


March 25, 2026 – Open Meeting Matter

To: The Board

From: Ethan A. Carrier 

Date: March 11, 2026

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

By letter dated January 26, 2026, three “good government” groups – Citizens Union, Reinvent Albany, and New York Public Interest Research Group (the “Petitioners”) – petition the Board, pursuant to City Charter § 1043(g),¹ to promulgate a rule to define “political activity” for the purposes of the prohibition on the use of City resources in Board Rules § 1-13 (**Exhibit 1**). For the reasons set forth below, Staff recommends the Board deny the petition.

LEGAL FRAMEWORK

Board Rules § 1-13 regulates the use of City time and City resources for purposes of the City’s conflicts of interest law, Chapter 68 of the City Charter, with subparagraphs a and b containing the principal restrictions and the remaining subparagraphs providing a number of exceptions. Board Rules § 1-13(b), which regulates the use of City resources for conflicts of interest purposes, states:

Except as provided in this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, title, personnel, equipment, resources, supplies, or

¹ Charter § 1043(g) states: “Petition for rules. Any person may petition an agency to consider the adoption of any rule. Within sixty days after the submission of a petition, the agency shall either deny such petition in writing, stating the reasons for denial, or state the agency’s intention to initiate rulemaking, by a specified date, concerning the subject of such petition. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. In the case of a board, commission or other body that is not headed by a single person, such rules of procedure may authorize such body to delegate to its chair the authority to reject such petitions. Such decision shall be within the discretion of the agency and shall not be subject to judicial review.”

technology assets for any non-City purpose. For purposes of this subdivision “technology assets” includes but is not limited to e-mail accounts, internet access, and official social media accounts.

As stated in the text of the rule, Board Rules § 1-13(b) is an implementation of Charter § 2604(b)(2), which states:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

While all Board Rules are implementations or interpretations of sections of Chapter 68, or other laws under the jurisdiction of the Board, Chapter 68 specifically prohibits the Board from imposing a penalty for the violation of Charter § 2604(b)(2) unless such violation involved conduct identified by rule of the board.² For this reason, Board Rules implementing Charter § 2604(b)(2) must be interpreted consistent with the meaning of Charter § 2604(b)(2).

This requirement means that the Board should apply Board Rules § 1-13(b) to prohibit the use of City resources for non-City purposes only where to conduct involves a public servant who has a “private interest” that is “in conflict with the proper discharge of his or her official duties,” as contemplated in Charter § 2604(b)(2). Thus, a public servant who uses their City computer perform work for their private employment would violate Charter § 2604(b)(2), as implemented by Board Rules § 1-13(b), but a public servant who uses their City computer to view sexually explicit material would not violate Chapter 68. Both scenarios involve the use of a City resource for a “non-City purpose,” but private

² 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.”

employment is expressly enumerated as a “private interest” in the text of Charter § 2604(b)(2) and thus the Board may enforce the prohibition. While using a City computer to view explicit material certainly violates other City rules or agency policies, such use of a City computer is not a “private interest,” or at least not a private interest of the kind contemplated in Charter § 2604(b)(2) and thus is not, by itself, a violation of Board Rules § 1-13(b). Indeed, there exist many legal or policy restrictions on the use of City resources for many and varied purposes across City government, the violation of which would not, by themselves, constitute violations of Charter § 2604(b)(2) and Board Rules § 1-13(b), as they do not related to “private interests” that “conflict” with a public servant’s City duties.

In applying Board Rules § 1-13(b), the Board has found that public servants may have a private interest in a candidate’s campaign for elected office such that the use of City resources for the non-City purposes of promoting or opposing a candidate’s campaign for elected office would be a penalizable violation of 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 the concept quickly becomes amorphous, and it is rare that other commonly described types of “political activity” actually include private interests of the narrow sort identified in Charter § 2604(b)(2).

In addition, it is often impossible to distinguish some so-called “political activity” from the proper functions of City government. For example, a public servant whose City job is to advocate for legislative action by the City Council or the state legislature on a hotly debated, politicized policy issue, such as environmental regulation or sanctuary city laws, might be engaging in conduct indistinguishable from the kind of advocacy that a

private citizen might view as “political activity.”³ But this sort of “political activity” is not a private interest akin to the circumstance where a public servant is engaged in advancing a campaign for elected office.

More importantly, engaging in work using City resources for advocate for City policy or legislation, including where such policy and legislation involves subjects of controversy or politicization, *is* for a City purpose. While the process is famously ugly, the battles among public servants, including elected officials, over policy and legislation is the proper functioning of democratic government. The use of City resources for these purposes, including using such resources to drum-up public support, does not violate any section of Chapter 68.

THE PETITION

The Petitioners advise that, in the lead-up to the November 2024 and November 2025 City elections, several City agencies, including, but not limited to, the New York City Charter Revision Commission, the New York City Council, and the New York City Commission on Racial Equity, used substantial City funds to engage in electioneering communications with regard to ballot referenda proposed by the Charter Revision

³ Other provisions of Chapter 68 provide support for the Board’s narrow view of the kinds of “political activity” that constitute a “private interest.” For example, Charter Section 2604(b)(9)(b) prohibits public servants from asking a subordinate public servant to “participate in a political campaign,” which is defined to include “managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant’s duties or responsibilities.” This Charter prohibition speaks only to conduct related to a “campaign” for a “particular candidate” and does not include any mention of support or opposition to ballot initiatives. This Charter section goes on to explain that it does not prohibit a public servant from “requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant’s duties or responsibilities.” That is, a public servant may ask a subordinate public servant to perform their City duties even when those duties relate to a candidate for elected office. Thus, Chapter 68 seeks to limit political activity to campaigns for candidates for elected office, not in a way that interferes with the normal duties of City government work.

Commission. “Although not all of 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.” The Petitioners assert that:

[P]ermitting 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. This has eroded a cornerstone of the City’s ethics framework: the prohibition on using City personnel, time, or resources for non-City purposes.

The Petitioners point to Charter § 1136.1(2)(c) in the Chapter 49 of the City Charter as the example of the limit on the use of using City resources for advocacy related to ballot initiatives. Charter § 1136.1(2)(c) states: “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.” Charter § 1136.1(1)(c) defines “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.”⁴

Apparently dissatisfied with lack of enforcement of Charter § 1136.1(2)(c) by either the New York City Campaign Finance Board or a District Attorney, the Petitioners ask the Board to:

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).

⁴ The Petitioners point to § 1052(a)(15), also in Chapter 49 of the City Charter, which defines “independent expenditures” to include expenditures “in support or in opposition to ... municipal ballot proposal or referendum,” as further evidence that the City Charter defines “political activity” to include activity related to ballot initiatives.

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".

Id. By doing so, the Petitioners desire that the Board use Charter § 2604(b)(2), as implemented by Board Rules §§ 1-13(a) and 1-13(b), as the basis for, effectively, enforcing Charter § 1136.1(2)(c) and thus barring the use of City time and City resources for electioneering about ballot initiatives. Petitioners argue that the Board should take a “whole-of-a-Charter approach” so that the Board’s interpretation of “political activity” under Chapter 68 is not in “direct contradiction to other parts of the City Charter.”

ANALYSIS & RECOMMENDATION

Staff recommends that the Board deny the petition for two reasons. First, the rulemaking sought by Petitioners ask the Board to regulate conduct by public servants that does not constitute a conflict of interest under Chapter 68 of the City Charter. Second, Petitioners ask the Board to promulgate a rule for the purpose of enforcing a section of the City Charter outside of Chapter 68 and under the jurisdiction of other City agencies.

As discussed above, conduct by a public servant to advocate for or against legislative or other policy changes does not, by itself, constitute a “private interest” for purposes of the City’s conflicts of interest law, as it serves a clear City purpose to engage in such work. Thus, while there is a reasonable argument that public servants have a cognizable private interest in campaigns by candidates for elected office, the same is not true in the context of a ballot initiative. The subject matters of ballot initiatives are not different in kind from that of City agency rulemaking or City Council legislation and they do not constitute private interests in and of themselves. If they did, then public servants

would be barred from advocating for or against ordinary legislation, for or against rulemaking, or for or against City policies. The fact that the kind of legislative proposal at issue in Charter § 1136.1(2)(c) is a ballot initiative and will be subject to a vote by the public does not transmute these subject matters into private interests for purposes of the City's conflicts of interest law.

Indeed, Petitioners would have the Board determine that it would be a conflict of interest for the City's Charter Revision Commission to advocate for its own proposed ballot initiatives, as if the Members of the Charter Revision Commission suddenly had a private interest in the matters on which they and their staffs have spent months working as part of their City duties. Whatever Charter § 1136.1(2)(c) may mean, its purpose is unrelated to any conflict of interest.

The fact that the purpose of Charter § 1136.1(2)(c) is unrelated to any conflict of interest is reflected in the fact that it is codified in Chapter 49 of the City Charter, which is outside the jurisdiction of the Board. See Charter §§ 2603(a) and 2603(e)(1).⁵ Indeed, Charter Section 1136.1(2)(c) appears to be under the jurisdiction of the New York City Campaign Finance Board and, as its violation may be charged as a criminal misdemeanor, the violations of this section could be prosecuted by one of New York City's five District Attorneys. See Charter § 1136.1(4).

⁵ 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].

For these reasons, Staff recommends that the Board issue the proposed letter denying the petition (**Exhibit 2**). The Board cannot take a “whole-of-a-Charter approach” to its rulemaking or enforcement, as the Board has limited jurisdiction, namely the City’s conflicts of interest law found in Chapter 68. The reasons stated in the instant petition exceed the legal and subject matter authorities of the Board.



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,

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

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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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 letter to the Conflicts of Interest Board (the "Board"), dated January 26, 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 cannot 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 than 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, Charter Section 1136.1(2)(c) appears to be under the jurisdiction of the New York City Campaign Finance Board and, as its violation may be charged as a criminal misdemeanor, could be prosecuted by one of New York City’s five District Attorneys. See Charter § 1136.1(4).

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 denied.

Very truly yours,

Milton L. Williams Jr.
Chair

Wayne G. Hawley
Ifeoma Ike
Amy E. Millard

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].