New York City Campaign Finance Board

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Testimony of Amy Loprest
Executive Director, New York City Campaign Finance Board
City Council Committee on Governmental Operations
January 16, 2013

Good afternoon Chair Brewer, and members of the Committee. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board. With me today are Eric Friedman, Director of External Affairs, and Sue Ellen Dodell, General Counsel.

Thank you for the opportunity today to testify today on Int. No. 978, as amended.

The Board had serious concerns about the original version of Int. No. 978, which would have allowed outside groups to closely coordinate their spending with candidates, and we are pleased to see that the bill has been amended to address those concerns.

Others have raised questions about the Board's enforcement standards in this area. We hope Advisory Opinion 2013-1, issued last week by the Board, has helped to clarify the Board's approach to coordination between candidates and outside groups.

The current bill addresses only the disclosure of independent expenditures in City elections. Though we reiterate that the changes have improved the bill, we cannot support it.

Background

Early in 2010, the U.S. Supreme Court issued its controversial ruling in *Citizens United*, which held that the federal government could not restrict independent spending by corporations or unions in elections. The impact of *Citizens United* reverberated broadly, raising the prospect of a flood of new outside spending washing through elections at every level of government. In New York City, voters responded by approving an amendment to the City Charter aimed at bringing greater transparency to independent spending in New York City elections.

Pursuant to the Charter, the Board engaged in an open, deliberative process to promulgate rules for the disclosure of independent expenditures. As the Charter states, the rules require independent expenditures of $1,000 or more to be reported. An organization that makes more than $5,000 of independent expenditures to support or oppose a candidate must also make public disclosures of the contributions it receives.

Those rules, which took effect in May 2012, require labor unions, membership organizations, and corporations to disclose some of the spending they make to send campaign-related messages to their members or shareholders.

Int. No. 978-A would shield that spending from public view, overturning the rules carefully drafted by the Board concerning those expenditures. This will impact the quality of disclosure available to the public. There are five points I would address here in order to explain the Board's opposition to the bill.

Disclosure of money in politics is fundamental to the democratic process. Candidates must make public the names of their contributors, because thorough disclosure provides valuable information for voters, and protects the public from potential abuses of the political process. Without disclosure of a candidate's contributors, voters may feel as if

they are unable to make a truly informed choice at the polls.

All candidates who participate in the Campaign Finance Program have been required to make disclosures to the CFB since the Program was created in 1988. The City Council affirmed the value of disclosure in 2004, when the disclosure requirement was extended to all candidates who compete for City office.

With Local Law No. 59 of 2004, the Council stated that the lack of disclosure for non-participating candidates "deprives the voting public of relevant comparative information." The Council declared that "detailed public campaign finance disclosure helps safeguard against the risk that large campaign contributions will gain undue influence over government decision-making and sheds light on campaign spending practices."

Those same rationales apply to disclosure of independent spending by outside groups. Independent expenditures can provide an avenue for wealthy interests to influence election outcomes. Most candidates know who funds the television ads or mailers that support them or oppose their competitors. In some cases, the spenders may not even hide their identity. But without robust disclosure, the general public cannot know the details of the spending.

In short, there are two equally important aims for disclosure of independent expenditures. First, disclosure provides information that helps voters identify who is speaking to them. Second, it empowers voters to hold candidates accountable for their policies and supporters by providing information about the individuals and groups who spend money to aid their campaigns.

The Board is aware that groups play an important role in City politics. A central goal of the Campaign Finance Program is to provide candidates with the ability to speak for themselves. At the same time, this city has a long and proud tradition of citizens gathering to make their voices heard on every sort of issue. While the Program amplifies

the collective voice of individual small-dollar donors in City elections, civic organizations, single-issue groups, and labor organizations all can serve to aggregate the voices of like-minded New Yorkers in the political process.

We believe that these concepts are not mutually exclusive. New York City has a robust campaign finance system, with public funding, reasonable limits on contributions, and—with the Charter amendment—disclosure of independent spending. The rules that make our system strong should not and do not prevent groups from participating fully in public discussions about elections, politics, and policy in New York City.

The rules for disclosure of independent expenditures were written narrowly in this area, to cover the most widespread and important election-related communications. To provide the most useful information to the voters, it is important that the rules for disclosure reflect the way people and organizations communicate about elections in New York City.

The rules, as adopted, do provide exemptions for internal communications between an organization and its membership. Spending to print and send a newsletter, or conduct phone banks to members, were exempted from disclosure. Communications among an organization's membership as part of internal deliberations about endorsements were also protected from disclosure.

Campaign mail, on the other hand, is a medium that is used widely and effectively to communicate with voters. An analysis of campaign expenditures during the 2009 election shows clearly that mailings are an important mode of communication in City elections.

With a broad electorate to cover, campaigns for mayor, public advocate, and comptroller devoted roughly 30 percent of their communications budgets to mass mailings. A larger share, more than 60 percent, went to broadcast media. For City Council campaigns, which target much smaller constituencies, mailings are by far the preferred mode of voter

communication. Analysis of a representative sample of ten Council campaigns showed that the average candidate devoted almost two-thirds of his or her communications budget to mass mailings. That is why the rules were written to require disclosure for spending on all mass mailings—no matter the target audience.

Int. No. 978-A would exempt the costs of these campaign-related mailings from disclosure if they are sent by labor unions, membership organizations, or corporations to their members or shareholders. This broader exemption could potentially allow a significant amount of spending in New York City elections to go undetected.

Our current rules, as implemented, provide the public with a complete picture of election-related spending. The rules for disclosure of independent expenditures were in effect for the November 2012 special election for the City Council seat in District 12 in the Bronx. For the first time, New Yorkers had comprehensive access to disclosure of spending in a City election.

Our electronic, on-line disclosure system was operational for the special election. From the feedback we've received, it is easy to access and to use. Via our website, it provides the public with the identity of the spender, the amount spent, information about the payees, and a view of the communication.

There were three expenditures reported in the District 12 race, for a total of $12,442, all supporting the winning candidate. All three were marked as membership communications. This sum equals more than 10 percent of all the funds spent on his behalf—one out of every ten dollars spent in support of the winner came from an independent spender.

It seems clear that independent expenditures—as currently defined in Board rules—comprise a significant part of election-related spending in City elections. If Int. No. 978-A were enacted, voters would be deprived of information about this spending.

For these reasons, and given the Board's long-standing position on the issue, we oppose the bill.

The Board has consistently taken the position that campaign spending should not be categorized based on its target. A campaign message is a campaign message, no matter where or to which audience it is aimed. Feedback we received during the rulemaking process helped focus the Board's approach in this area. As a result, we believe our current rules provide the public with the best, clearest, and most comprehensive information about spending in City elections.

The Program's spending limits can magnify the importance of outside spending in our system; candidates who agree to limit their spending may be opposed by outside groups who face no limits on their activities. New Yorkers voted to require those independent actors to reveal the details of their spending. Int. No. 978-A would narrow that requirement, blocking New Yorkers' access to complete information about the interests supporting candidates for City office.

Thank you for the opportunity to testify, and I welcome any questions you may have.

New York
COMMON CAUSE
Holding Power Accountable

Testimony of Susan Lerner
Executive Director, Common Cause/NY
Before the
New York City Council Committee on Government Operations
Re Proposed Int. 978-A
January 16, 2013

Good afternoon and thank you for the opportunity to testify regarding Proposed Int. No. 978-A. My name is Susan Lerner, and I am the Executive Director of Common Cause/New York. I would like to staff the Committee staff and the staff of the Council for their willingness to meet with us and other good government groups and organizations concerned with the effective functioning of our campaign finance system to air concerns and develop the clearest and strongest bill language. Common Cause/NY is a non-partisan, non-profit citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause/New York has been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country. Common Cause has remained a steadfast and ardent supporter of campaign finance reform –including advocating for public financing of elections and greater transparency and disclosure of independent expenditures.

Common Cause/NY has also been a long standing supporter of requiring the disclosure of independent expenditures in city elections. As a result of a previous gap in New York City's Campaign finance laws independent actors –such as organizations, political parties, or labor unions – were able to spend freely in New York City elections, with their actions largely hidden from public view or scrutiny. We welcomed and supported the ballot measure that would require the disclosure of independent expenditures, which was approved by the City's voters in November of 2010. The amendment was necessary to strengthen New York City's campaign finance regulations, already a model for the nation, by requiring transparency for independent spending in politics.

Let us be clear, Common Cause/NY strongly supports the charter amendment and the Campaign Finance Board's efforts to bring transparency to independent actors. We support reporting and disclosure requirements for independent expenditures in order to help foster an informed electorate at every level of government. As the Charter Review Commission explained, a persistent problem with independent expenditures is that they are often backed by substantial resources but fail to provide voters with information to enable them to assess the credibility of the statements or arguments made, or to allow targets of attacks a fair chance to respond. For that reason, it is important that the sources of independent expenditures are revealed, and that is why the charter amendment was proposed and adopted.

Lack of source disclosure, however, is not a problem in internal organizational communications. Members immediately recognize the source of communications from their own organization and there is simply no such thing as an anonymous internal communication. Common Cause/NY strongly believes that membership communications entail vital civic participation and should be fostered, not discouraged or treated as somehow suspect. Individuals who are members of a specific organization are not confused as to the source of any communications about candidates or referenda they get from the organizations. In fact, they probably support such organizations because of those activities.

We believe that 978-A appropriately defines members as those who choose to use their dollars to support that organization or who are granted governance rights by the organization's articles or bylaws. The definition of members appropriately does not include those who are more casually associated with an organization by simply attending events sponsored by the organization or asking to receive information from it. This is in line with the approach taken by the IRS in defining members and by others jurisdictions in defining membership communications.

We have consistently supported campaign finance measures at the federal, state and local level throughout the country that expressly exempt membership communications from the definition of independent or campaign expenditures. Our concern in this area focuses on organized money and not organized people. That was also true of the Charter Review Commission and the voters: both the Commission's final report and the 2010 official voter guide nowhere mentioned membership communications as a concern or a subject for new regulation, only communications to the public at large.

The proposal being considered today does not significantly alter the campaign landscape as it has existed in New York City elections under the City's campaign finance system for decades. We support this measure as an appropriate clarification that the Independent Expenditure amendment of the Charter was not intended to effect a change in how membership communications would be treated. We have ascertained that, prior to the regulations adopted by the Campaign Finance Board in 2012, the consistent practice had been to treat membership communications as exempt. Proposed Int. 978-A simply seeks to restore the informal *status quo ante* as it existed in all City elections under the campaign finance system prior to Spring, 2012 and properly memorialize it in statute rather than leave it to informal and shifting interpretation.

We appreciate that the current version of the proposed bill deals only with an exemption from the definition of "independent expenditure" for membership communications and does not conflate and confuse issues relating to independent expenditures with the separate and different issues raised by the concept of "coordination" under campaign finance regulation. We take no position at this time on any issues relating to defining coordination or any exemptions or safe harbors thereunder.

In short, we support Proposed Int. 978-A

Thank you.

CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council
On Int. No. 978-A

January 16, 2013

Good afternoon Chair Brewer and members of the Governmental Operations committee. My name is Alex Camarda. I am the Director of Public Policy and Advocacy at Citizens Union. Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. Thank you for the opportunity to testify today on this bill and for the Council's engagement on this issue generally.

Citizens Union supports Int. No. 978-A believing communications between an organization and its members (or a corporation and its shareholders) should not be impeded in any way when when those communications are not coordinated with a candidate and the entity in question does not exist primarily for the purpose of influencing elections.

The bill before the committee today is the product of several years of discussion and negotiation that occurred in response to the *Citizens United* decision in January 2010 that accelerated unlimited contributions to and spending by outside entities operating independently of candidate committees. The 2010 Charter Revision Commission addressed the issue of independent spending by political committees and non-profit organizations by putting before the voters a ballot question calling for the disclosure of independent spending by any entity spending $1,000 or more in the year preceding an election and the disclosure of donors (above $1,000) for any entity spending $5,000 or more in the year preceding an election. Following the voters' overwhelming approval of the referendum, the New York City Campaign Finance Board (CFB) promulgated rules on the referendum soliciting input through three hearings in 2011 and 2012.

During the Campaign Finance Board hearings, the Board heard from good government groups, unions, member organizations and others on the proposed rules, in particular on the issue of member-to-member communications. Citizens Union testified then, consistent with our position today, that member-to-member communications need not be disclosed if there is a disclaimer on the communication indicating the targeted audience is the members of the organization.

The Campaign Finance Board's rules ultimately exempted most member-to-member communications from disclosure. Organizations today can communicate with their members

without disclosure through routine newsletters and periodicals, telephone calls, hand-delivered printed materials, email and text communications, social media postings, member mobilization activities, and posting for free on a website. They also do not need to disclose internal deliberations about candidate endorsements or discussions at in-person meetings. In fact, the only required disclosure of member-to-member communications that actually occurs in practice is mass mailings (over 500 pieces in a 30-day period) between organizations and their members. Int. 978-A in effect simply extends the exemption to include mass mailings sent by member organizations to its members.

Int. 978-A represents a consensus approach between those organizations that would like to freely communicate with their members, even while coordinating with candidates, in recognition of their first amendment rights of free speech and association and those who want to ensure that our candidates do not rely too heavily on assistance provided to them by large membership organizations and consequently may feel an unwarranted obligation to them after their election. .

Citizens Union believes the proper balance between these two important goals is to allow member organizations to communicate with their members in an unfettered manner when done independently, but to count as a contribution any coordination with a candidate that is goes beyond ministerial cooperation. Int. 978-A addresses the former while the recently released CFB Advisory Opinion (2013-1) clarifies permissible communications between candidates and member organizations so the line is more clearly drawn between routine and informative communications and those in which candidates are campaigning directly to those members of the organizations.

Thank you for the opportunity to testify today, and for the Council's engagement on this issue in general. I welcome any questions you may have.

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Comments of Adam Skaggs, Senior Counsel,
Brennan Center for Justice at NYU School of Law[1]

Submitted to the
New York City Council Committee on Governmental Operations

For the hearing on
Proposed Int. No. 978-A –
In relation to the campaign finance board

January 16, 2013

My name is Adam Skaggs and I am Senior Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law. On behalf of the Brennan Center, I would like to thank the Committee for holding this hearing, and for giving us the opportunity to comment on this bill.

As we have previously testified before the New York City Campaign Finance Board,[2] the Brennan Center supports an exemption from regulation of communications by membership organizations that are exclusively aimed at and received by their members, that are uncoordinated with candidates' campaigns, and that result in, at most, only de minimis communication with the general public. The Brennan Center therefore supports this proposal to exempt uncoordinated member-to-member and stockholder communications from being counted as independent expenditures in city elections.

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[1] The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center's Money in Politics project works to reduce the real and perceived influence of money on our democratic values. Our counsel defend campaign finance, public funding, and disclosure laws in courts around the country, and provide legal guidance to state and local reformers through counseling, testimony, and public education. The views expressed in this testimony are solely those of the Brennan Center.

[2] Mark Ladov, Brennan Ctr. for Justice, Testimony Before the N.Y.C. Campaign Fin. Bd. for the Hearing on Proposed Rules for the Disclosure of Independent Expenditures, Oct. 27, 2011, *available at* http://www.brennancenter.org/content/resource/proposed_rules_for_the_disclosure_of_independent_expenditures/

An organization that spends thousands of dollars on a public advertising campaign about a candidate shortly before an election, designed to sway the voting decisions of members of the public, should disclose that spending to the public so that voters can weigh that information in making choices on Election Day. In contrast to communications aimed at a public audience — about which voters may have little understanding of the source of the communications — member communications are from a source well known and understood by the members: the member organization itself. The constitutional justifications for disclosure of election-related speech are, therefore, less present when membership organizations speak solely to their members. Moreover, member communications within an organization may address elected officials and candidates in a variety of contexts without necessarily seeking to affect an election.

To take a single example, a labor organization might be engaged in contract negotiations and have support from a current elected official who also happens to be a political candidate. In communications with its members regarding the progress of and strategy for contract negotiations, that membership organization would be likely to mention that candidate in a widespread communication within the organization. Such a mention would not be directed at the public, and would not focus on urging the elected official's re-election; such an internal mention of the candidate should not require the same filing of a report as an electioneering communication directed toward a general public audience.

In sum, as we have previously testified, exempting ordinary member communications from the definition of "independent expenditure" is a sound policy that the Brennan Center supports. We therefore urge adoption of the proposal under consideration at today's hearing.

I would be glad to answer any questions you may have. Thank you.

Testimony for City Council Hearing on Amendment to Campaign Finance Law Prepared by Citizen Action of New York

New York City has one of the most comprehensive and effective public campaign financing programs in the country. Citizen Action of New York has always supported this system and its expansions. In fact, we are such strong supporters of it that we are working hard to pass a similar system at the state level. Truly the New York system of public matching funds has become a national example of successful public financing of elections, enticing record numbers of candidates to seek office, and helping elect new members who reflect the communities and interests of their districts.

The essential focus of New York City's system that makes it such a model is participation. Built on the small donor matching program, the City's system encourages participation by all parties: by candidates, more of whom seek each office in New York City than in most states and municipalities; by donors, who know that even a $50 contribution will matter here because it counts as $350; by volunteers and activists who see that these people-powered candidates are building their campaigns around the grassroots; and ultimately by the voters who see that their council members are answerable to them, and not to a deep-pocketed lobbyist.

We believe that continuing expansion and improvement of the City's campaign finance system is always welcome, as long as it hews to this essential focus. More participation in our democracy is better for our democracy. The recently passed charter amendment can enhance the power of ordinary people by putting a check on the potential for runaway unreported spending by outside groups. The spirit of the voters who passed that revision was clear: they want their voices heard, not drowned out.

We're here today because unfortunately, the Campaign Finance Board has since interpreted this amendment in ways that run counter to its intent. Rather than interpreting the amendment in such a way as to maximize participation in our democracy, they included a restriction on the participation of some citizens. Those of us who are members of organizations, including political interest organizations such as Citizen Action of New York, would have our communications to and from our fellow members treated by the same standard as an independent television advertisement, or a mass mailing to the public. Organizations which ought to be ENCOURAGED to participate in our local democracy, and to communicate with their members about the positions of candidates on issues important to them, would be actively discouraged from doing so, for fear of running afoul of the new regulations. That goes against both the spirit of the voters, and the letter of the amendment itself, which said nothing about regulating internal member to member communications.

Internal communications differ substantially from the sort of independent expenditures that ought to be covered by the new regulations. They are not anonymous: members easily recognize

the source of communications from their own organization. They are not one-way: membership organizations generally engage in regular two-way communication with their members, and members often have a say in the messages conveyed by the organization. Finally, they do not exist to circumvent limits on direct campaign donations: membership organizations are not temporary entities that spring up to aid specific candidates, and member communications are not aimed at the general public.

What's more, the City's effective campaign finance system has built its deserved reputation without any such restrictions on internal membership communications in place. The Campaign Finance Board itself recognizes this fact; its post-election review of the 2009 campaign year rightfully celebrates the broad success of the system in that year. But if membership organizations were not discouraged from participating in our democracy in 2009 or previously, and our system has worked well, why should we would we want to make such a drastic change in the way we treat them in 2013?

In response to this unfortunate interpretation, a number of organizations – including Common Cause, NARAL, the NAACP, Make the Road NY, and the New York City Hospitality Alliance – have requested that the City Council pass legislation clarifying the new amendment. The proposed bill, as you know, would properly exclude internal membership organization communications from the requirements of the independent expenditure rule. It would define clearly what constitutes "membership" in an organization, so it could not be used as a loophole by malevolent outside interests aiming at the general public.

And it would be in keeping with the will of the voters in New York. The charter amendment was intended to shine a light on anonymous spending that is too often used to influence elections. It was never intended to stifle an organization's ability to engage in collective action, or educate its members about a candidate's views. Indeed, membership communications are a critical form of civic participation that should be encouraged, not treated as suspect. By passing this legislation, the City Council will ensure that New York continues to have the strongest, most expansive, and most balanced campaign finance laws in the nation.

Jesse Laymon is the Downstate Campaigns Manager of Citizen Action of New York

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Karen Scharff is the Executive Director of Citizen Action of New York

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TESTIMONY
of
GENE RUSSIANOFF
Senior Attorney
NEW YORK PUBLIC INTEREST RESEARCH GROUP
before the
NEW YORK CITY COUNCIL
COMMITTEE ON GOVERNMENTAL OPERATIONS
hearing on
INTRO 978A-2012 (CAMPAIGN FINANCE)
January 16, 2013
New York City

The New York Public Interest Research Group supports Intro 978A-2012.

Last year, the New York City Campaign Finance Board enacted rules on the disclosure of independent expenditures in city elections. This was in response to both a charter amendment adopted by voters and after an open and lengthy process by the CFB process involving many organizations.

NYPIRG – and other civic groups – supported those rules as a needed response to federal court decisions that resulted in increasing permissible independent expenditures. But we disagreed on a point at the CFB hearings. In our view, free expression by a member organization to its own membership should not be subject to campaign finance reporting when these expenditures are independent of a campaign.

NYPIRG agrees with the bill sponsors that this reporting requirement of the CFB rules should be changed by the City Council.

For the record, NYPIRG thinks it is too late in the City election cycle for major changes to long-standing provisions of the City's landmark Campaign Finance Act, such as its definition of what constitutes a contribution.

The New York City Campaign Finance Act is one of the great achievements of the City Council. It is far and away the best municipal campaign finance program in the nation. While the federal program has wilted over the years, this body has voted to adapt and strengthen the law over the years. All these changes were carefully considered and debated during the course of multiple hearings and meetings.

These include:

- requiring that the Campaign Finance Board publish and mail to registered voters a Voter Guide with neutral information on candidates and ballot proposals (1989);

- mandating that City-wide candidates in the program must debate (1995);

- increasing the match of public funds from first one-to-one to four-to-one in 1998 and setting at its current match of $175 by city residents at a 6-1 rate;

- Extended contribution and disclosure requirements to non-participants, and increasing the match for candidates opposing a wealthy self-financed candidate (2004); and

- Limits contributions from people doing business with the city (2006)

THE COUNCIL
THE CITY OF NEW YORK

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I represent: Citizen Action of New York

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Name: Adam Skaggs

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Name: Amy Loprest

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I represent: NYC Campaign Finance Board

Address: 40 Rector St, NY NY 10006

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I represent: "

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