CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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March 25, 2026

VIA E-MAIL

Ben Weinberg
Director of Public Policy, Citizens Union

Rachael Fauss
Senior Policy Advisor, Reinvent Albany

Blair Horner
Senior Policy Adviser, New York Public Interest Research Group

Re: Petition for Amendment of Board Rules § 1-13(b)

Dear Mr. Weinberg, Ms. Fauss, and Mr. Horner:

This is in response to your letters to the Conflicts of Interest Board (the "Board"), dated January 26 and March 24, 2026, petitioning the Board, pursuant to Charter § 1043(g), to promulgate a rule defining "political activity" for purposes of Board Rules § 1-13(b), which regulates the use of City resources under Chapter 68 of the City Charter, the City's conflicts of interest law. For the reasons explained below, the Board denies the petition.

Out of a concern that significant City funds have been used by City agencies to advocate for or against ballot initiatives, you ask, in sum and effect, that the Board amend its rules so as to create a legal basis for the Board to use its Chapter 68 enforcement authority to prosecute violations of Charter § 1136.1(2)(c), which is Chapter 49's prohibition against the use of City resources for electioneering messages, including electioneering messages regarding such ballot initiatives. Specifically, to effectuate this application of the Board's authority, you ask the Board to incorporate Charter § 1136.1(2)(c)'s ban on electioneering messaging for ballot initiatives as a prohibited "non-City purpose" under the City's conflicts of interest law for which public servants may not use City resources.

The Board's Charter mandate does not extend to matters of ethical conduct beyond those that constitute a conflict of interest as cognized in Chapter 68. When the 1986-1988 Charter Revision Commission created the modern conflicts of interest law and transformed the old Board of Ethics into the new Conflicts of Interest Board, it established, by design, a Board of narrow jurisdiction:

> The code's prohibitions, however, do not define the full scope of ethical behavior for public servants but, rather, identify a definable and crucial subset of ethical behavior, that is, those actions which conflict with a public servant's official duties. In this respect, the chapter sets forth minimum standards, the violation of which may merit the imposition of serious civil and, under some circumstances, criminal penalties. Recognizing that these standards do not define the full range of ethical behavior, the commission decided to title the proposed new chapter, agency, and code 'Conflicts of Interest' rather than 'Ethics', as under the previous charter.

Report of the 1986-1988 New York City Charter Revision Commission, Vol. II, at. 148. Accordingly, the Charter sections under the jurisdiction of the Board are to be applied only where there is a conflict of interest, that is, where a specific public servant has a private interest that conflicts with their City duties.

With this limited jurisdiction in mind, Board Rules § 1-13(b) is an implementation of Charter § 2604(b)(2) and is applied only within the authority of that Charter section. To that end, Charter § 2606(d) prohibits the Board from imposing a penalty for the violation of Charter § 2604(b)(2) unless the conduct also violates a rule promulgated by the Board specifically implementing Charter § 2604(b)(2).[1] Because Charter § 2604(b)(2) is a prohibition against a public servant engaging in conduct involving a "private interest" that conflicts with their official duties, any interpretation or application of Board Rules § 1-13(b) must also involve a "private interest" that conflicts with the public servant's City duties.

A public servant's use of City resources as part of their City job to advocate for or against a ballot initiative does not, by itself, constitute a "private interest" as contemplated in Charter § 2604(b)(2). In this respect, the circumstances are no different from where a public servant, as part of their City duties, uses City resources to advocate for legislation, rulemaking, or policy, whether that advocacy is to the Mayor's Office, the City Council, or the public. That advocacy cannot, by itself, create a "private interest" merely because such use of City resources is prohibited by law or policy outside of Chapter 68, including provisions of other sections of the City Charter. Such an approach would transform every violation of law or policy involving the use of a City resource into a conflict of interest subject to the Board's enforcement. The Board's jurisdiction cannot be so vague or so broad.

For these reasons, where the Board has applied Board Rules § 1-13(b) in the context of a public servant engaging in so-called "political activity," it has endeavored to

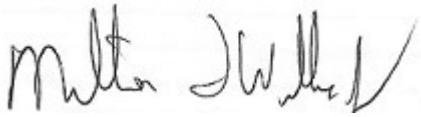
[1] Charter § 2606(d) states: "Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph."

do so only when that public servant is engaged in activity related to a campaign for a candidate for elected office, that is, where there is a "private interest" of the kind contemplated in Charter § 2604(b)(2). The Board has not extended the scope of "private interest" to include all conduct that might be described as "political activity," as it is rare that other commonly described types of "political activity" actually include private interests of the narrow sort contemplated in Charter § 2604(b)(2).

Finally, Charter § 1136.1(2)(c) is codified in Chapter 49 of the City Charter rather than in Chapter 68, reflecting that this restriction is unrelated to a conflict of interest and outside the legal jurisdiction of the Board. See Charter §§ 2603(a) and 2603(e)(1).[2] Indeed, the legislative history of Charter § 1136.1 demonstrates that the Board does not have authority over this Section. In 1998, when enacting Charter § 1136.1, the City Council considered the question of who should enforce this Section and decided to give solely to district attorneys the authority to prosecute violations of this Section as criminal misdemeanors. When the City Council in 2004 again considered the question of enforcement in amending Charter § 1136.1(2)(c), it gave the New York City Campaign Finance Board administrative enforcement authority for Charter § 1136.1(2)(b) but left enforcement of Charter § 1136.1(2)(c) to district attorneys. Thus, any change to the administrative enforcement of Charter § 1136.1(2)(c) must be enacted through Charter amendment.

In sum, the Board's rulemaking and enforcement powers cannot be applied to a matter that does not constitute a conflict of interest or to Charter sections outside of Chapter 68. Accordingly, your petition is respectfully denied.

Very truly yours,



Milton L. Williams Jr.
Chair

Wayne G. Hawley
Ifeoma Ike
Amy E. Millard

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[2] The Board's authority to make rules or engage in enforcement of the City's conflicts of interest law is codified in Chapter 68 of the City Charter at Charter § 2603(a) and Charter § 2603(e).

Charter § 2603(a) states in relevant part: "The board shall promulgate rules as are necessary to implement and interpret the provisions of ***this chapter***, consistent with the goal of providing clear guidance regarding prohibited conduct" [emphasis added].

Charter § 2603(e)(1) states in relevant part: "The board shall receive complaints alleging violations of ***this chapter***" [emphasis added].