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May 29, 2019

BY EMAIL
Hillary Weisman
General Counsel
NYC Campaign Finance Board
100 Church Street, 12th Fl.
New York, NY 10007

Re: Comments on Proposed CFB Rules Re-Codification

Dear Ms. Weisman:

Below please find my comments on the rules the CFB proposed for public comment in April 2019. These comments are solely my own and not submitted on behalf of any other party.

Proposed 1-02, defining "transition expenses", states that transition expenses may not be incurred after the candidate takes office. This provision is contrary to NYC Administrative Code §3-801(2)(c) which sets January 31 in the year following the election as the deadline for incurring transition expenses. [Rulemaking Notice p. 30]

Proposed 4-01(c)(viii) – The proposed rule states:

> Pursuant to § 14-106 of the New York State Election Law, candidates must maintain copies of all advertisements, pamphlets, circulars, flyers, brochures, letterheads, and other printed matter purchased or produced and a broadcast record of all radio or television time purchased and scripts used therein.

Election Law §14-106 was expanded by legislative amendments in 2014 and 2018 to now require:

> a copy of all broadcast, cable or satellite schedules and scripts, paid internet or digital, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, and reproductions of statements or information published to five hundred or more members of a general public audience by computer or other electronic device including but not limited to electronic mail or text message, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be.

The Board should consider conforming the proposed rule with the expanded Election Law requirements. [Notice p. 48]

Proposed 4-05(b)(ii)(B) – To facilitate its contemporaneous monitoring of candidate eligibility and compliance with the requirements for optional early public funds payments (Charter §1052(a)(21)), the Board should consider establishing additional monthly reporting deadlines beginning in the December prior to the year of the election and continuing in February, April, and June of the election year. *See also* comments below re: Proposed 7-02(a)(ii) and 7-04. [Notice p. 50]

Proposed 4-05(c)(ii)(A)(8) – The Board should consider deleting the requirement that candidates report whether any contributor has business dealings with the City since it is not a feature of CSMART and is redundant with disclosures made on the existing Doing Business Database (DBDB). [Notice p. 51]

Proposed 4-05(c)(vi)(A) – The proposed requirement that transfers "consist entirely of contributions previously raised by the transferor committee" is a substantive change from current Rule 1-07(c) which states: "the Board shall attribute ... transfers to the last monetary contributions, loans, and other receipts received by ... the transferor committee before making the transfer". While the Act requires that certain transfers be attributed to "previous contributions", no provision of law directs that every transfer consists entirely of previous contributions. Such a proposition may not be factually accurate in every instance. Consider the following hypothetical:

> A candidate opens an exploratory committee for City-wide office, with a $100,000 personal loan. During its existence, the committee earns $1,000 in interest, receives one $500 contribution, and makes no expenditures. When a vacancy occurs in the City Council, the candidate opens a new committee to which the full $101,500 balance of the first committee is transferred.

It is not clear how the proposed rule change would address this hypothetical transfer. [Notice p. 55]

Proposed 5-03(g) and 5-05(l) – The first proposed rule would extend the CFB prohibition against a candidate accepting a contribution in violation of any local, state or federal law to prohibit acceptance of "a contribution that was made, received, solicited or otherwise obtained in violation of" any such law. The other proposed rule is a corollary against matching such contributions with public funds.

The rulemaking notice makes no reference to *Campaign Finance Board v. Oberman*, OATH Index No. 2519/17 (Nov. 21, 2017). If the CFB is making these proposals to nullify the precedential effect of that decision, the Board should make that intent clear. The Campaign Finance Act, however, does not address whether the CFB may penalize candidates for contributions that violate other laws and also does not address whether contributions that in some way violate other laws are matchable. While these proposed rules may have some public policy merit, as is often the case devils lurk in details.

First, the current rule prohibiting "acceptance" expressly addresses candidate conduct, whereas the new language is passively phrased to prohibit contributions in circumstances where the candidate may not have any knowledge or reason to believe that a contribution "was made, received, solicited or otherwise obtained in violation of" another law. As a first step, the prohibition should be

narrowed to apply only to candidate conduct and not hold the candidate in strict liability for actions of contributors or solicitors.

Second, in contrast with State Election Law, local law delegates enforcement authority to the CFB only against the acceptance of contributions in violation of specified local laws, none of which also proscribe the making of those same contributions. Since the CFB has not been delegated authority to determine and has no actual experience in determining whether a contribution was made or solicited in violation of another law, presumably the predicate for the enforcement of these proposed rules would be a judicial or quasi-judicial determination of violation and not a mere allegation of violation. This should also be clarified.

Third, as drafted, the proposed rules would not actually nullify the *Oberman* precedent. Judge Gloade found that evidence in a Conflicts of Interest Board proceeding that the candidate "used City resources to contact campaign contributors does not prove that the challenged contributions were accepted or received in violation of the City's Conflict of Interest Law". *Oberman* at 7. With respect to the question of whether contributions were unlawfully "solicited", Judge Gloade stated "while Judge Zorgniotti [the judge in the antecedent Conflicts of Interest Board case] concluded that the calls themselves violated the conflicts of interest law because they were made on City time using City resources, she made no finding that [the candidate] actually solicited contributions during the telephone calls or that the specified contributions were received as a result of the telephone calls." *Id.* at 6.

Nonetheless, the absence of a prior Conflicts of Interest Board determination that the contributions in that case were "made, received, solicited or otherwise obtained" in violation of the Conflicts of Interest Law did not deter the Board from alleging otherwise in the enforcement proceeding it brought to impose penalties and require the repayment of public funds. How will the new proposed rule assure candidates that the Board will not again leap into future enforcement actions based on an aggressive misreading of a judicial or quasi-judicial determination pertaining to campaign contributions under a law that is not enforced by the CFB?

For example, various federal "pay-to-play" rules ban certain government business opportunities over various time periods and these bans are triggered when covered persons make certain contributions to public officials. *See, e.g.*, Municipal Securities Rulemaking Board, Rule G-37 and 17 C.F.R.275.206(4)-5. Were the making of a contribution to result in a ban against a company doing certain government business, would the CFB conclude that the contribution triggering the ban was "made, received, solicited or otherwise obtained" in violation of those rules? This and similar questions should be addressed before rules are adopted and not, for the first time, in the context of an enforcement proceeding or public funds repayment claim. [Notice p. 58, 61]

5-04(a)(v) – The proposed rule specifies that a political committee registration is null and void until the committee files an amendment to correct a material change in the information previously filed. What effect will this have on candidates who accept contributions from the political committee after the material change occurs but before the amendment is filed? If the CFB intends to treat those contributions as violations, how will it provide notice to candidates that contributions from those committees are not acceptable during those time periods? [Notice p. 59]

5-04(c) – The proposal for documenting joint contributions should be amended to clarify how candidates must document the attribution of joint contributions made by credit card for which signed contribution cards are not required. See Proposed 4-01(b)(ii)(A)(4) and (B). [Notice p. 60]

5-05(d) – The characterization of persons (other than lobbyists) "required to be included in a statement of registration filed pursuant to" City lobbying law as "doing business contributors" is inaccurate and misleading. Contributions by those persons are not subject to the doing business contribution limits and those persons would not be listed in the DBDB. To signify these contributions are non-matchable, the CFB should devise a different label, such as "lobbyist-related contributions." [Notice p. 61]

5-05(v) – Unless the CFB adds additional post-election reporting requirements, the proposed rule means that no contribution received more than 23 days after a general election is matchable with public funds, since there is currently no mechanism for reporting such contributions until January 15 in the following year. To be consistent with Admin. Code §3-702(3), the proposed rules either need to provide a mechanism for claiming such contributions as matchable by December 31 or create an exception for contributions timely reported in the January 15 disclosure statement immediately following the year of the election. [Notice p. 62]

5-07(a) – Administrative Code §3-709(9) authorizes the Board "to accept donations to be credited to the fund. The board may devise such methods of soliciting and collecting donations as it may deem feasible and appropriate." While this authority would enable the Board to have rules that encourage disgorgement of contributions as donations to the NYC Election Campaign Finance Fund, the proposed rule would mandate disgorgement of certain contributions to the Fund. In addition to lacking authority to mandate disgorgement of contributions to the Fund, the proposed rule is contrary to Election Law §14-128, which mandates disgorgement of anonymous contributions to the general treasury of the state. [Notice p. 64]

5-07(e) – The proposal to require the reporting of a payment to the Fund as a refund to a contributor is unclear. The proposal should make clear that the CFB disclosure software will accommodate this additional reporting in a manner that is consistent with the current requirements for reporting to the State Board of Elections. [Notice p. 65]

5-07(f)(i)(C) – The proposal would clarify the treatment of doing business contributors. The rulemaking notice gives the following example:

> a candidate for City Council accepts a $1,000 contribution during the first year of an election cycle from a contributor who is not in the DBDB. One year later, the contributor begins doing business with the city. This contributor has already reached the doing business limit of $250, but the candidate is not required to return the excess, as the contributor did not appear in the DBDB when the contribution was made. However, the candidate may not accept any additional contributions from that contributor while the contributor is in the DBDB.

Conversely, the proposed language suggests that if a contributor makes a $250 contribution while in the DBDB and then makes a later contribution of $500 after he or she is no longer in the DBDB, the later contribution is permissible and not required to be refunded. If this is not the CFB's

understanding of Admin. Code §3-703(1-a), it should propose additional language for public comment. [Notice p. 65]

5-08(a)(ii) – The proposal permits a segregated account to be used after the election to "pay outstanding liabilities related to the preceding election." The proposed rule should make clear which "preceding" election is being referenced. [Notice p. 66]

5-09(i)(iii) – The proposed permission for unlimited post-election loans made by a "candidate" after the Board has issued a "final determination" for the purpose of paying penalties or making required public funds repayments extends to "every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate." *See* Proposed Rule 1-02, defining "candidate." The proposed rule does not appear to change current permission for candidates to pay penalties and repay public funds directly to the CFB, without having such funds pass through the political committee as a loan. The proposed permission for loans would create flexibility by allowing the recipient committee to raise new contributions for the purpose of repaying the candidate's loan. One issue left open by the proposal is whether the lender has the option of forgiving the loan, which would have the effect of converting the loan into a contribution that is not subject to the contribution limit. The CFB should make clear whether that is the intended result. Additionally, the CFB may wish to clarify how this proposed rule covers candidates (including treasurers and agents) who are in the DBDB. [Notice p. 68]

5-10(b)(iv) – Administrative Code §3-703(1-a) contains special limits on contributions from "a natural person who has business dealings with the city". Admin. Code §3-702(18) defines "business dealings with the city" and §3-702(20) defines the DBDB as containing the "names of persons who have business dealings with the city", which includes both natural persons and firms. In contrast, labor organization and political committee contributions are subject to Admin. Code §3-703(1)(f) (affiliation standards for labor organization contributors) or §§3-703(1)(k) and 3-707 (political committees), but neither are subject to the doing business limits of §3-703(1-a).

In the light of these local law provisions, the purpose and scope of the proposed rule is unclear. First, the proposal is not limited to contributions by entities that themselves appear in the DBDB. Second, the local law's doing business disclosure provisions make no reference to affiliations between individuals in the DBDB and entities not in the DBDB. Third, if the president of a labor organization is registered as a lobbyist for that organization (and therefore subject to the doing business limit), where is the legislative authorization for also subjecting contributions by the labor organization or its affiliated political action committee to the doing business limit that Admin. Code §3-703(1-a) extends only to natural persons?

To the extent the proposed rule is intended to apply only to business entities (and neither labor organizations nor political committees), it is wholly unnecessary. Contributions from corporations, LLCs and partnerships are prohibited altogether, whereas sole proprietorships would be restricted as natural persons under the doing business limits, without need of reference to "affiliation" principles. [Notice p. 69]

5-11(a)(ii) – On its face the duty to maintain a bank account in the name of the "principal committee" is inapplicable to non-participants. *See* Admin. Code §3-702(2), defining "principal committee." [Notice p. 70]

5-11(a)(iii) and (c) – The prohibitions against commingling receipts for different elections in the same account and prohibitions against post-election expenditures, transfers and use of receipts for a different election should not be applicable to non-participants, who are not prohibited, *inter alia*, from using surplus funds for future elections or required to move surplus funds to a new bank account before making expenditures. [Notice p. 70]

6-01(g) – When the Act places an obligation solely on a principal committee, the Board may not extend that obligation to the candidate. *See NYC Campaign Finance Board v. Ortiz*, 38 A.D.3d 75, (1st Dept. 2006). Rather than re-codify a currently overbroad rule, the proposal should narrow the scope and adhere to Admin. Code §3-703(1)(o) which states: "expenditures by [a participant's] principal committee for the purpose of advocating a vote for or against a proposal on the ballot in an election that is also a covered election shall be subject to the contribution and expenditure limitations applicable in such covered election." (Emphasis added.) No provision of the Act prohibits the creation of a separate ballot proposal committee by a participating candidate, treasurer or agent of that candidate or automatically subjects such a ballot proposal committee to the Act's contribution and expenditure limits. [Notice p. 73]

6-02(a)(ii)(Q) – Similarly, this proposal would also re-codify a currently overbroad rule. Because this prohibition has no analogue in Admin. Code §3-704(2), the rule should, at a minimum, expressly acknowledge that qualified expenditures include presumptive campaign expenditures in furtherance of a political campaign for elective office that are set forth in Admin. Code §3-702(21)(a)(6) (legal defense of a non-criminal matter arising out of a political campaign) and (10) (costs incurred in demonstrating eligibility for the ballot or public funds payments or defending against a claim that public funds must be repaid). Otherwise, the proposal appears designed to deter good faith legal challenges to Board determinations. [Notice p. 79]

6-06(h) – The proposal inaccurately applies the term "principal committee" to non-participating candidates. *See* Admin. Code §3-702(2), *supra*. [Notice p. 84]

7-02(a)(ii); 7-04; also 3-01(b) – With respect to the early payment of public funds, prior to the candidate's meeting all the requirements of law to have his or her name on the ballot, Admin. Code §3-703(1)(a) states:

> To be eligible for optional public financing under this chapter, a candidate for nomination for election or election must:
>
> (a) meet all the requirements of law to have his or her name on the ballot, or, for the disbursement of optional public financing occurring prior to two weeks after the last day to file designating petitions for a primary election, certify that he or she intends to meet all the requirements of law to have his or her name on the ballot for the primary or general election;

Pursuant to Charter revision changes adopted by the electorate in 2018, Charter §1052(a)(20)(b) and (21) state:

> (b) Notwithstanding any other provision of law, to be eligible for the disbursement of optional public financing occurring prior to two weeks after the last day to file designating petitions for a primary election, in addition to satisfying the requirements of section 3-703

of the administrative code and all other applicable requirements of this section and chapter 7 of title 3 of the administrative code, the participating candidate shall demonstrate that at least one of the conditions set forth in paragraph (b) or (c) of subdivision 7 of section 3-705 of the administrative code is satisfied, as determined by the campaign finance board. The participating candidate seeking such monies shall submit a certified signed statement attesting to the need for such public funds and identifying the condition or conditions set forth in paragraph (b) or (c) of subdivision 7 of section 3-705 of the administrative code that apply and supporting such statement with relevant documentation. The board shall be authorized to verify the truthfulness of any certified statement submitted pursuant to this subparagraph and of any supporting documentation and shall post such certified statements and supporting documentation on its website.

21. Notwithstanding any other provision of law, no monies shall be paid to participating candidates in a primary or general election any earlier than February 15 in the year such election is scheduled to be held. Any reference in this charter, the administrative code or any other local law to the earliest date by which monies shall be paid to participating candidates in a primary or general election set forth in subdivision 5 of section 3-709 of the administrative code shall be deemed a reference to this paragraph. Notwithstanding any other provision of law, for the disbursement of optional public financing occurring prior to two weeks after the last day to file designating petitions for a primary election the campaign finance board shall schedule a minimum of three payments on February 15, April 15 and June 15 in the year such election is scheduled to be held, or as soon after each such date as is practicable.

Admin. Code §3-710(3)(b) states:

If a participating candidate whose principal committee has received public funds fails to actively campaign for election to a covered office, such candidate and his or her principal committee shall pay to the board an amount equal to the total of public funds received by such principal committee. For the purposes of this subdivision, the term "actively campaign for a covered office" shall mean filing designating or nominating petitions for inclusion on the ballot, and activities that include, but are not limited to, raising and spending funds for nomination for election or election to a covered office, seeking endorsements, and broadly soliciting votes.

(Emphasis added.)

The Board has not yet administered these provisions for early payment in a covered election. Whereas the pre-existing post-ballot status payment regime permits payments to participating candidates following a single certification of participation, candidate qualification for early payment requires in every instance two additional certifications:

1) A certified statement of need pertaining either to the competitiveness of an identified opposing candidate (Admin. Code §3-705(7)(b)) or identifying one or more opposing candidate in a primary or special election for an office for which no incumbent is seeking re-election (Admin. Code §3-705(7)(c)); and

2) A certified statement that the candidate intends to meet all the requirements of law to have his or her name on the ballot for the primary or general election.

The proposed rules appear to fold the "optional early public funds payment" provisions into the general requirements for pre-election payments, without fully reckoning with unique compliance issues posed in the additional certification requirements for early payment. Rather than first address these new issues in a vast re-codification of its rules, I urge the Board to consider initiating a separate rulemaking solely on the subject of the new early payment requirements.

For example, the separate rulemaking could give attention to various thorny questions, such as:

1. What deadlines apply to the two additional certifications and the required declaration of office sought?
2. Under what conditions, if any, may a candidate change the declared office sought after first receiving public funds?
3. If no opponent has declared for the same office, how may a candidate identify an opposing candidate?
4. Will "opposing candidates" identified in the additional certification have standing to challenge the candidate's application for early payment? If so, what rules apply to those administrative proceedings?
5. If, after a candidate receives an early public funds payment, the opposing candidate changes the office sought, drops out of the race altogether or otherwise fails to "actively campaign for a covered office", does that trigger any repayment obligation? What if the opposing candidate ends his or her campaign at the request of the public funds recipient? What if the opposing candidate declines designation for the primary election and the designating petitions' committee on vacancies gives that designation to the now unopposed early public funds recipient?
6. Will the Board have any standards to protect against collusion or coordination between potential public funds recipients and their putative opponents?
7. If the designating petitions of an early public funds recipient are invalidated due to fraud but there is no judicial decision that the candidate committed fraudulent acts that would support a repayment claim under Admin. Code §3-710(3)(a), would the Board nonetheless seek repayment on the basis that the candidate has failed to actively campaign? What if that candidate then conducts a write-in campaign for the primary nomination?

[Notice p. 86 – 87]

7-07(ii)(B), (C), (D) – The broad definition of "candidate" would result in anomalous deductions from public funds payments, such as for payments of liabilities or penalties in a previous election that are made by a candidate from personal funds or by an authorized committee other than the principal committee for the current covered election or for political contributions made from personal funds. [Notice p. 89]

9-01, 9-02(c)(i) – Proposed Rule 7-07(a)(i) asserts that public funds payable shall be reduced by the amount of outstanding civil penalties assessed by the Board for the current election cycle. Admin. Code §3-702(21)(a)(9) defines "[p]ayment of non-criminal penalties or fines arising out

of a political campaign" as presumptive campaign expenditures in furtherance of a political campaign for elective office. Neither this proposed rule nor this provision of the Act distinguishes between penalties assessed prior to or after the election. Thus, whether deducted from public funds payments or paid by the principal committee, the CFB's collection of an assessed penalty has an identical effect on the principal committee's bank balance for purposes of the reimbursement claim the CFB may ultimately assert pursuant to Admin. Code §3-710(2)(c).

A principal committee's penalty payment – whether to the CFB or any other governmental agency – will not have the effect of reducing the amount of a public funds repayment claim under Admin. Code §3-710(2)(a) or (b) (*see* Admin. Code §3-704(2)(j)). But because it is a campaign expenditure under Admin. Code §3-702(21)(a)(9), however, such a penalty payment necessarily reduces the amount public funds reimbursement the CFB may properly claim under Admin. Code §3-710(2)(c).

Proposed 9-01 asserts "[p]ublic funds must be repaid to the Board separately from, and in addition to, any penalties owed by the candidate." Based on the explanation given in the Notice, this assertion is directly contrary to Admin. Code §§3-702(21)(a)(9) and 3-710(2)(b). To the extent the Board believes proposed 9-01 reflects its current policy, that policy must be changed to conform with the Act. [Notice at pp. 96 - 99]

9-02(c)(iii) – CFB Rule 5-03(e)(2)(ii) restricts public funds recipients from making bonus payments after the election. Proposed 9-02(c)(iii) allows for post-election bonus payments provided specified criteria are met. I agree with the intent of this proposal to create clarity and flexibility for employee compensation arrangements but disagree with the proposed overregulation of bonus compensation agreements.

Were all things equal, competing participants and non-participants should have the same flexibility to incentivize top performance by their staff. The major distinction between participants and non-participants is that only the former are subject to expenditure limits. Since incentives for performance should pertain solely to pre-election work, bonuses to employees should be subject to the Act's expenditure limits when paid by participants, even if those payments are made after the election.

Second, to safeguard public funds, the CFB needs assurance that a *bona fide* obligation to pay the bonus was incurred when the employee was hired. Thus, to substantiate a post-election bonus payment, I would recommend that CFB rules require participants to submit to the CFB copies of employee contracts providing for bonus compensation within 24 hours after the employee is hired. Otherwise, CFB rules should not set criteria for bonuses that result in different treatment for bonuses paid by participants and non-participants. [Notice p. 98 – 99]

10-03(c)(iv) – Admin. Code § 3-710.5(ii)(a) states "in the case of adjudications conducted prior to the date of a covered election, the board shall use the procedures of section 1046 of the charter only to the extent practicable, given the expedited nature of such pre-election adjudications". Proposed 10-03(c)(iv) would foreclose the possibility of pre-election CAPA adjudications altogether without the practicability determination this local law provision requires. The proposal is especially odd in light of the newly extended time periods between the date of first permissible public payments in February and the new June primary election and between the June primary election and November general election. Given that these timeframes for both pre-primary and

pre-general election adjudications have more than doubled to greater than four months each, the proposed CAPA adjudication preclusion should be deleted. [Notice p. 101]

11-02(a) – If the Board intends Chapter 11 to be applicable to cases brought against independent spenders under the Charter, this proposal should be amended accordingly. Compare Proposed 10-03(a) [Notice p. 102]

13-03(b)(iii), (iv); see also 15-07(a) – These proposals should clarify how the TIE may address liabilities incurred for responding to CFB inquiries and producing CFB disclosure reports after January 31. [Notice p. 114]

13-03(b)(vi) – The proposed presumption that only one inaugural event is TIE-related is unclear regarding circumstances such as costs incurred in relation to elected candidate participation in, *inter alia*, TIE fundraising events, joint swearing-in ceremonies with other elected candidates, and other elected candidate's inaugural events. Further, if a Council district crosses borough boundaries it may be politic and not unreasonable to hold separate events in both boroughs. [Notice p. 114]

15-03(a), (b) – The Notice should clarify whether this proposal continues or modifies longstanding Advisory Opinions (Nos. 1992-3, 2007-2, 2008-3, 2009-1, 2010-2), which declared that special election candidates could not avail themselves of the off-year expenditure limits set forth in Admin. Code § 3-706(2). If the Board's intent is to follow those precedents, it also needs to reckon with the plain language of Admin. Code §3-706(1) which provides no expenditure limit for expenditures made prior to the January 1 preceding the special election. *Compare* Admin. Code §3-704(1) (the calendar year of the election requirement for qualified expenditures is inapplicable to special elections). [Notice at p. 127]

15-04(c) – The "candidate's" duty to refund over-the-limit contributions received prior to the date the special election was first reasonably anticipated is overbroad and should be limited to the authorized committee(s) that are involved in the special election. [Notice p. 128]

15-04(g) – This proposal should be clarified by inserting the word "after" after the word "until." [Notice p. 128]

15-04(h) – If a candidate first explores running in a special election but then decides to use his or her committee for a different covered election, what is the legal basis for requiring the candidate to return contributions? Likewise, what is the legal basis for requiring a candidate to return contributions when he or she is not on the ballot but continues to run as a write-in candidate in the special election? [Notice p. 128]

15-06(d) – The proposal requires ballot proposal committees to submit additional disclosure statements on January 15 and July 15 "of the year prior to the year of the election." Should this rule instead require those statements be submitted in the year of the election? [Notice p. 129]

16-05(e)(ii)(B), also 16-07(a) – Proposed Rule 16-01 follows longstanding CFB procedures requiring candidates to demonstrate to the Board that a runoff election is reasonably anticipated before they may accept contributions for the runoff election. Admin. Code §3-709(6) prohibits

public funds payments in a runoff election any earlier than the day after the day of the primary or special election, as the case may be.

Proposal 16-05(e)(ii)(B) expands the significance of reasonable anticipation determinations to potentially permit public funds payments prior to the date permitted by Admin. Code §3-709(6). Proposal 16-07(a) states that reasonable anticipation determinations would also trigger independent expenditure reporting requirements for a runoff election, which would duplicate the ongoing reporting for the primary or special election, as the case may be. Since one proposal is contrary to law and the other is confusing and duplicative, both should be deleted. [Notice pp. 131, 133]

16-05(g) – This proposal creates a duty to return contributions which were not received in violation of any law. This proposal is contrary to longstanding CFB precedent. *See* CFB Advisory Opinions 2013-2, 2001-11, 1999-1, and 1997-2. The Notice neither acknowledges nor provides any legal justification for superseding these opinions. Also, the alternative proposed requirement for disgorging these contributions to the NYC Election Campaign Finance Fund, like proposal 5-07 discussed above, is not authorized by Admin. Code §3-709(9). [Notice p. 131]

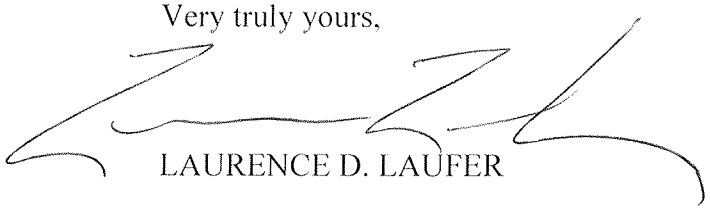
16-06(b)(iv)(B) – A runoff primary election is covered by the same certification as the preceding primary and subsequent general election. In contrast, a runoff special election is covered by the special election certification and not by the subsequent primary and general election certification. In other words, funds left over after a runoff special election are potentially subject to the Admin. Code §3-710(2)(c) public funds reimbursement requirement and therefore may not be moved to a primary or general election account. This proposal is therefore contrary to the Act and would undermine the public funds reimbursement requirement. It should be deleted. [Notice p. 133]

17-02(b)(i)(F)(3); 17-02(b)(iii)(C) – The Board should consider whether the advent of the June primary election makes it feasible to set a deadline for submission of general election Voter Guide candidate statements after the date of the June primary, which would also allow primary candidates to submit a different statement for the general election. Because these two proposals would foreclose this option, they should be reconsidered. [Notice pp. 135, 137]

17-02(b)(ii)(B) – This proposal acknowledges an instance in which a candidate "clothing, make-up and hairdressing" is related to the political campaign. This fact should inform how the CFB administers Admin. Code §3-702(21)(b)(3), which prohibits the use of campaign funds for such a personal use only when that use is unrelated to a political campaign. [Notice p. 136]

Thank you for the opportunity to comment.

Very truly yours,



LAURENCE D. LAUFER