New York City Campaign Finance Board
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Testimony of Amy Loprest
Executive Director, New York City Campaign Finance Board

New York City Council
Committee on Government Operations
April 25, 2014

Good afternoon Chair Kallos, and members of the Government Operations Committee. My name is Amy Loprest, Executive Director of the New York City Campaign Finance Board (CFB). I am joined today by Eric Friedman, our Assistant Executive Director for Public Affairs. Thank you for the opportunity to testify on the bills under consideration today.

New York City celebrated the 25th anniversary of its landmark matching funds program last year. The comprehensive reforms proposed by Mayor Koch, and enacted by this body, aimed to restore New Yorkers' confidence in government, which had been damaged by a series of high-profile corruption scandals.

Thanks in no small part to the City Council's ongoing commitment, today those reforms are thriving. Candidates for office in New York City can run successful campaigns without relying on large contributions—and the strings that may be attached to them. The matching funds program ensures that New Yorkers living in every neighborhood, in every school district, and practically every city block across the five boroughs participate meaningfully in funding campaigns for office. Their participation helps keep our democracy healthy.

Over the past year, in testimony before state lawmakers and in public forums around the city and across the country, we have supported the call for comprehensive reform of our state's outdated campaign finance system. We have been pleased to see the reforms under discussion in Albany have been modeled on New York City's program. We enthusiastically lend our voice in support of Res. 75, urging lawmakers to enact a statewide public campaign financing system.

The Board also supports passage of Intro. 6, which will require campaigns to include a "paid for by" notice on all communications. The Board recommended adoption of a similar requirement covering all campaign communications following the 2009 elections.

A comparable mandate exists in federal law, and we should have it here in New York City.

As you know, the City Charter now requires independent expenditures to identify the spender with a "paid for by" notice. However, no such requirement exists for communications paid for by campaigns. During an election, voters may be inundated with conflicting and confusing information about candidates through a wide variety of media—on television, in the mail, on the Internet, and elsewhere. Providing voters with clear information about the groups responsible for these campaign messages will reduce the likelihood of confusion among voters.

Disclaimers that clearly identify the funding sources for a political ad provide crucial information to voters at the very moment it is most useful: when they are seeing or hearing it for the first time. This requirement has become especially important in recent elections, as independent expenditures make up a rapidly growing share of communications to voters. It may become even more important with yesterday's federal court ruling that eliminated New York State's contribution limits to independent spenders.

During the 2013 elections, 50 groups and individuals reported $15.9 million of independent expenditures. Pursuant to a Charter amendment in 2010 and the Board's subsequent rulemaking, for the first time independent groups disclosed to the public an extraordinary level of detail about the funds they raised and spent. Voters could access all of the 1,196 unique communications reported by spenders via the CFB's website. Each communication was required to contain a "paid for by" notice showing the group or individual responsible for the spending.

We believe Intro. 148-A will further strengthen our robust disclosure requirements. Requiring groups to reveal their top funders within the communication will help voters better understand who is behind each message.

The two independent groups that spent the most during the 2013 elections illustrate the potential impact of this legislation. Jobs for New York, Inc. spent more than $4.9 million on independent expenditures in 2013. For the average voter looking at a mailing from the group, or hearing one of its ads on the radio for the first time, nothing about its name would indicate that it was backed by contributions from the real estate industry.

Similarly, a notice as required by Intro. 148-A for United for the Future, which spent $3.8 million, would have better informed voters that the funds for the communications were provided by the local and national teachers' unions.

Just as importantly, Intro. 148-A will require an even richer level of detail about the entities that provide funding to independent spenders. The legislation will make it more difficult for the ultimate funders of campaign ads to shield their identities.

We are pleased to be able to collaborate with the Council on this important legislation, which would put New York City at the forefront of regulatory efforts to provide the public with comprehensive information on outside spending in elections.

To better match the current Charter requirement for disclosure of spenders' funding sources, you may wish to consider increasing the reporting threshold for transfers to $5,000 from $1,000.

In order to best realize the intent of Intro. 148-A, the Council may wish to consider whether certain of the disclaimer requirements represent an undue burden on the independent spender particularly with regard to radio advertising.

We also have some technical corrections to Int. 148-A to suggest, which we will provide to Committee staff.

Upon adoption of these bills, the CFB would consider rules for candidates and independent spenders requiring that disclaimers be provided in the language of the communication. As we all know, New York City has a diverse electorate, and campaign communications are published in a wide variety of languages. This rule change would ensure that the disclaimers work as intended, by providing information that can be readily understood by voters.

As always, we look forward to communicating with the Council on these and other issues. I thank you once again for the opportunity to testify today, and I look forward to answering any questions you may have.

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League of Women Voters of New York City

Testimony before the Government Operations Committee
of the New York City Council

April 25, 2014

My name is Rosemary Faulkner. I am a resident of New York City. I speak as a member of the League of Women Voters of New York City, and as a citizen of the city who is concerned about the corrosive effect of big money on our elections. I and my colleagues from the League are here to comment on three proposals that, in different ways, attempt to respond to the negative effects of political campaign expenditures.

First, I'd like to comment on Intro. 148A.

Intro. 148A properly provides for the identification of the top five funders of any mailers, fliers, signs, and TV, radio and internet advertisements. Specific requirements in the proposal detail how the identification information is to be communicated

The League of Women Voters of New York City strongly supports the objectives of this bill and urges the Committee to complete its work and report out a law that will effectively disclose the identity of those individuals funding independent expenditures in New York City elections.

Our democracy is at peril with the flood of money into elections from special interests and the very wealthy. New York City has wisely instituted public financing of elections through a small donor matching system which has improved the quality of our elections in many ways. However, recently, independent expenditures by corporations and individuals have become a significant influence in New York City elections, as evidenced by the Fall 2013 campaign. In that campaign 40 or more independent expenditure committees spent at least $15 million. Further detailed information on this spending is available from the report by Common Cause, "Analysis of Independent Expenditures in the 2013 New York City Elections". Such expenditures have a corrosive effect on those benefiting from the expenditures, influencing the way they regard legislation and other governmental actions that affect the special interest making the expenditure. This may occur whether or not the expenditure was significant in getting the candidate elected.

Since restricting these expenditures through legislation is not currently an option, one significant limitation on the impact of such expenditures is disclosure of the identity of those groups and individuals funding the expenditures, usually advertisements in favor of a candidate or issue. Currently there is little such disclosure. If voters are able to identify the interests behind the information presented and understand their actual goals, they can then evaluate the information more accurately. For example, a negative ad regarding a particular candidate funded by the real estate industry may have no content related to that industry but be simply motivated by an effort to defeat the candidate who may support, say, more regulation of real estate development. Moreover, negative attack ads whose funders are not identified can be irresponsibly inaccurate and misleading, damaging a candidate without accountability. Disclosure would reduce such irresponsible ads. Overall, disclosure helps to make accessible the information a voter needs so that he or she can be more truly informed.

Further, it is important that the actual funders be identified in the ad, not just the name of the independent expenditure committee that pays for the communication. Often, the names of the Committees themselves provide little information to assist in identification. For example, "Progress NYC" is supported by labor unions, "New Yorkers for Proven Leadership" is backed by David Koch of Koch Industries, and real estate interests are behind "Jobs for New York".

The League of Women Voters strongly supports the objectives of this bill. We urge the Committee to report an effective bill to the full Council as soon as possible.

Regarding Intro. 6

The League of Women Voters of New York City heartily supports the proposed amendments to Section 3-703. We believe the additional requirements will bring important identifying information to light while preserving the rights of campaigns and others to communicate freely with constituents so that all points of view can be aired.

Intro. 6 adds two new requirements to Section 3-703 of the NYC Administrative Code governing political campaigns. The requirements would apply to all candidates for office in New York City and their campaigns whether or not they choose to accept public campaign financing. The first additional requirement is that when a campaign or candidate pays for literature, advertising or other communication, it will be required to disclose that is has paid for that communication. The second requirement is that if a campaign or candidate authorizes another person or entity to pay for such communication, the authorization by such campaign or candidate must be disclosed.

The League of Women Voters recognizes that money can be a corrupting influence in politics and that how campaign funds are raised and spent is fraught with potential problems. At the same time, the League also recognizes that expenditures by campaigns and others who support those campaigns are a free speech right and a necessary and healthy part of our political process. Balancing these interests requires that campaign expenditures be subject to reasonable regulation. Requiring disclosure as to who is authorizing and financing a particular communication is not only a reasonable, but an essential part of that balance.

A properly balanced disclosure allows campaigns to express their views freely while providing constituents the information necessary to evaluate the communication properly. Disclosure requirements ensure that other stakeholders, including government regulators, good government groups, and media, have access to the information they need to combat inaccurate information, bias and corruption.

Disclosure of the source of an authorized political communication can serve to illuminate the motivation behind the communication and reduce a potential source of campaign deception or corruption. Even where no actual deception or corruption exists, transparency combats the appearance of corruption and promotes confidence in the political process, leading to greater public participation in campaigns and voting. The League of Women Voters sees great value in such participation. For these reasons, we support Intro. 6 and the proposed amendments to Section 3-703.

Regarding Res. No. 75

The League of Women Voters of New York City supports Res. No. 75 and urges the Committee to approve it and refer it to the Council for speedy enactment.

The League has long been a strong supporter of New York City's optional, small donor matching funds public financing system. In the view of the League, the City's system, supervised aggressively by the NYC Campaign Finance Board, has encouraged substantial new participation in City elections by permitting individuals without great wealth or access to wealthy friends or political donors, nevertheless to seek nomination and election.

As the Moreland Act Commission appointed by Governor Cuomo in 2013 said in its December 2, 2013 Report:

> "The Commission believes that public financing of campaigns, in the form of small donor matching funds, frees elected officials from reliance on massive donations from wealthy and powerful interests and invigorates citizens' democratic participation, increasing public accountability and renewing the public trust. Small donor matching also allows those without access to well-heeled interests and without the support of large independent expenditures to nevertheless compete in elections." (Moreland Commission, Executive Summary, p.11, December 2, 2013)

Res. No. 75 pending before this Committee urges support for legislation currently pending in the State Assembly and Senate known as the "2013 Fair Elections Act". (It may be that the current correct title of the Act intended for support is the "2014 Fair Elections Act".) That Act would establish a New York State optional partial public financing system for campaigns for statewide office, state legislative office and constitutional convention delegates. The proposed matching funds system would provide participating candidates $6.00 in State funds for every $1.00 of eligible contributions up to a maximum of $250, and would permit contributions of no more than $2000 from any one contributor.

The State Assembly and Senate and especially Governor Cuomo missed a great opportunity as they were finalizing the State's 2014-2015 Budget to enact comprehensive campaign finance and ethics reform. Nevertheless, they still have the opportunity to enact reform, particularly to establish a comprehensive program of public financing including small donor matching funds, before the Legislature adjourns in June.

For that reason, the League of Women Voters of New York City supports Res. No. 75 and urges the Committee to approve it and refer it to the Council for speedy enactment. The Council's approval, coming from elected officials who have successfully navigated through and benefited from a substantially similar public financing system, will be a powerful signal to the legislative leaders in Albany to enact reform this year.

Thank you for the opportunity to present this testimony on behalf of the New York City League of Women Voters.

CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council Governmental Operations Committee on Legislation and a Resolution Related to Campaign Finance Reform

April 25, 2014

Good afternoon Chair Kallos and members of the Governmental Operations committee. My name is Alex Camarda. I am the Director of Public Policy & Advocacy at Citizens Union. Citizens Union of the City of New York is an independent, nonpartisan, civic organization of members who promote good government and advance political reform in the city and state of New York.

In an age of growing removal of restrictions on who can give and how much money can be contributed to political campaigns, Citizens Union strongly supports robust disclosure of campaign contributions and spending. We believe it is vital to provide meaningful information to voters about sources of funding to candidates or independent spenders. We further support providing informative "paid for by" disclaimers in campaign ads that effectively communicate the organization, candidate or source behind the communication. We think that campaign donor information should be made publicly available in an easily accessible way, that is meaningful and informative, that allows for knowledge and analysis by the press, advocacy organizations and the general public.

Both Intro No. 6 and No. 148 seek to provide needed information to New York City voters. We support Int. No. 6 believing that candidates, many of whom use taxpayer funds should not be able to anonymously send mailers or air ads and disclaimers for independent expenditures who use no public funds require identification of who is issuing it.

While Citizens Union supports the intent behind Int. No. 148 requiring donor disclosure within campaign communications like advertisements, the technique that is used to accomplish this effectively is very important. We neither support nor oppose 148 in its current form, but would like to present a number of issues that need to be addressed before this bill moves forward and we feel comfortable supporting it.

The critical question for us is how to provide effectively needed donor disclosure without burdening the means of communication with requirements that make the advertisement more about the disclaimer and less about the content of the message, and risking infringement on constitutional rights protected by the first amendment. The correct balance needs to be struck between needed voter information and the right to participate in political campaigns.

Agree with it or not, the U.S. Supreme Court has made its views well-known that influencing elections through communication is not corrupting unless there is perception of or evidence of a quid pro quo. Attempts to limit speech during a campaign are viewed increasingly as suspect unless it meets that defined but open to interpretation standard.

Donor disclosure is beneficial in that voters gain better insight into who is behind the ads as they are delivered. Full and strong disclosure of donors may also contribute to more civil campaign communications because donors will be unlikely to put their names to more negative advertising. However, top donor disclosure in ads as proposed by Intro 148 may be both cumbersome and have minimal revelatory impact given that the donors often are entities with names that may not mean much to voters. It also may shift the focus of ads from the message to the source which makes speech more burdensome particularly when it consumes substantial space or time in ads. More descriptive disclaimers with information about how to access detailed information about all donors to the independent expender may be a better technique.

Below are our detailed thoughts on the proposed legislation and feedback.

Int. No. 148 (Lander)

The *Citizens United* and other decisions by the U.S. Supreme Court in recent years have given way to a dramatic increase in outside spending. In New York City during the 2013 elections, $15.9 million was spent by independent groups, including $6.3 million in Council races alone[1], a marked increase from previous election cycles of 2005 and 2009.

Citizens Union, because of its support for robust donor disclosure of campaign donors and spending pushed for, and supported, the charter amendment approved by the voters in 2010 that required independent spending be disclosed in addition to contributions above $1,000 if spenders made $5,000 or more in expenditures.

The Campaign Finance Board has done an excellent job presenting information about independent spenders on its website. The CFB has placed prominently on its homepage a banner that states, "See the Impact of Independent Expenditures on 2013 races."[2] This provides a race-by-race account of all independent spending by every independent spender for each election as compared to candidate spending with links to each independent spender's profile page. Each independent spenders' profile page displays the name, address, website, executive officers and spending for and against each candidate.[3] Clicking on the total expenditures link for an independent spender provides a further listing of every contributor which can be sorted and downloaded to a spreadsheet for further analysis.

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[1] See NYC Campaign Finance Board, Independent Expenditure Summary. Available at: http://www.nyccfb.info/VSApps/WebForm_Finance_Independent.aspx?as_election_cycle=2013

[2] See http://www.nyccfb.info/

[3] See for example, independent spending for each primary election at http://www.nyccfb.info/PDF/IE_Candidate_Spending_Charts_Primary.pdf

Int. No. 148 seeks to make available some of this online information about independent spenders in the campaign communication itself. Currently, independent communications are already delivered to voters with a "paid for by" message which names only the organization making the ad. These disclaimers are not very revealing to voters because independent spenders often have innocuous and generic sounding names that reveal little about their mission or financial backers. Below were the top 5 independent spenders in the 2013 NYC elections.

Top Independent Spenders in the 2013 NYC Elections	**Expenditures in 2013 Elections**
Jobs For Growth	$4,901,830
United for the Future	$3,465,849
New York Progress	$1,044,742
NYCN4S	$856,762
Progress NYC	$632,508

If each of these independent spenders were to disclose its top 5 donors and executive officers as required in print mediums by Int. No. 148, the following information would be disclosed:

Name of Independent Spender	**Expenditures in 2013 Elections**	**Top 5 Donors in 2013 Elections (in all ads except those less than 15 seconds)**	**Top Executives (required in print ads)**
Jobs For Growth	$4,901,830	1. Jamestown, L.P. 2. 7 World Trade Center II, LLC 3. AGS Ventures II, LLC 4. BFP One Liberty Plaza Co., LLC 5. Brookfield Properties One WFC Co., LLC *Note: donors 2-10 gave the same amount to Jobs For Growth. Only 2-5 are listed.*	1. Rob Speyer 2. Steven Spinola 3. William Auberbach
United for the Future	$3,465,849	1. Educators United 2. UFT Cope 3. American Federation of Teachers 4. UFT Cope Local 5. *No 5th donor*	1. Paul Egan

Name of Independent Spender	Expenditures in 2013 Elections	Top 5 Donors in 2013 Elections (in all ads except those less than 15 seconds)	Top Executives (required in print ads)
New York Progress	$1,044,742	1. Hotel Workers for a Stronger Middle Class 2. United Federation of Teachers COPE 3. 32 BJ SEIU Empire State Pac 4. Carpenters and Joiners of America PAC 5. New Yorkers Together	1. Kevin Curtin among many others listed as Director
NYCN4S	$856,762	1. CWA, Local 1180 2. Central Parker Real Estate Consulting, LLC 3. Hugo Neu Recycling, LLC 4. Wendy Neu 5. Stephen Nislick	1. Arthur Cheliotes 2. Stephen Nislick 3. Wendy Neu
Progress NYC	$632,508	1. 1199 SEIU NYS Political Action Fund 2. Mason Tenders District Council 3. NYC District Council of Carpenters PAC 4. United Federation of Teachers COPE 5. District Council #9 PAC *Note: donors 6 and 7 gave the same amount District Council #9 PAC.*	1. Matthew Rey

As shown on the chart above, donor disclosure is revealing in certain instances but not in others. Some voters may be able to get a sense of who is behind the ads. For instance, the listing of donors reveals to some degree that educational interests, particularly unions are behind United for the Future. However, often donors are obscured by acronym-laden LLCs and PACs that won't likely mean much to the typical voter if rattled off in succession at the end of an ad. Even individual's names may not mean much to voters without further information. The value of the names of donors to voters must be weighed against the burden on freedom of

speech of the independent spender. The lengthier disclaimers in campaign communications could consume a significant portion of campaign ads, and the cost could be a significant burden which may raise issues of infringement on freedom of speech.

We believe what is most important is that full and meaningful information about donors is easily accessible and well presented to the public so the media, advocacy groups and campaigns' own opposition research can provide fuller context and explanatory information through sources other than the ads to voters. An ad may not be the best technique for providing meaningful and effective voter information about the background and interest of donors to independent spenders. Donor disclosure in ads needs to avoid resulting in the unintended consequence of chilling speech during campaigns.

It may be preferable, for example, to instead to include in campaign ads with the current "paid for by" disclaimer additional language specifying a precise *url* that links directly to profile information about the independent spender and its top donors either on the Campaign Finance Board's website and/or an Internet donor disclosure website or page created by the independent spender on their existing or newly established website. This requirement exists in other donor disclosure legislation introduced in other states, including California.[4]

Beyond the major issue of whether donors should be disclosed within the ad, Citizens Union makes the following recommendations pertaining to Int. No. 148:

1) We support the intent of section 1(b) of the bill to pierce the veil and ensure that independent spenders disclose their original individual named donors to the Campaign Finance Board. This is critically important as we have seen how the organization Common Sense Principles, which sent issue-based mailers to voters in competitive New York State senate districts in previous election cycles, shielded its donors from disclosure of its lobbying activity to the Joint Commission on Public Ethics (JCOPE).[5] Instead of disclosing its actual donors, Common Sense Principles instead disclosed one donor: a limited liability corporation (LLC) named the Center for Common Sense, LLC.[6]

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[4] See SB 52, section 12. *A committee that has paid for political advertisements and that has received cumulative contributions that meet or exceed the disclosure threshold shall establish and maintain a disclosure Internet Web site. If the committee has an Internet Web site, that site may also serve as the disclosure Internet Web site. The homepage of the disclosure Internet Web site and any landing pages that visitors are directed to on the Internet Web site and any other Internet Web sites maintained by by the committee shall include a disclosure area...* Available at: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0051-0100/sb_52_bill_20130516_amended_sen_v95.pdf

[5] See http://www.commonsenseprinciples.com/

[6] Veilkind, Jimmy. "Drumroll: Common Sense Principles releases its donors," *Capitol Confidential.* February 6, 2013. Available at: http://blog.timesunion.com/capitol/archives/177691/drumroll-common-sense-principles-lists-its-donor/

While we support the intent of this section, the language seems to suggest an individual or entity would have to register as an independent spender because it contributed to one or, because it is perceived to have contributed to one, for the purpose of independent campaign expenditures. This we do not support.

We suggest the language below instead:

Amend subparagraph b of subsection 15 of section 1052 of the New York City Charter to read:
(b) Every individual and entity that makes independent expenditures aggregating one thousand dollars or more in support of or in opposition to any candidate in any covered election,or in support of or in opposition to any municipal ballot proposal or referendum, shall be required to disclose such expenditure to the board. In addition, every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more in support of or in opposition to any candidate in any covered election shall disclose the identity of any entity that contributed to the entity reporting the expenditure, and any individual who, in the twelve months preceding the covered election, contributed one thousand dollars or more to the entity reporting the expenditure. In addition, every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more in support of or in opposition to any candidate in any covered election shall ADDITIONALLY disclose the identity of any entity that INDIRECTLY OR DIRECTLY TRANSFERS to the entity reporting the expenditure, and any individual who, in the twelve months preceding the covered election, INDIRECTLY OR DIRECTLY TRANSFERS one thousand dollars or more to the entity reporting the expenditure. The campaign finance board shall promulgate rules for determining what shall be deemed to be a transfer for the purpose of making independent expenditures under this subparagraph.

2) The United States Supreme Court has upheld donor disclosure[7] (outside of the context of campaign communications) provided there is no evidence that shows donors for the organization engaging in campaign communications have been subject to harassment, threats, reprisals or harm.[8] **The legislation would therefore benefit from a process by which organizations could petition the Campaign Finance Board to exempt disclosure from ads individual donors or donors to the entire organization.** New York State has a

[7] The majority decision in Citizens United states there is a governmental interest in providing the electorate with information about election-related spending sources, that disclaimers in ads and disclosure requirements are valid, that they make clear ads are not from candidates, that disclaimers in one medium but not another are not problematic, that disclosure can cover issue-based or so-called electioneering ads, and that proof of chilling speech is needed to make a case against disclosure. See.

[8] See Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 LRRM 2961 (2010) [2010 BL 15350]. *"The Buckley Court explained that disclosure can be justified by a governmental interest in providing "the electorate with information" about election-related spending sources. 424 U. S., at 66...However, the Court acknowledged that as-applied challenges would be available if a group could show a" "reasonable probability'" that disclosing its contributors' names would "'subject them to threats, harassment, or reprisals from either Government officials or private parties.'"* and *"Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make § 201 unconstitutional as applied.*

similar donor exemption process at the state level for disclosure of donor of lobbying organizations.[9]

3) **The bill should exempt from disclosure donors to 501(c)(4) organizations who indicate their donation should not be used for independent expenditure, but rather for public education or lobbying activities.** This compartmentalization of funds is permitted in federal and state election law.

4) **The bill should require in television and radio communications the disclaimer in a similar pitch and tone as the ad itself in addition to the requirement the message be "clearly spoken."** As anyone who has listened to speed readers clearly deliver disclaimers at the end of automobile commercials, requiring the same pitch and tone in addition to the message being clearly spoken is equally important, if not more so. This requirement exists in other donor disclosure legislation introduced in other states, including California.[10] It should be added to any disclaimer legislation whether it is inclusive of top donors or not.

5) **Though we have concerns about burdensome donor disclosure in the ads themselves, if donor disclosure in ads is to be enacted, a mechanism needs to be put in place to indicate to independent spenders which donors to disclose in the event more than five donors have given the top five contributions in dollars.** As shown on the chart above, Jobs For New York's second through tenth highest contributors gave the same contributions. Progress New York had three donors tied for the 5th largest contributor.

6) **Though we have concerns about burdensome donor disclosure in the ads themselves, if donor disclosure in ads is to be enacted, a mechanism needs to be put in place when numerous people are effectively the executive director of the independent entity to determine which person should be named in print communications.** Progress New York, for example, has 10 Directors with none clearly named as the Executive Director.

The complications of addressing recommendations numbers 5 and 6 point to the hurdles that must be crossed, which makes full and explicit donor disclosure online more appealing and workable.

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[9] See NYS Legislative Law, Article 1-A, section 1-h(c)(4)(ii). *This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.*

[10] See SB 52, section 9(a). *A political advertisement that is a radio advertisement or prerecorded telephonic message shall include a disclosure at the end of the advertisement read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement...* Available at: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0051-0100/sb_52_bill_20130516_amended_sen_v95.pdf

Int. No. 6 (Garodnick)

Citizens Union strongly supports this legislation as written believing the loophole allowing candidates to send communications to voters anonymously should have been closed long ago. During the 2013 campaign, anonymous communications were made by candidates for comptroller, public advocate and city council. This legislation will ensure for future elections all candidate communications disclose the candidate who is behind them with a "paid for by" disclaimer that already applies to independent spending.

Resolution 75 (Williams)

Citizens Union has advocated for campaign finance reform at the state level for many years and supports the intent of this resolution, which calls on the state legislature to establish a public matching system for its elections. However, we believe the Council should pass a resolution calling on the legislature to pass public campaign financing along with other needed elements of reform including: 1) lower contribution limits for all candidates, participating and non-participating; 2) robust disclosure of independent expenditures and other campaign contributions and spending; 3) reductions in contributions to party committees and transfers by party committees; 4) stronger enforcement, ideally in the form of an independent entity outside the Board of Elections as is the case with the city's Campaign Finance Board; and 5) restrictions on personal use of campaign funds. We urge the Council to modify its resolution to express its support for principles of campaign finance reform rather than any one particular bill. Bills introduced by Senate Co-President Klein and Governor Cuomo, like the Silver bill, improve the current system in New York State. We believe the Council's resolution would carry more weight in the near term and the future if it expressed support for desired campaign finance principles rather than one specific piece of campaign finance reform legislation.

I welcome any questions you may have.

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Testimony of Brent Ferguson

Counsel, Brennan Center for Justice at NYU School of Law

Submitted to the New York City Council Committee on Governmental Operations

April 25, 2014 Hearing

The Brennan Center for Justice at NYU School of Law appreciates the opportunity to discuss the proposals before the Committee today. The Brennan Center strongly endorses passage of the resolution supporting the 2013 Fair Elections Act. Especially in light of recent Supreme Court decisions that have elevated the importance of large expenditures in our political system, expanding the city's public financing model to the entire state would send a message to the nation that small donor matching programs can promote the voices of average citizens, and succeed even in a state that is home to the biggest donors in the country. The Resolution would encourage state leaders to pass meaningful reform in this legislative session.

We also support the Council's efforts to update the city's disclosure laws in response to the explosion of independent spending in city elections. Similar laws have already been passed in states that have not seen nearly as much political spending as New York City. To ensure that the proposed disclosure laws are workable and provide valuable information to the public, we recommend making a few amendments. First, we suggest requiring any report that names a corporation or group as a contributor to also identify a natural person that has some discretion or control over the contributing organization. We also recommend adding a provision to ensure that contributors cannot avoid having their identity disclosed by forming several different entities and making contributions below the disclosure threshold. Finally, we recommend adding a few exceptions to the disclaimer requirement, including an exception for small political advertisements that cannot practicably contain the required information.

Res. No. 75

Resolution 75 would demonstrate the City Council's support for the 2013 Fair Elections Act, a bill seeking to institute a statewide small donor matching program and overhaul the state's campaign finance system. The Brennan Center agrees with the proposed Resolution — publicly

prevent an entity from avoiding disclosure by creating a number of affiliated organizations and separately contributing amounts under the one thousand dollar reporting threshold.[2]

The Brennan Center also believes that the city's law will be strengthened by the final provision in section 1, which treats as an independent expenditure any transfer of one thousand dollars or more to an entity for the purpose of assisting that entity with making an independent expenditure. While we have confidence that the Campaign Finance Board would promulgate effective regulations pursuant to this section, the bill could also set forth certain criteria to ensure that effective provisions are contained in the Charter. One promising method of determining what qualifies as such a "covered transfer" is contained in the federal DISCLOSE Act of 2013.[3]

Section 2

Section 2 of the law would require various types of campaign-related advertisements to include disclaimers providing information about the spending entity and the "five largest aggregate donors to such entity." This provision would help give New York City voters the information they need to properly assess political advertisements.

Because of the rise in independent spending after *Citizens United v. FEC* and other cases, those seeking to ensure fair, informative elections have recently focused on ensuring that the sources of independent advertisements are clearly displayed for the public to see. As part of that effort, several states such as Alaska, Connecticut, Washington, and Rhode Island have implemented "Top Five" disclaimer provisions similar to section 2 of the bill.[4] While it is too early to determine the effect of such laws, the push for reform in these states demonstrates the important role that such disclaimer requirements play in informing voters.

Importantly, independent spending plays a greater role in New York City than it does in several states that have already passed similar disclaimer laws. The most recent numbers from the Campaign Finance Board show that almost $16 million was spent on independent expenditures in the 2013 election, which comprises 11.5% of spending when candidate expenditures and independent expenditures are combined.[5]

The State of Connecticut passed a disclaimer law[6] similar to today's proposal in 2010 in response to *Citizens United*, though independent spending at that time in Connecticut was

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[2] Both of the suggestions made in this paragraph could also be applied to the disclaimer requirements in section 2. *See, e.g.*, CAL. CODE REGS. tit. 2, § 18225.4(c) ("If two or more entities make independent expenditures that are directed and controlled by a majority of the same persons, the independent expenditures of those entities shall be aggregated.").

[3] H.R. 148, 113th Cong. § 2 (2013); *see also* CONN. GEN. STAT. ANN. § 9-601(29) (defining "covered transfer").

[4] BRIAN PAUL & SUSAN LERNER, COMMON CAUSE NEW YORK, ANALYSIS OF INDEPENDENT EXPENDITURES IN THE 2013 NEW YORK CITY ELECTIONS 10 (2013), http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/Common%20Cause%20NY%20--%20Analysis%20of%20IEs%20in%20NYC.pdf; *see also* WASH. REV. CODE ANN. § 42.17A.320.

[5] NEW YORK CITY CAMPAIGN FINANCE BOARD, CAMPAIGN FINANCE SUMMARY, 2013 CITYWIDE ELECTIONS, http://www.nyccfb.info/VSApps/WebForm_Finance_Summary.aspx?as_election_cycle=2013 (last visited Apr. 23, 2014).

[6] CONN. GEN. STAT. ANN. § 9-621.

Candidate disclaimer laws similar to this bill have been widely adopted because they provide valuable information for voters who see or hear political advertisements, and there is little reason that New York City should not update its law in this manner. Just as the provisions contained in Prop. Int. No. 148-A provide valuable information about outside spenders, voters who use political advertisements to make their democratic choice should know if an advertisement is paid for by the candidate it supports.

committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee.").

[13] *See, e.g.*, VA. CODE ANN. §§ 24.2-956 – 958; DEL. CODE ANN. tit. 15, § 8021; IND. CODE ANN. § 3-9-3-2.5(d); Ala. Code § 17-5-12; CONN. GEN. STAT. ANN. § 9-621(a).

ORRICK

Testimony Before the Committee on Governmental Operations
of the New York City Council on Intro 6 and Intro 148
By E. Joshua Rosenkranz, Partner, Orrick, Herrington & Sutcliffe LLP
On Behalf of the Real Estate Board of New York
April 25, 2014

Good afternoon Chairman Kallos and members of the Committee. I am Josh Rosenkranz, a partner at the law firm Orrick, Herrington & Sutcliffe, LLP, where I chair the firm's Supreme Court and Appellate Practice Group as well as its Public Policy Group. Before entering private law practice, I served as the founding President and CEO of the Brennan Center for Justice at NYU Law School, a non-partisan law and policy institute that seeks to improve our system of democracy and justice. Both in my public-interest life and in private practice, I have advocated for and defended common-sense campaign finance reform, including a successful defense of the landmark federal Bipartisan Campaign Reform Act of 2002 all the way to the Supreme Court. At the same time, I have counseled clients in government and in advocacy groups about the constitutional limits on reform efforts and have successfully challenged numerous reforms on constitutional grounds. I am here today on behalf of The Real Estate Board of New York ("REBNY"), which represents over 15,000 owners, developers, managers, and brokers of real property in New York City.

REBNY supports efforts to promote openness and transparency in the electoral process. REBNY also shares my view that, in accomplishing that goal, reforms should be reasonable and even-handed; they should not favor some groups and disfavor others and should not be so onerous as to chill speech. For these reasons, REBNY supports Intro 6. Intro 6 will improve campaign-finance transparency across the board by closing a loophole that currently allows candidates to produce anonymous attack ads. And it will close that loophole in an even-handed way. We hope that the City Council will pass this bill and hold candidates to the same level of transparency that is already required of independent expenditure groups.

For the same reasons that REBNY supports Intro 6, however, it opposes Intro 148. Intro 148 turns a simple, plainspoken disclosure law into an administrative-disclosure regime so burdensome on independent expenditure groups that, in practice, it will cause those groups simply not to engage in the covered political speech in the first place.

Intro 148 has two critical flaws.

First, the bill requires independent expenditure groups to lard their printed material and TV and radio ads with far too much unnecessary information—so much information that groups will not bother running the ads.

There is no reason to require ads to report such granular information as the names of its officers, its business address, its top five donors, and a boilerplate disclaimer. All of this information is publicly reported and available on the CFB's website. Accordingly, this provision would not make any new information available to the public.

It would, however, impose considerable new burdens on independent expenditure groups. If the new disclosure rules in Intro 148 had applied to the larger independent expenditure groups from last year, about one-third of a 30 second radio ad would have been devoted to these mandated disclosures. The spoken disclaimer on radio ads of 15 seconds or shorter would still be about four seconds or almost a third of those ads. So much information is now required to be displayed on a TV ad that assuming the standard Federal Communications Commission rules on size and time requirements for such disclaimers, the mandated language will effectively take up most of the screen. And no one simply watching their television will be able to read it all in the time it will be displayed. In a world with Intro 148, print and TV ads will look more like pharmaceutical package inserts rather than informative political communications. And radio ads would have to squeeze in so much content that it would amount to a full employment act for the MicroMachines Man. The tail isn't simply wagging the dog here. It is beating the dog into submission.

The sheer amount of information this proposal would require, combined with the fact that all of this information is already publicly available, leads to the inescapable conclusion that the intent of this proposal is not to inform the public but rather to chill free speech rights by impermissibly discouraging independent speech altogether. Recent jurisprudence makes clear that limited disclosure is appropriate in electioneering communications, but any impingement on free speech rights, such the proposals in Intro 148, are subject to strict scrutiny. To be sure, the courts have looked more favorably on disclosure to a government entity (as opposed to disclosure appended to the actual speech itself). The law currently requires such disclosure in the form of reports to the CFB, and that law is working. But an extensive disclosure that must be packaged and delivered contemporaneously with the actual speech goes too far. Absent an overriding state interest (which the proponents of Intro 148 have not demonstrated), Intro 148's onerous disclosure requirements are unconstitutional. If the Council is concerned about speech it does not like, as Justice Brandeis said, "the remedy to be applied is more speech, not enforced silence."

If the intent of this legislation is to make campaign contributions and expenditures more transparent, there are other ways to accomplish this goal.

As REBNY proposed in testimony submitted at the CFB's post-election hearing, independent expenditure groups and candidates could be required to provide a web address that recipients of their communication could access and use to find out more information (such as the information called for by Intro 148). This could be facilitated by the CFB creating simple, dedicated URLs for each spender, such as http://www.nyccfb.info/JobsForNY. Again, because CFB already has and already publicizes this information on the internet, this would be a simple fix.

And experience shows that it would work. Jobs for New York, an independent expenditure group that was active last cycle, took this approach by proactively including the organization's URL on written

communications, allowing communication recipients to find information about its mission, leadership and endorsements more easily. Indeed, this reform would increase the level of information available to the public and allow for even greater transparency than would be required under Intro 148. And it would do so without impinging on the free speech of independent expenditure groups.

At the very least, if the Council is committed to enacting measures in this bill, it should impose similar disclosure requirements on candidates to ensure that the burdens of facilitating enhanced transparency fall evenhandedly on all relevant actors. Listing the top five donors or bundlers for each candidate seems to make even more sense for candidates than it does for independent expenditure groups. Given the purported aim of preventing corruption that underlies most efforts at campaign finance reform, it seems that the suggestions put forward in this legislation are equally suited for political candidates who come into direct contact with contributors and bundlers who often have business before the City. Conversely, independent expenditure groups are not allowed to talk to the candidates about their political activity.

The second major defect is that the amendment to §1052(15)(b) of the Charter is confusing and will cause massive and duplicative over-reporting. Current law requires that any party that "makes independent expenditures aggregating one thousand dollars or more" register as an independent expenditure group with the CFB and subject itself to ongoing reporting. Intro 148 would deem any party that simply contributes more than $1,000 to an independent expenditure group to have "made" an independent expenditure themselves. This characterization would seemingly require the contributing party to have to report *again*—the exact same information — that by virtue of existing law is already being reported by the independent expenditure group. This buries the CFB in duplicative data.

Not only is the disclosed information duplicative; it is confusing. Take a concrete example. Jobs for New York had 130 different contributors who gave more than $1,000. And Jobs for New York reported 561 communications. As another example, the Working Family Party reported 64 different contributors and 18 communications. Had Intro 148 been on the books, the CFB would have been inundated with 64 different entities all reporting that they had each "made" the same 18 independent expenditures. How is a contributor supposed to know which particular communication their money funded? More importantly, how is a typical voter supposed to know that Jobs for New York was responsible for the piece when 130 different entities are all required to report that they "made" it under this new law?

While Intro 6 proposes common sense even-handed reforms, Intro 148 seeks to target a particular group of people such that it will chill their exercise of their free speech rights. I urge you to support Intro 6 and to oppose Intro 148.

Testimony of Janos Marton
New York City Council Government Operations Committee
April 25, 2014

Thank you to Committee Chair Kallos and to all the Councilmembers on the Government Operations Committee. Thank you especially to all of the Council and legislative staff who drafted these bills and put this hearing together. There has been a great deal of political intrigue over the past month regarding the Moreland Commission being shut down, involving prominent figures in state politics, but I am here today to testify about substance of campaign finance law, as that was my focus at the Commission, where I served as special counsel from August through this April. Now that the Commission has been wound down, I am testifying in my individual capacity.

The Supreme Court's assault on campaign finance laws have left governments with little recourse in combatting the flow of money in politics, and it is to the City Council's great credit that it is attempting to improve the New York City system, which has touted as a national model in the years since *Citizens United v. FEC*. Today I am going to discuss potential improvements to state campaign finance law in the context of the resolution before this committee, the merits of the Introductions 6 and 148, and areas of potential improvement for New York City's campaign finance law. At the conclusion of my remarks, which I will submit for the record, I will be happy to take questions on any of these subjects.

I will begin with Resolution 75, which urges the state legislature to adopt a public campaign financing system for New York State. The merits of public financing are well understood in this city. You have heard insightful testimony from the city's leading good government organizations on public financing's benefits, and as Councilmembers who participated in the matching fund program, you understand them well. I do not have much to add to that discussion, except that the Moreland Commission's investigation and public hearing regarding the State Board of Elections does not leave me with much confidence that it could implement and run a public financing system with the professionalism of the CFB unless it undergoes significant structural and cultural changes.

As to the value of Resolution 75, it appears that Speaker Sheldon Sheldon and Senate co-leader Jeff Klein already support public financing, while Senate co-leader Dean Skelos does not. What is less clear is whether any of them support closing housekeeping accounts, lowering contribution limits and closing the LLC loophole. These three provisions allow for the large pay to play checks that plague New York politics. Housekeeping accounts serve as nothing more than proxy campaign accounts, end-runs around campaign finance laws that allow unlimited contributions from individuals, corporations, unions, and any other special interest you can think of. New York's sky-high contribution limits and the use of the LLC loophole by the real estate industry and other corporate interests give party leaders and entrenched legislators a crutch to ignore public financing, even if it were to pass.

Public financing works in New York City because in most cases it is a better deal for the candidate than opting out, which has in turn led to a culture in which candidates are excepted to use it. I doubt the same would follow in Albany under a public financing system unless these other reforms were adopted and caused the large flow of big checks to stop. That is why a Resolution supporting comprehensive finance reform, not just public financing, might have more of an impact on the debate in the state legislature. It has long been understood that Senate Republicans are the impediment to campaign finance reform in this state, but Democrats in this body should ask their state-level colleagues how they feel about issues like housekeeping accounts and the LLC loophole.

Turning to Introduction 6, I believe this bill would be a strong addition to New York City campaign finance law. Every election cycle we have the charade of nasty hit pieces circulated late in the campaign season, which quite obviously come from the opposing candidate or his supporters. This disclosure requirement is good policy and clearly constitutional. I hope that the CFB, which will promulgate the specific enforcement mechanism, chooses to employ harsh penalties for violating this law. I can imagine violations being difficult to prove, and only severe penalties will deter the kind of campaign that would use this tactic in the first place. My one question relates to the term "authorizes" in Subsection B. In the age of Super PACs, one of the most interesting questions yet to be fully litigated is what constitutes illegal coordination. In regard to this bill, a candidate must disclose if he authorizes a PAC to run an ad on his behalf, but PACs do not generally need "authorization" to do that. I might have chosen a more expansive word if the goal is reduce suspect coordination. In summary, I strongly support this bill.

Before I discuss Councilman Brad Lander's bill, Introduction 148, I want to share an experience from a Moreland Commission investigation. One of our tasks was to investigate the role of 501c organizations in elections. The Commission's preliminary report highlights the role of Common Sense Principles, a Virginia-based 501(c)(4) nonprofit that spent millions of dollars during the 2010 and 2012 elections on mailers attacking Democratic State Senate candidates. Investigative journalists and the attorney general's office were previously stymied in determining who bankrolled the group because Common Sense did not file with New York's charity bureau and did not have a real address in Virginia. Even when they filed with JCOPE in 2013, Common Sense claimed its donor was the Center for Common Sense, another shell entity in Florida.

Using a mailer ID number from a piece of Common Sense literature, we found their New York-based printing company. However, the executive we spoke with at the media company referred to Common Sense as a "ghost company", meaning that while they printed and mailed literature for Common Sense, the mailers were paid for by yet another Florida intermediary. Next, we found that their web consultant was based in New York City, and so we subpoenaed him. An expensive legal team was hired to fight our subpoenas, and that litigation was in mid-stream when the Commission was shut down.

I believe that had the litigation run its course, documents and communications from our subpoena may have revealed illegal campaign coordination. But we do not need to rely on Common Sense to know that hiding campaign money through 501(c)(4) vehicles is a growing problem. In California, regulators found that two Arizona 501(c)(4)s tied to the Koch brothers funneled millions of dollars into California elections without disclosure, and similar cases have arisen from Kentucky to Utah.

I bring up these examples to demonstrate the sophistication with which major players use shell organizations. From my understanding, Intro 148 is intended to educate the voter the next time a group with a name like "Jobs for New York" floods a district with ads. This is a noble goal, and the desire to focus on disclosure is reasonable, given the Supreme Court's adverse rulings in every other area of campaign finance reform.

It is likely, however, this legislation will be challenged on First Amendment grounds as intrusive and burdensome- intrusive because it asks organizations to reveal their donors and internal leadership, and burdensome because it requires group clutter their messaging with the numerous

disclosures required by this legislation.

This bill can withstand a legal challenge as it pertains to the rights of donors. Donors do have the right to be protected from government policies that will lead to harassment and reprisals against them, and courts have ruled in favor of protecting certain vulnerable groups from disclosure, such as NAACP activists in the pre-civil rights south. Courts have set a high bar for such protections, such as harassment that leads to violence or loss of employment. Today's dark money groups, often led by billionaires and large corporate interests, are pushing for that standard to expand to basically any form of retaliation, such as economic boycotts, but courts have stood firm so far.

My concern with the required listing of officers is that powerful, sophisticated players will simply evade the intent of this legislation by using shell organizations. Real estate companies, for example, already create dozens of corporate entities as part of their legitimate business model. The Commission's investigation into Common Sense Principles showed the ease with which donors could mask their impact through different corporate forms, even while complying with disclosure laws. I completely sympathize with the goal of requiring a natural person to be associated with an ad, as I do think that is more effective than the status quo, but I am curious what other nonprofits and unions think about this requirement, since they would presumably be listing their actual leadership and donors on all campaign mail under this law, and might consider such a requirement unduly intrusive. Ultimately, someone needs to push the boundaries of disclosure law as far as the courts will allow it, so I support the ambition behind the bill.

Finally, I encourage this committee to hold our current public financing system to the highest standard. No system is perfect, but because New York City is a model to the nation, it is all the more essential to fine-tune what was been a 25-year work in progress.

This committee should look at amending the sources of payment campaign finance legal defense funds, passing legislation to prevent money bundled by those doing business with the city from being matchable, and raising the expenditure cap for City Council candidates. I have heard from several former candidates that $160,000 is not enough to take on an incumbent or someone with institutional support like local political clubs or organized labor. This committee should consider authorizing the CFB to penalize campaign accounts in future elections to properly punish campaign finance abuse that takes place too late in the campaign for the CFB to adjudicate as it is happening.

Lastly, all elected officials should pledge to return matching funds in noncompetitive races, as Borough President Gale Brewer did. Last year only seven councilmembers had races where the winning candidate received less than two-thirds of the vote; it hardly seems like matching funds for the other races are a good use of taxpayer dollars. This issue would be of even greater consequence at the state level.

Thank you for the opportunity to speak with you this afternoon. I am happy to take any questions now and come back at another time. The overwhelming presence of money in politics is one of the challenges of our time, and campaign finance reform is not easy. I commend the work of this committee and pledge to do my part to help.

THE COUNCIL
THE CITY OF NEW YORK

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 2-27-14

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Name: TRIADA STAMPAS

Address: _____

I represent: FOOD BANK FOR NYC

Address: 39 BWAY 10TH FL NY NY 10006

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I intend to appear and speak on Int. No. 6148 Res. No. 75

☑ in favor ☐ in opposition

Date: April 25

(PLEASE PRINT)

Name: Jesse Laymon

Address: 315 W. 56th St.

I represent: Effective NY

Address: _____

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I intend to appear and speak on Int. No. 6,148 Res. No. 75

☐ in favor ☐ in opposition

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Name: Rosemary Faulkner

Address: 7 East 85th St, New York, NY 10028

I represent: League of Women Voters

Address: 4 West 43rd St, New York, NY 10036

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Name: SUSAN LERNER

Address: 80 Broad St., Ste 2703

I represent: Common Cause/NY

Address: same

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Name: Alex Camarda

Address: _____

I represent: Citizens Union

Address: _____

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Name: Amy Loprest

Address: 100 Church St.

I represent: New York City Campaign Finance Bar

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(PLEASE PRINT)

Name: Janos Marton

Address: 156 S. 4th Street, Brooklyn, NY

I represent: Individual

Address: _____

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Name: Josh Rosenkrantz

Address: _____

I represent: Orrick / REBNY

Address: _____

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Name: Amy Loprest

Address: 100 Church ST

I represent: NYC Campaign Finance Board

Address: _____

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☑ in favor ☐ in opposition

Date: 4-25-14

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Name: Brent Ferguson

Address: ~~161 Columbus Ave~~ 556 Sixth St

I represent: Brennan Ctr for Justice

Address: 161 Ctr Ave 12th Fl.

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