

Testimony of Brooklyn Borough President Eric L. Adams
New York City Council Committee on Standards and Ethics
November 21, 2016

Thank you Chair Maisel and the members of the New York City Council Committee on Standards and Ethics for this opportunity to testify on Intro 1345, A Local Law to amend the administrative code of the city of New York, in relation to conflicts of interest and organizations affiliated with elected officials.

I understand, appreciate, and support the spirit by which this legislation is being introduced, though I have concerns that the bill, in its current form, will have a marked impact on the ability to leverage public-private partnerships to support legitimate City purposes.

Attempts to regulate non-profit organizations that are affiliated with City officials must seriously consider the impact that such reforms may have on the ability of those organizations to raise private support in furtherance of bona fide City purposes. The reform measures, as outlined, would create barriers that could make it impossible for private entities to charitably support City programs and initiatives. This is especially troubling in the face of budgetary constraints that may affect the ability of City officials and agencies to provide these programs and initiatives.

For example, charitable giving has catalyzed economic development through my office's "Dine in Brooklyn" initiative, which engaged more than 135 small businesses in the borough and generated thousands of dollars in local spending. It has also educated thousands of Brooklynites on issues to strengthen their financial literacy, especially important for a borough that, according to the Federal Reserve of New York, far surpasses the rest of New York City, New York State, and the entire country in serious delinquent credit card debt and mortgage delinquency.

Advisory Opinion 2003-4 of the New York City Conflicts of Interest Board (COIB) is particularly instructive on this point. It spells out the importance of private support for City initiatives, provided that appropriate steps are taken to prevent donors from even appearing to receive preferential treatment from the City. To that end, Advisory Opinion 2003-4 specifies that only certain, pre-approved non-profit organizations will be qualified to receive charitable donations on behalf of the City, and that very exacting restrictions will be in place to prevent the direct solicitation of entities or individuals that do business with the City agency or office.

Organizations that seek to be pre-approved by the COIB to receive donations in support of City initiatives must satisfy a robust seven-factor analysis. These seven factors are:

(1) Whether there is any appearance of favoritism toward particular non-for-profit entities created by such fundraising on behalf of the City
(2) The impact on the beneficiary organization's competitors, if any
(3) The relationship between the mission of the beneficiary organization and City programs
(4) The importance to the City of the organization's activities
(5) The extent to which the fundraising is undertaken, or appears to be taken, in an 'official' capacity
(6) The elected official's personal interest in or relations to the beneficiary organization
(7) Whether fundraising for the organization is consistent with the public servant's official duties or appears to further only personal or political interests

This seven-factor analysis is incredibly important because it sets a high bar for which type of organizations may raise charitable support in furtherance of City initiatives. Organizations that do not meet this test are not considered to be operating for bona fide City purposes, which makes the appearance of elected officials fundraising for those organizations more suspect. As a practical matter, it is helpful to look at the Internal Revenue Code for guidance on how different types of non-profit organizations are organized to determine whether they will meet COIB's seven-part test. For example, organizations recognized as charitable under section 501(c)(3) of the Internal Revenue Code would be more likely to meet the COIB standard than organizations that are recognized under section 501(c)(4) of the Code, which operates to advocate and educate on specific policy issues and initiatives, and not provide charitable support for specific programs and initiatives.

Once an organization is determined by COIB to be operating in furtherance of City initiatives, the organization must adhere to strict guidelines on who can be solicited for charitable donations. As Advisory Opinion 2003-4 methodically explains, there is great concern that individuals or entities might seek to make donations to the City in the hopes of receiving a favorable determination on any business matter they have pending with the donee City official or agency. This is a legitimate concern and donors should not try to masquerade a *quid pro quo* arrangement under the guise of a charitable donation to the City. COIB's guidelines offer protections against this possibility by preventing a City employee or official from soliciting a donation from any individual or entity with business pending or about to be pending before that City official or agency. In this way, there is very little likelihood that an individual or entity making a charitable donation to the City would be doing so in the hopes of receiving any preferential treatment from the recipient of that donation.

Intro. 1345 seeks to upend the carefully constructed regulatory scheme crafted by the City's ethics experts, the COIB, and replace it with a set of unclearly defined and broadly worded prohibitions against fundraising from individuals or entities doing business with the City as well as regulating how City-affiliated non-profit organizations can spend their charitable dollars in support of bona fide City purposes.

As currently drafted, the bill would prohibit a City-affiliated organization that spends more than 10 percent of its expenses on any type of official communication that includes the name or

likeness of an elected official from receiving more than four-hundred dollars from any individual who is doing business with the City, and would prohibit all donations from any corporate entity or labor union. Violations of these prohibitions would result in escalating fines that begin at $5,000 and go up to $30,000, and include criminal misdemeanor charges.

The language as currently written is unclear and could significantly hinder work of the affiliated non-profit organizations in several ways.

- First, this legislation is overly broad in its prohibition against receiving donations from any individual or entity doing business with the City, even if the City official who is affiliated with the organization has no ability or power to determine the outcome of a donor's pending City business.

- Second, this legislation seeks to unfairly prevent non-profit organizations that are operating for the purpose of supporting City agency programs and initiatives from using the name or likeness of a City official in even a *de minimis* manner.

- Third, this legislation will have a significant impact on the ability of City-affiliated non-profit organizations to leverage public-private partnerships in furtherance of legitimate City purposes.

The prohibition on receiving no more than $400 from any individual or entity doing business with the City is overly broad. Under our City Charter, different elected officials are entrusted with different powers and responsibilities to effectuate the administration of city government. For example, borough presidents have no authority or power to take any official actions outside of what is prescribed by the charter. As noted by COIB in its determination that my affiliated non-profit organization is pre-approved under Advisory Opinion 2003-4, those actions are limited to applications for appointments, capital funding, land use items, and procurements. My office has no ability to affect the disposition of a land use application for a location in the Bronx, nor can my office award a city contract from an agency other than my own to a favored donor. To restrict one borough president's office's ability to support their programs and initiatives because an individual or entity has business in another borough is patently unfair and overly broad.

This legislation should be amended to keep with the existing standard set out in Advisory Opinion 2003-4: only entities with business before the City official or agency should be restricted from making charitable donations to support the programs and initiatives of that official or agency's office. Furthermore, I urge the Council to consider the standard set out in federal bribery statutes and recently adjudicated by the Supreme Court in *McDonnell v. United States* as it attempts to address the real or perceived danger of a *quid pro quo* between a donor and a City official. That unanimous Court decision explained that the mere setting up of meetings, calling other public officials, or hosting an event does not constitute an official government action.

The prohibition on a City-affiliated organization from spending more than 10 percent on official communications that include the City official's name or likeness overly burdens the ability of

these organizations to operate in furtherance of official City business. While I understand there is a concern that the use of charitable funds to pay for official communications can be interpreted as nothing more than a tool of self-promotion for the City official there is a large difference between using a City official's name or likeness for a blatantly self-promotional or even quasi-political purpose, and using a name or likeness in a *de minimis* manner just to identify the source or sponsor of an event or initiative.

Elected officials need to communicate with their constituents in a manner and style that will most effectively reach those who need to hear that message. The programs and initiatives that my affiliated non-profit organization supports are forward-thinking, innovative, and incredibly important for my constituents, many of whom are the most at-risk residents in our city and often the target of unscrupulous actors looking to prey on their vulnerability. The ability to effectively communicate the importance of, for example, preventative health resources to my constituents who need these services is made more legitimate to these constituents if it comes from a clear, identifiable, and trusted source. Taking down barriers to information and engaging the populace in a constructive manner is integral to ensuring that the benefits and resources of City government are appropriately allocated to those most in need.

Furthermore, the practical impact of this provision will adversely affect City officials who do not receive budgetary allocations to otherwise communicate with their constituents directly. Each member of the Council receives a specific allocation to send mail and communications to their constituents, as do members of Congress, the State Senate, and the State Assembly. Borough presidents receive no such allocation. At a time when more than 10 percent of college students believe that Judge Judy is a member of the Supreme Court, our city residents deserve to know who their democratically elected city officials are so they can better access their government. In the absence of dedicated means of constituent communications, the only way to reach constituents is through the use of charitable funds raised to support the programs and initiatives of the office.

This legislation should be amended to allow for a *de minimis* use of a City official's name or likeness in an official communication. Creating a *de minimis* exception will not affect the ability of City officials to continue the routine and ordinary use of their name and likeness in the furtherance of their agency's work and will also curb the excessive abuses of self-promotion and quasi-political purposes that seems to be animating the Council's concerns in this legislation.

The donation restrictions imposed by this legislation will have a significant impact on the ability of City officials to leverage public-private partnerships to support City initiatives. As explained above, only non-profit organizations that operate in furtherance of legitimate and bona fide City purposes are eligible for approval by COIB. As long as there are strong protections in place to guard against *quid pro quos*, the Council should not undertake any efforts to hamper the ability to raise charitable funds on behalf of the City. Imposing a donation limit of $400 from any entity that does business with the City, and a blanket prohibition from any corporate entity or labor union, will severely restrict the ability to charitably support City programs. Unless the shortfall of charitable donations will be compensated for with increased budgetary allocations, the Council should reconsider these donation limits and find a better balance between regulating and restricting charity.

If the Council will continue to keep the broader restriction limiting donations from individuals or entities doing business with the City instead of the existing COIB restriction prohibiting all donations from entities doing business before the City official's agency, then this legislation should be amended to raise the $400 threshold to a higher amount. Furthermore, the total prohibition against any corporate donation should be revised because many non-profit foundations and organizations are registered as corporate entities. Under this legislation, an affiliated non-profit organization would be prohibited from receiving any donation from another non-profit or private foundation. Not only does this unintended consequence severely restrict fundraising on behalf of the City, it also sends a message to large foundations and charitable ventures that New York City simply does not want their support.

In conclusion, while I fully understand and support the spirit with which these reforms are being proposed, I have apprehensions about the real-life consequences that these reforms will have on residents who depend on the services that affiliated non-profits provide. I believe that this legislation should be amended to codify the existing protocols issued by the COIB and to further refine what types of donations and expenditures are appropriate for City-affiliated non-profit organizations in a time of transparency and integrity.

Addendum A: Technical Questions on Intro 1345

In addition to our testimony today, Brooklyn Borough President Eric L. Adams asks the following questions of a technical nature that should be clarified either in the bill or in the legislative record before the adoption of Intro.1345.

As to documentation:

1. When itemizing expenditures, which is the correct reporting period: the period during which it was incurred or the period in which it was paid?

2. Do in-kind donations of time count in calculating the 10 percent threshold? Does the answer change if it is the time of the elected official's employee (as permitted by COIB rules for City affiliated charities)?

3. As to the term "otherwise exercises control": How is this defined? Actual authority? Friendship? Political alliance? Common purpose?

4. As to the term "telephone communication": Is this meant to capture a single call or are we talking about phone campaigns and robo calls?

As to penalties:

1. Who is liable for violation penalties? The elected? The organization? The treasurer? The donors?

2. Can you be guilty of multiple offenses in a single period, subjecting you to the minimum fine of $15,000 in the same or first filing period?

3. Why isn't there an opportunity to cure provision?

As to reporting:

1. What is the definition of the time frame? Does this represent a calendar year and, if so, does the bill intend to give seven months for reporting at the end of a year (or, if fiscal year, just one month)?

2. If reporting is by fiscal year, does this not conflict with the earlier calendar year used for determining the 10 percent threshold (3-903)?

3. If this is by fiscal year, allowing only one month, does that mean that every time a donor is added to the doing business database after the donation, if during the period following August 1st but within the catchment period of the law, that an amended report will have to be made?

4. Were expenditures deliberately omitted from the website posting requirement of COIB?

5. On the website, will donor information include addresses (unlike CFB)? What about donors who wish to remain anonymous but are not doing business with the City and willing to so certify? (These are charities after all, and not political campaigns.)

6. With respect to a 501 (3) or (4) that the elected official "controlled" prior to the elected's election to the covered office: Will this now be covered and will it be covered "retroactively"? (For example, will a donation made within the six months before the elected takes office have to be returned if that donor was in the City doing business registry?)

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Dick DADEY
Address: 60 Ransom St
I represent: Citizens Union
Address: 299 Broadway

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☑ in opposition

Date: ______

(PLEASE PRINT)

Name: GENE RUSSIANOFF
Address:
I represent: NYPIRG
Address: 9 MURRAY ST NYC

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Dominic Mauro
Address:
I represent: Reinvent Albany
Address:

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: 11/21/16

(PLEASE PRINT)

Name: Amy Loprest

Address:

I represent: NYC Campaign Finance Board

Address: 100 Church St, 12th Floor NYNY

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: ________

(PLEASE PRINT)

Name: Henry Berger

Address: Mayor's Office

I represent: ________

Address: ________

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1345 Res. No. ______

☐ in favor ☐ in opposition

Date: 11/21/16

(PLEASE PRINT)

Name: WAYNE HAWLEY

Address: ______

I represent: CO1B

Address: 2 LAFAYETTE

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1345 Res. No. ______

☒ in favor ☒ in opposition

Date: 11-21-16

(PLEASE PRINT)

Name: CAROLYN MILLER

Address: 2 LAFAYETTE ST, SUITE 1010

I represent: CO1B

Address: ______

Please complete this card and return to the Sergeant-at-Arms