COMMENTS OF 1199 SEIU UNITED HEALTHCARE WORKERS EAST ON THE NEW YORK CITY CAMPAIGN FINANCE BOARD'S "NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED RULES" (AUGUST 28, 2024)

OCTOBER 25, 2024

Introduction

1199 SEIU United Healthcare Workers East ("1199 SEIU") respectfully submits these comments in response to the above-referenced notice ("the Notice") in order to explain 1199 SEIU's opposition to certain aspects of the proposed amendments of the CFB's Rules – specifically, the proposals to (1) expand the "factors" in Rule 6-04 that the CFB would take into account in determining whether or not an "expenditure" is "independent" of a New York City candidate campaign, and (2) the redefinitions of the terms "express advocacy communication" and "electioneering communication" in Rule 14-01 and the related changes to their reporting under Rules 14-02 and disclaimers under Rule 14-04.

1199 SEIU is the largest and fastest-growing healthcare union in the nation, representing workers in myriad positions in hospitals, ambulatory care centers, off-site provider-based clinics, nursing homes and home care settings. In total the union represents over 450,000 of these workers throughout New York, New Jersey, Massachusetts, Maryland, Florida, and Washington, D.C. Most of this membership – approximately 250,000 – live and work within New York City and its near suburbs. As just one example, tens of thousands of members work throughout the mega-health systems that include Mount Sinai, NYU Langone, Presbyterian, Northwell Health (formerly Northshore LIJ), and Montefiore. All of these City and regional members and their families – who include untold numbers of additional City residents and voters – have a critical interest in City elections, and their union serves as a vital voice for them in the electoral process. For that reason 1199 SEIU regularly engages in City elections through public communications, contributions to candidates, voter registration drives and member engagement and education.

The CFB Has Undertaken This Rulemaking in a Procedurally Flawed Manner

We preface our substantive comments with the following objections to the CFB's process in undertaking this rulemaking with respect to the provisions we address; we take no position with respect to the process as to other aspects of the proposed amendments, although our critique may well apply to them. The CFB's proposals at issue are too-late proposed to become effective for the remaining period of the 2025 election cycle.

First, these proposals violate New York City Charter ("the Charter") ch. 45, § 1042(a). That provision requires the CFB to publish each May a "regulatory agenda" for the ensuing July-to-June fiscal year that includes "a brief description of the subject areas in which it is anticipated that rules may be promulgated..., including a description of the reasons why action by the agency is being considered," including any then-known details; who generally would be subject to the rules; "an identification, to the extent practicable, of all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule"; and "an approximate schedule for adopting the proposed rule."

The Notice asserts that "[t]his proposed rule was included in the CFB's regulatory agenda for this Fiscal Year." That is plainly untrue with respect to the proposals that these comments address. The CFB's "Regulatory Agenda for Fiscal Year 2024" ("CFB Agenda") stated that during the ensuing (now, current) fiscal year "[s]ubject areas for proposed rules may include simplifying and streamlining disclosure, reporting, and recordkeeping requirements; safeguarding the disbursement of public matching funds; transition and inaugural activities; penalty assessments; contributions by individuals and entities; contributions by persons doing business with the City; ethical guidelines for Board members and Board staff; voter assistance; and the reporting of independent expenditures." See https://rules.cityofnewyork.us/wp-content/uploads/2023/05/Regulatory-Agenda-FY2024-.pdf. The CFB Agenda did *not* mention at all the subjects of determining independence of expenditures, the definitions of independent expenditures or electioneering communications, or disclaimer requirements for regulated communications, let alone provide any information about their substance or the Charter-required details about them.

We acknowledge that Charter ch. 42, § 1042(c) provides that "[f]ailure to include an item in a regulatory agenda shall not preclude action thereon. If rulemaking is undertaken on a matter not included in the regulatory agenda the agency shall include in the notice of proposed rulemaking the reason the rule was not anticipated." But the Notice fails to explain why the proposed rules at issue were not included in the CFB Agenda – consistent with its incorrect assertion that they were included, but contrary to this requirement of the Charter. It might be that in the end the CFB would seek to legally defend these administrative flaws by relying upon the last sentence of § 1042(c): "The inadvertent failure to provide the reason such rule was not included in the regulatory agenda shall not serve to invalidate the rule." But the CFB would have to demonstrate that the omission was "inadvertent," which seems unlikely given that the subject areas identified in the CFB Agenda included "the reporting of independent expenditures," so the CFB plainly considered what aspects of independent expenditures to address and not address in upcoming regulations, yet the Notice's changes to the reporting rules (specifically, to Rule 14-02(b)(i)) themselves are modest, and far more significant are the changes to the unrelated independent expenditure and electioneering communication rules we have identified and discuss below.

This is not a technical procedural matter. The Notice points to no legal development since the CFB Agenda issued, and no other development in or concerning the City, that prompted the CFB in August to propose the amendments at issue; and in fact there evidently are none, merely an internally generated desire by the CFB to extend its regulatory reach. More importantly, there have been no such developments either during or since the end of the previous 2021 election cycle that might warrant the proposed changes. And, even in the absence of such developments, nothing precluded the CFB from proposing changes to the independent expenditure rules either before the 2021 election to take effect during the following (now, current) election cycle, in the immediate wake of the 2021 election, or during the intervening years since then. Instead, suddenly now, three years into the current election cycle and on the eve of the 2025 election year, the CFB proposes to make substantial changes to rules affecting how 1199 SEIU and innumerable other organizations may participate in the election campaigns that have long been underway – and with the City primary election day possibly less than eight months ahead.

And, with all respect, the CFB has proposed to adopt and implement these amendments by minimizing the opportunity for public input by providing a scant and ill-timed 30-day comment period during the height of the 2024 New York State and federal election, and then in response to a request for an enlargement of time beyond the November 5 general election, the agency declined and instead extended the comment period only until October 25. If the CFB believes it must rush this process through, then it needs to explain why, including why it did not propose these changes years ago.

The Proposed Amendments to the Coordination Rules Should Not Be Adopted

The late timing and intended immediate effect of the proposed rules contains a substantive flaw: the CFB's "five new factors that the [CFB] may consider in determining whether an expenditure is made independently of a campaign" rely on conduct and relationships stretching back either to January 12, 2022 (the beginning of this election cycle or before), yet, of course, none of the affected organizations and individuals could have known that their conduct and relationships that long ago would be implicated and restrict what they or their employers and associates could do beginning on whatever date the CFB amends the Rules. These "five new factors" – actually, seven – include:

- whether the candidate campaign "has retained the professional services" of *anyone* "who has been previously compensated, reimbursed, or retained as a consultant[,] political, media, or fundraising advisor, employee, vendor, or contractor" of the independent spender at any point during the current election cycle – so, not only, as in the current rule, a "principal member or professional or managerial employee" of that spender (proposed amendment to Rule 6-04(a)(vii));

- whether "the candidate serves or has served as a principal member or professional or managerial employee of the entity making the expenditure, or as a professional or managerial employee of the person making the expenditure," also at any point during the current election cycle – an entirely new factor (proposed new Rule 6-04(a)(viii));

- whether "the candidate, or an individual or entity who has been previously compensated, reimbursed, or retained by the candidate as a consultant; political, media, or fundraising advisor; employee; vendor; or contractor, has conveyed strategic information not obtained from a publicly available source to the person or entity making the expenditure or its agent, during the same election cycle in which the expenditure is made, provided that, for purposes of this subdivision, information shall be deemed strategic if it relates to the candidate's or an opponent's electoral campaign plans, projects, or activities" – an entirely new factor (proposed new Rule 6-04(a)(x));

- whether "the person or entity making the expenditure has utilized strategic information or data that...is not from a publicly available source or otherwise available by subscription" – an entirely new factor (proposed new Rule 6-04(a)(xi)(A));

- whether "the person or entity making the expenditure has utilized strategic information or data that...has been made publicly available by the candidate, or an individual or entity who has been previously compensated, reimbursed, or retained by the candidate as a consultant; political, media, or fundraising advisor; employee; vendor; or contractor, in a manner which the candidate or such individual or entity knew or should have known would facilitate such utilization," no matter how long ago – an entirely new factor (proposed new Rule 6-04(a)(xi)(B));

- whether "the person or entity making the expenditure is, or has been established, financed, maintained, or controlled by, the candidate's spouse, domestic partner, child, grandchild, parent, grandparent, aunt, uncle, or sibling, or the spouse, domestic partner, or child of such child, grandchild, parent, grandparent, aunt, uncle, or sibling," no matter how long ago any of those relationships to the person or entity occurred – an entirely new factor (proposed new Rule 6-04(a)(xii)); and

- whether "the expenditure is made by an entity in which the candidate, or the candidate's spouse, domestic partner, child, grandchild, parent, grandparent, aunt, uncle, or sibling, or the spouse, domestic partner, or child of such child, grandchild, parent, grandparent, aunt, uncle, or sibling, holds or has held an ownership interest of ten percent or more or a management position, including, but not limited to, being an officer, director, or trustee, during the same election cycle in which the expenditure is made" – an entirely new factor (proposed new Rule 6-04(a)(xiii)).

All of these new standards for determining coordination, with the exception of proposed new Rule 6-04(a)(xi)(A), then, reach back at least to January 12, 2022, and three relate back in

time as far as necessary to capture conduct and relationships for consideration in evaluating the lawfulness of conduct that either has already occurred since then or that will occur after the amendments are adopted. This dramatic expansion of the CFB's formal coordination criteria contrasts sharply with almost all of the CFB's current factors in Rule 6-04, which rely instead solely on conduct and circumstances that are contemporaneous with the expenditure at issue, and therefore within the knowing control of all concerned.

Although we believe those two factors are overbroad, their adoption by the CFB at least precedes the current election cycle, so candidates and the general public have been on notice about them since before this cycle began. But if the CFB adopts any of its seven proposed new factors, then those affected will be – to be blunt – entrapped by conduct occurring and relationships arising as long as years ago that they then had no reason to expect could preclude or place at legal risk their current and upcoming exercise of First Amendment rights in the 2025 City election. Thus, the most fleeting, innocuous, non-substantive and even coincidental connections could factor into a determination of coordination. That is manifestly unfair and inappropriate. And, it would be entirely intrusive, disruptive and chilling to apply now, inasmuch as individuals and institutions routinely have undertaken their hiring and contracting decisions years before a City election, and without that election in mind.[1]

These problems are not simply practical: it is also unlawful for a coordination determination to be premised not on actual conduct concerning an organization's expenditure in a City election, but on the existence of a mere relationship, even a past one, even if that did not in fact result in any actual influence by a candidate campaign on an organization's expenditure.

First, neither the Charter nor the New York City Campaign Finance Act (NYC CFA) authorizes the Board to issue rules that apply retrospectively, and decades of jurisprudence support the contention that legislation (and agency rules implementing it) should only be applied prospectively. As a general matter, "[r]etroactivity is not favored in the law. Thus, [legislative] enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown*, 488 U.S. 204, 208 (1988). There is no legislative language requiring (or even authorizing) the Board to incorporate conduct that was not considered to be coordinated at the time it was engaged in into the subsequent analysis of whether coordination has occurred.

[1] At least one of the proposed new factors doesn't even rely on a relationship, and is so further overbroad that it's hard to believe the CFB means to adopt it: whether "the person or entity making the expenditure has utilized strategic information or data that...is not from a publicly available source or otherwise available by subscription" proposed new Rule 6-04(a)(xi)(A)). Here the non-public "strategic information or data" need not have any connection whatsoever with a candidate campaign, so the application of a coordination standard to it would be nonsensical.

Relatedly, "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the 'principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.'" *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994) (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J., concurring)) (footnote omitted). As then-Judge Gorsuch explained:

> [T]he concerns that attend retroactive legislation equally attend retroactive agency action. . . . . [P]ermitting retroactivity would undo settled expectations in favor of a new rule of general applicability rendered by a decisionmaker expressly influenced by policy and politics. [T]he decisionmaker [i.e., the agency] would be able to punish those who have done no more than order their affairs around existing law—and could accomplish all this with full view of who will stand to flourish or flounder, left not merely to predict who the winners and losers might be, but able to single out disfavored persons and groups and punish them for past conduct they cannot now alter. To avoid problems like these, the work of the primary legislative actor in our legal order (Congress [or governing legislature]) has always been presumptively prospective." *De Niz Robles v. Lynch*, 803 F.3d 1165, 1175 (10th Cir. 2015).

Changing the factors that contribute to the coordination analysis mid-election cycle, as the proposed amendments would do, is an affront to these principles.

Second, the factors would not be enforceable on First Amendment grounds. The United States Supreme Court almost 30 years rejected on that basis the government's contention that under the Federal Election Campaign Act all of a political party's expenditures in support of its candidates had to be treated as coordinated with those candidates, and therefore subject to the Act's applicable limits. "An agency's simply calling an independent expenditure a 'coordinated expenditure' cannot (for constitutional purposes) make it one." *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 621-622 (1996). And, of course, a political party and its candidates are far more interdependent and formally aligned with each other than are most of the relationships that the CFB's proposed rules would make potentially determinative of a coordination finding. In light of this and other First Amendment precedent, the Federal Election Commission over time, and after substantial litigation, has settled upon a suite of coordination standards that rely on two general bases for a coordination finding: actual conduct that actually influences aspects of a covered public communication, and access to a candidate's non-public strategic information that actually influences such a communication. *See* 11 C.F.R. § 109.21(d). And, that is the command of Charter ch. 46, § 1052(a)(15(a)(i), which defines an "independent expenditure" solely 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." All of these terms entail a candidate campaign's actual involvement with respect to an expenditure, not a mere past or present relationship with the spender.

There is another compelling reason not to adopt these proposed rules. Entirely unmentioned by the Notice is that the New York Election Law (NYEL) includes its own set of standards in defining coordination conduct. First, very much like the Charter section quoted above, the NYEL generally defines an "independent expenditure" to mean a covered communication "where [a] candidate, the candidate's political committee or its agents, a party committee or its agents, or a constituted committee or its agents or a political committee formed to promote the success or defeat of a ballot proposal or its agents, did authorize, request, suggest, foster or cooperate in such communication." See NYEL § 14-107(a). Second, however, the NYEL then lists nine enumerated situations (that, when parsed through, add up to more) that, it says, "[c]oordination shall include." See *id*., § 14-107 (language after subsection (d)). Rather than reproducing or quoting these provisions here, it suffices to point out that many of them are similar to the CFB's current and proposed coordination factors, but none use the precise same language. Most of the NYEL provisions implicate the same practical and constitutional flaws that we have already described, and to be sure they are written in conclusive terms – "coordination *shall* include" – rather than in the CFB's only slightly less conclusive, and highly suggestive and chilling, terms – "In determining whether an expenditure is independent, the Board may consider whether any of the factors from the following non-exhaustive list apply." But the NYEL provisions, which were adopted in 2016, evidently have never faced judicial review and, to our knowledge, have never been enforced by the New York State Board of Elections, so their legal fate remains unresolved. But they do have significance to the CFB's current rulemaking.

First, it is not clear whether or to what extent the NYEL standards apply to City elections given the scant case law that has addressed the relationship between the NYEL on the one hand and the City Charter and the NYC CFA on the other. In *McDonald v. New York City Campaign Finance Board*, 986 N.Y.S. 2d 557 (N.Y. App. Div., 1st Dept. 2014), the Appellate Division concluded that the NYEL did not preempt the NYC CFA where the latter imposed "additional" and "not inconsistent" restrictions on sources and amounts of contributions to candidates. In its current rulemaking about coordination standards, the CFB must directly address the interplay of its Rules with the NYEL – indeed, whether the CFB even considers that NYEL § 14-107 applies to City elections – rather than leave the public wondering whether they would have to adhere to both sets, and how to resolve the many distinct terms and nuances in each that arguably or actually cover the same subjects, and weigh what requirements actually apply.[2] Yet the CFB

[2] It is difficult to discern how the Law Department complied with Charter ch. 42, § 1043(d) by certifying that the CFB's proposal "is not in conflict with other applicable rules." See Notice, p. 25.

proposes the worst course of all: imposing its own distinct version of much of what the NYEL contains without even acknowledging that it is doing so.

There is one aspect of the CFB's proposed rules that is more restrictive than the same-subject provisions of the NYEL: the proposed rules implicate conduct and relationships going back to the beginning of the election cycle or earlier, but the NYEL provisions that implicate past conduct and relationships generally cover only those "within two years of the general election." However, that simply complicates the calculation further, as organizations and candidates must understand and follow one set of standards for two or more years, and then try to understand and harmonize two sets of standards for the last two years of the election cycle.

The Proposed Amendments to the Public Communications Rules Should Not Be Adopted

The Notice proposes to amend the definition of "[e]xpress advocacy communication" in Rule 14-01 and "electioneering communication", and therefore the applicability of the correspondingly amended Rule 14-02 regarding reporting and Rule 14-04 regarding disclaimers, in order "to expand coverage to include internet-based communications" and "remove the distinctions between different reporting and identification requirements based on the method by which a communication is distributed, in favor of distinctions based on the type of communication." This "expan[sion]" of the CFB's reach to the Internet and beyond would be substantial, is unprecedented and is inconsistent with the Charter. And, the Notice contains absolutely no explanation, let alone a justification, for this proposal.

The current definition of an electioneering communication covers specifies non-Internet media and "paid advertisements." The current definition of "express advocacy communications" similarly covers specified non-Internet media as well as "paid electoral advertising," and provides that the latter "shall not include communications over the internet, except for: (1) communications placed for a fee on another individual or entity's website; or (2) websites formed primarily for, or whose primary purpose is, the election, passage, or defeat of a candidate in a covered election or of a ballot proposal." The proposal would eliminate most references to particular media and delete the exception for unpaid Internet; instead, these terms would include a communication with the requisite message content (which the proposals essentially leave intact) that "is delivered or served to specific individuals if 500 or more messages of a substantially similar nature are transmitted within any 30-day period."

Accordingly, for the first time ever, the CFB would seek to directly regulate any form of Internet communication that is *not* a paid advertisement and that is simply "delivered or served" to others, even if for free, such as an email, a tweet, a directed social media message that entails no new cost, or any other form of Internet activity that may arise – as the Notice explains, the CFB seeks to "capture emerging communication technologies" whatever they may be and whenever they are created – and can achieve such "deliver[y] or serv[ice]." And, all such

messaging would be subjected to reporting, including submitting copies of the communications to the CFB, and to the full CFB-mandated disclaimer without regard to the length of the message or the requirements of the medium; only text messages would be subject to a disclaimer alternative of "a link to a location controlled by the independent spender." Moreover, the proposal does not define the key terns "delivered" or "served", so they appear self-evidently expansive. Nor does the proposal define the term "specific individuals"; does that mean people who are identified to be and are contacted by the sender; countable particular human beings to whom a communication was, for free, "delivered or served"; that one or a series of "substantially similar messages" were received by that many people, including where that message content was dispatched through a variety of different Internet means that, when added up, reached at least 500 people; all of the above; or something else?

The expansion of the Rules to cover free-Internet communications appears both misguided, impractical and hardly enforceable given that millions, and more likely billions, of such messages will be transmitted by individuals and organizations about City candidates during just this final year of the 2025 election cycle. We are aware of no campaign finance law or enforcement agency that purports to regulate such activity. Instead, at least on paper the CFB will have created a situation guaranteed to entail massive violations and generate contempt for the agency itself. And, just how would the CFB proceed to monitor and enforce any of this?

The CFB's proposed overreach is evident by the limited scope for disclaimers permitted by the Charter. In August 2014 the City Council enacted Local Law No. 41, adding Charter ch. 46, § 1052(a)(15)(c), to identify with specificity the *only* kinds of public communications media utilized by independent spenders that are subject to disclaimers, namely:

- "any written, typed or printed communication, or…any internet text or graphical advertisement," *id*. at (c)(i);
- "any paid television advertisement or paid internet video advertisement," *id*. at (c)(2);
- "any paid radio advertisement, paid internet audio advertisement, or automated telephone call," *id*. at (c)(iii); and
- "any non-automated telephone call," *id*. at (c)(iv).

Plainly, none of these categories includes freely circulated material over the Internet. And, in 2016 the CFB incorporated the substance of these provisions into what is now Rule 14-04, reciting almost *verbatim* the Charter-specified media outlets. That rule guided independent spenders on disclaimers during the 2017 election year and it has guided them since, and neither the Charter Commission nor the City Council has taken action since to amend those

requirements. Nor until now has the CFB, except for "text messages," which the CFB added to the disclaimer media in January 2021 following a formal rulemaking.[3]

The Rules accordingly exclude from the definition of a "covered communication" "email," "tweets," and the like unless they are paid advertising, and both the Charter and Rule 14-04 subject Internet communications to disclaimers only if they are "internet text or graphical advertisement[s]," "paid internet audio advertisement[s]," and "paid internet video advertisement[s]." In short, the law's sole Internet reach to paid advertisements could hardly be clearer in its text; and, the City Council's "[l]egislative findings" for Local Law No. 41 repeatedly made the point that the disclaimer requirement applies only to "advertising":

> Under current law, disclosure on independent expenditure advertisements includes only the name of the individual or organization responsible for the *advertisement*. Many independent expenditure-making organizations in the 2013 election cycle, however, had generic names that told voters little about who or what the organizations represented, obscuring the actual sources of the spending and making it difficult for voters to evaluate the arguments in election-related *advertisements*. Requiring the inclusion of the names of donors to these organizations within such *advertisements*, and linking to a website with more detailed information, will alleviate this problem in a targeted way by enhancing voters' understanding of the interests and individuals whose financial support substantially enabled the creation of such *advertisements*. The Council therefore finds that it has an interest in promoting transparency by ensuring that the electorate has sufficient information and that voters are informed about the sources of spending related to local elections, and that this legislation is substantially related to such interest. [Emphases added.]

The independent expenditure regulatory regime is highly integrated: a communication that qualifies as an "independent expenditure" is subject to two kinds of regulation that go hand in hand: public reporting and a disclaimer. See Charter, ch. 46, § 1052(a)(i), (b), (c). Accordingly, a communication that is not subject to the Charter's disclaimer rules cannot then be classified as an express advocacy communication or an electioneering communication.

It may be that the CFB's text message rulemaking reflects the agency's theory of authority here. The CFB explained in its Notice of Final Rules that it was "clarify[ing] the application of…[Charter] § 1052(a)(15)(c)(i) to text message communications…." Again, the cited subsection imposes disclaimer requirements on "any written, typed or printed

[3] Although text messages are not the focus of this submission, the analysis here about the CFB's lack of authority applies as well to the Rule 14-02 definition of text messages and Rule 14-04(v). While the CFB at least undertook a formal, recognized administrative process in order to apply disclaimer requirements to text messages, that undertaking itself did not confer authority to do so. Of course, there is no rule at all concerning email, tweets and social media.

communication, or…any internet text or graphical advertisement." But it strains the boundaries of reasonable interpretation to contend that the first part of this series applies to anything but *offline* communications when the last part of this series explicitly applies to corresponding *Internet* communications – just as do the series that follow: "any paid television advertisement or paid internet video advertisement," *id*. at (c)(ii), and "any paid radio advertisement [or] paid internet audio advertisement," *id*. at (c)(iii). Accordingly, until now the CFB itself *by rule* has explicitly recognized that the scope of regulable Internet independent expenditures does *not* extend to email, social media, and other freely accessed Internet outlets. If the City Council intended in 2014 – when email, social media, websites and other freely accessed electronic outlets already existed – to regulate any of them, then it would have done so just as explicitly as it did the media outlets that it named.

Finally, it also appears that the Notice would subject other forms of communication to regulation for the first time. According to the CFB's "Guide to the CFB Independent Expenditure Disclosure Rules (July 2024), see https://www.nyccfb.info/PDF/independent_spenders_guide.pdf, neither express advocacy nor nor electioneering communications include, in addition to "[e]mail, Text, Twitter [sic], etc.", "[b]uttons, [p]ens, [c]lothing", or "[p]osting for free on a website," and an electioneering communication further does not include "[p]osters, [l]awn signs," or "[l]eaflets, [f]lyers, [p]alm cards," or "[l]ive [p]hone banks/[r]obo calls." Yet all of these media may be capable of being "delivered or served" subject to reporting, disclaimers and, of course the coordination rules themselves. So, with respect to all of these very common forms of communication, the proposed rules' reached to "any medium" would radically change how political activity may be undertaken in City elections.

Conclusion

In sum, the proposed changes addressed in these comments seek to do way too much, exceed the CFB's legal authority, defy common sense, are practically unenforceable, are proposed way too close to the 2025 election year, and are supported with way too little explanation, justification, public notice and popular understanding. The CFB should not adopt them.