January 26, 2026

New York City Conflicts of Interest Board – Members
2 Lafayette Street, Suite 1010
New York, New York 10007

Re: Promulgating Rules on Prohibited Political Activity, including Referenda Electioneering

Dear Members of the Conflicts of Interest Board,

We write to ask the Conflicts of Interest Board take the following measures to address the troubling amount of city resources spent on electioneering during the 2025 election cycle:

- Promulgate a rule that clearly defines what constitutes prohibited "political activity" using city time and resources under Charter Section 2604(b)(2) and Board Rules Section 1-13(b).
- Include, as part of that rule, advocacy in support of or opposition to ballot proposals or referenda, including electioneering that that does not explicitly say "vote yes" or "vote no".

We make this request because we believe the Board's actions over the last two years have led to an outpouring of taxpayer-funded electioneering that has undermined the trust placed in the public servants of the city. As we warned in a previous letter to the Board, permitting public servants to use city resources to promote their view on Charter Revision Commission proposals has created the perception that officials have wholesale approval to advocate for or against local ballot questions, despite clear limits in the City Charter.[1] This has eroded a cornerstone of the City's ethics framework: the prohibition on using City personnel, time, or resources for non-City purposes.

In the lead-up to the November 2025 election, the New York City Council has launched a multi-pronged campaign opposing three housing-related ballot proposals advanced by the 2025 Charter Revision Commission. The campaign included $2 million spending on mailers, additional spending on digital ads, campaign website, and other forms of communications, as well as personnel time for public presentations, rallies and press conferences. Similar mailers were funded with public money during the 2024 ballot campaign. Other city agencies took part in their own electioneering efforts in 2025. For example, the New York City Commission on Racial Equity distributed materials calling the public to "raise their votes against Mayor Adams-led Charter Revisions on Housing." The 2025 Charter Revision Commission spent $3.2 million on a TV ad campaign that featured top city officials describing the importance of building more affordable housing. Although not all these communications explicitly urged to "vote for" or "against" the proposals, many were clearly designed to urge voters to cast ballots in support of a particular position.

[1] Because all of the Board's advisory opinions are kept confidential, including those on the use of City resources for non-City purposes, guidance on this topic was inferred from press reporting.

These examples illustrate the urgent need for clear rules defining prohibited "political activity" using city time and resources before the 2026 general election, which would likely see new charter proposals on the ballot. The Board has consistently held that public servants must keep their political activities separate from their official City duties (COIB Advisory Opinion No. 2017-4). Without clear, public guidance from the Board, every city agency, elected official, and public servant with access to an email account may soon conduct electioneering under the guise of "city policy debate".

In developing a rule defining prohibited political activity using city time and resources, we believe the Board has an obligation to take a whole-of-a-Charter approach. Even if the Board's authority is limited to interpreting Chapter 68, this interpretation cannot be in direct contradiction to other parts of the City Charter.

Specifically, Chapters 49 and 46 of the City Charter are clear that advocacy in support of or opposition to ballot proposals or referenda is considered "political activity." This position should be reflected in any new rule on the topic.

Section 1136.1(2)(c), provides that "*no public servant shall use governmental funds or resources for a public communication that contains an electioneering message, including but not limited to information placed by electronic means on the Internet*." "Electioneering message" is defined in paragraph (1)(c) 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).

Section 1052(a)(15), which governs disclosure of independent expenditures – another form of political activity - defines it 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)

Any definition of "political activity" should be consistent with these City Charter provisions.

It should also draw on existing Campaign Finance Board rules, which define electioneering and express advocacy communications (52 RCNY § 14-01), to ensure the policy applies to communications beyond those that use clear phrases such as "vote yes" or "vote no."

Furthermore, including referendum advocacy in the prohibition on political activity is consistent with court decisions and the Conflicts of Interest Board's own decisions. In *COIB v. de Blasio*, one of the Board's most prominent cases involving the misuse of city resources for political activity, the Board cited *Stern v. Kramarsky,* 84 Misc. 2d 447 (Sup. Ct. N.Y. Co. 1975) to demonstrate the principles behind the City Charter's ban in Section 2604(b)(2). *Stern v. Kramarsky* addressed only the use of public resources by a government agency to support a ballot question. In that case, the court found that the New York State Division of Human Rights violated the New York State Constitution's restrictions on the use of public

funds (article VII § 8, article VIII, § 1) by engaging in activities meant to achieve the passage of a statewide referendum, the 1975 Equal Rights Amendment.

The court held that:

> *"The spectacle of State agencies campaigning for or against propositions or proposed constitutional amendments to be voted on by the public, albeit perhaps well-motivated, can only demean the democratic process. As a State agency supported by public funds they cannot advocate their favored position on any issue or for any candidates, as such. So long as they are an arm of the State Government they must maintain a position of neutrality and impartiality. It would be establishing a dangerous and untenable precedent to permit the government or any agency thereof, to use public funds to disseminate propaganda in favor of or against any issue or candidate."*

The New York State Court of Appeals reinforced this principle in *Phillips v. Maurer*, 67 N.Y.2d 672 (1986), a case involving a local board of education that distributed referendum-related materials. The court ruled that government funds should not be used to

> *"disseminate information, at the taxpayers' expense, patently designed to exhort the electorate to cast their ballots in support of a particular position [on a ballot question] advocated by the board."*

For these reasons, we urge the Board to begin the process of promulgating a rule that clearly defines prohibited "political activity" using city time and resources, and include, as part of that rule, advocacy in support of or opposition and other electioneering regarding ballot proposals or referenda. We respectfully ask that this request be discussed at the next public meeting of the Board.

We appreciate your consideration of this matter.

Sincerely,

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CC:
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