



March 24, 2026

New York City Conflicts of Interest Board – Members

VIA EMAIL

Re: Comments Ahead of March 25 Open Meeting on Petition for Amendment of Board Rules § 1-13(b)

The Board has published a proposed response letter and staff memorandum in advance of its March 25, 2026 meeting to consider a petition submitted by our organizations. The petition requests that the Board promulgate a rule defining prohibited “political activity” conducted using City time and resources under Charter Section 2604(b)(2), and that such definition explicitly include advocacy in support of or opposition to ballot proposals or referenda.

After reviewing these materials, we respectfully submit the following comments for the Board’s consideration.

The proposed response and staff memorandum argue that the conduct we seek to regulate does not constitute a conflict of interest under Chapter 68 because it does not involve a “private interest” that conflicts with a public servant’s City duties. They contend that advocacy for or against ballot proposals is no different from advocacy related to legislation, agency rulemaking, or other policy matters. It is further argued that the use of City resources for such advocacy, “*is* for a City purpose” and falls within “the proper functioning of democratic government.”

This view overlooks a critical distinction between a public referendum and the ordinary policymaking process. The existence of an election transforms a policy question from a matter within a public servant’s official duties (e.g., Council legislation) into one that lies beyond those duties. A referendum represents the point at which public officials – elected or otherwise – cede authority on a policy question to the electorate. They are in the same position as any other voter, with personal views and stakes in the outcome; advocating for a particular result is therefore not part of the proper discharge of official duties.

This distinction is reflected in court cases cited in our petition, which the Board itself has relied on discussing violations of Section 2604(b)(2). These cases prohibit the use of public resources for electioneering in referenda, rather than treating such activity as part of government’s official duties.

Absent recognition of this distinction, public servants could similarly claim that campaigning for a candidate falls within their official duties, on the theory that the candidate’s election may advance their preferred Council legislation – a matter of City policy rather than their “private interest”.

The proposed response also cautions that adopting our approach would render the Board’s jurisdiction too broad and vague. However, failing to recognize the risks associated with permitting government-funded referendum advocacy—indeed, appearing to endorse such conduct as part of official duties—

raises equally serious concerns. This is particularly so given the Board’s role as the primary authority to which New York City public servants look for guidance on permissible conduct.<sup>1</sup>

Indeed, our inquiry arose because the New York City Council sought guidance from the Board on this very issue, and then—Council spokespersons cited the Board’s opinion in a manner that appeared to greenlight conduct prohibited by the City Charter.<sup>2</sup> Absent of such opinions being made public, the proposed Board response and memorandum, which appears to condone taxpayer-funded electioneering activities, would serve as the only public guidance on this matter.

While the Board’s concern about overbroad jurisdiction is understandable, it should not result in an unduly narrow guidance that could be interpreted as permitting public servants to violate other provisions of the Charter.

For these reasons, we respectfully encourage further deliberation on the need for clear rules governing the use of City resources in the context of ballot proposals and referenda.

Yours truly,

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CC:

Carolyn Miller, Executive Director, New York City Conflicts of Interest Board  
Ethan Carrier, General Counsel, New York City Conflicts of Interest Board

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<sup>1</sup> The Campaign Finance Board, referenced in proposed letter, has no role in this issue. Its enforcement authority is explicitly limited to § 1136.1(2)(b) – which governs the pre-election mailer blackout period, not the ban on publicly-funded electioneering in § 1136.1(2)(c).

<sup>2</sup> Nick Garber, Crain’s New York Business, September 19, 2025, Council crusade against housing reforms tests ban on political campaigning <https://www.craigslist.com/politics-policy/nyc-council-campaign-against-housing-questions-tests-electioneering-rules/>; 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/>; <https://www.politico.com/newsletters/new-york-playbook/2024/10/29/dcas-under-fire-00185990>; Jeff Coltin, Politico New York, October 29, 2024, <https://www.politico.com/newsletters/new-york-playbook/2024/10/29/dcas-under-fire-00185990>