



November 18, 2024

Carolyn Miller, Executive Director
New York City Conflicts of Interest Board
2 Lafayette Street, Suite 1010
New York, New York 10007

RE: Clarifying City Charter Rules on Using City Resources on Electioneering for Local Referenda

Dear Ms. Miller,

We write to ask that the Conflicts of Interest Board (COIB) provide the public greater clarity regarding its guidelines on using City resources for political campaign activity and electioneering in relation to local referenda questions.

According to media reports¹, COIB has recently provided the New York City Council with guidance regarding a public campaign the Council conducted in relation to the 2024 ballot proposals to amend the City Charter. The campaign was conducted by individual council members and Council central staff and included mailers, public events, and a social media campaign.

According to the reporting, the Board advised the Council that the prohibition on the use of City resources for non-City purposes, as detailed in City Charter §2604(b)(2) and Board Rules §1-13(b), does not apply to “the course of debating” the proposals of the Charter Revision Commission or to “promoting one view or another about them.” Although the Charter does forbid spending City resources on “political campaign activity,” the reporting makes it appear that the Board interprets political campaigns only as those “directed toward the success or failure of a candidate for election to public office” or “the promotion of a political party,” and not campaigns directed towards a public referendum on proposals of a charter revision commission. The above quotes are based on media reports; the advice letter from COIB has not been made public by the City Council.

Because the COIB guidance is not public, we do not know if COIB provided an interpretation of other sections of the City Charter. However, we are concerned this reporting generates the perception that public servants have wholesale approval to spend public resources advocating for or against local ballot questions.

Such perception would seem to be inconsistent with other sections of the City Charter, particularly §1136.1, which deals with prohibitions on the use of government funds and resources in support or opposition to candidates and ballot proposals. Charter §1136.1(2)(c) clearly states that, “*no public servant shall use governmental funds or resources for a public communication that contains an*

¹ Annie McDonough, City & State New York, October 28, 2024, *Holden files formal complaints on NYC Council’s ‘overtly political’ ballot proposal messaging*. <https://www.cityandstateny.com/politics/2024/10/holden-files-formal-complaints-nyc-councils-overtly-political-ballot-proposal-messaging/400616/>; Jeff Coltin, Politico New York, October 29, 2024, *New York Playbook: DCAS Under Fire* <https://www.politico.com/newsletters/new-york-playbook/2024/10/29/dcas-under-fire-00185990>

*electioneering message, including but not limited to information placed by electronic means on the Internet.” Paragraph (1)(c) of that section defines an “electioneering message” as, “a statement designed to urge the public to elect or defeat a certain candidate for elective office, or support or oppose a particular political party, **or support or oppose a particular referendum question.**” (emphasis added)* The section sets penalties for intentional violations of this law.

It is worth noting that other Charter sections that regulate political campaigns also consider local referenda to be regulated activities. For example, §1052(a)(15), which governs the disclosure of independent expenditure in campaigns, defines such activity as “*a monetary or in-kind expenditure made, or liability incurred, **in support of or in opposition to a candidate in a covered election or municipal ballot proposal or referendum**, where no candidate, nor any agent or political committee authorized by a candidate, has authorized, requested, suggested, fostered or cooperated in any such activity.*” (emphasis added)

We acknowledge that COIB is empowered only to implement and interpret Chapter 68 of the City Charter (as well as local laws related to legal defense trusts and affiliated nonprofits), and that other sections of the Charter may not fall within its enforcement jurisdiction. However, we strongly believe it is crucial to provide public officials and the public at large with a comprehensive interpretation of the Charter’s rules regarding political campaigns – related to both candidates and ballot proposals – and the use of city resources.

New York City has had local referenda in four of the last seven general elections, and we will likely have another one next year. Considering the increasing frequency of New York City ballot questions, it is necessary to have appropriate and public guidance on this issue.

We appreciate your consideration of this matter.

Sincerely,

Ben Weinberg, Director of Public Policy
Citizens Union

Blair Horner, Executive Director
New York Public Interest Research Group

John Kaehny, Executive Director
Reinvent Albany

CC: Ethan Carrier, General Counsel, COIB