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BY HAND

Hon. Joseph P. Parkes, S.J.
Chair
New York City Campaign Finance Board
40 Rector Street
New York, N.Y. 10006

Re: Advisory Opinion Request

Dear Chairman Parkes:

I write on behalf of Weiner '09, Congressman Anthony Weiner's principal committee for the 2009 mayoral election, to request an advisory opinion clarifying the new intermediary rule contained in Section 3-702(12) of the Campaign Finance Act (the "Intermediary Rule" or the "Rule").

Throughout his public career, from his first campaign for the City Council which would not have been possible without the City's model reformed campaign finance system, as a Member of Congress, during his 2005 mayoral campaign, and since, Mr. Weiner has always been a stalwart proponent of campaign finance reform. He endorses the goal of the new Intermediary Rule -- promoting true transparency in who is soliciting sizeable political contributions in the City of New York -- and seeks this Advisory Opinion in order to assist the CFB in implementing and enforcing the new Rule in a manner that will achieve the objective of full public disclosure.

The ambiguity in the new Rule arises from the fact that the CFB's campaign disclosure statements permit disclosure of only one intermediary per contribution while, in fact, there are often multiple touch points between a campaign and a campaign donor. The Rule appears to offer no guidance as to how a campaign is supposed to determine which of multiple contacts with a particular donor should be reported as the intermediary. Even worse, the Rule contains contradictory guidance on this point that may permit campaigns that do not seek to scrupulously comply with the letter and the spirit of the Rule to avoid reporting the true intermediary responsible for soliciting and obtaining a particular contribution.

Specifically, the problems arise from (i) the multiple definitions of "intermediary" itself, (ii) the provisions regarding event host committees, and (iii) the statutory presumption that people who are clearly identified as the solicitor of a contribution are to be reported

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as intermediaries. It is the interplay of these provisions that gives rise to this advisory opinion request.

First, with respect to the definition of "intermediary" itself, the Rule contains two categories of persons or entities who can be an intermediary: (i) a person or entity which "*delivers* any contribution"; or (ii) a person who "*solicits* contributions . . . where such solicitation is known to . . . [the] candidate or . . . committee" (emphases supplied). The Rule contains no guidance on what to do if more than one person solicits a contribution or if a solicitor of a contribution is known to the campaign but a different person delivers the contribution.

Second, the Rule provides for a statutory presumption that "persons *clearly identified* as the solicitor of a contribution to the candidate or his or her authorized committee shall be *presumed* to be known to such candidate or his or her authorized committee" (emphases supplied). But, again, what if more than one person is "clearly identified" as the solicitor of a contribution, for instance, if a donor sends a check with a note saying that three different people had asked her to contribute, or if a campaign is aware of solicitation letters or emails being sent to a single donor by more than one person? No guidance is offered as to how to report the intermediary in such circumstances.

Third, the provisions regarding event host committees add another layer of confusion. The Rule provides that (i) for campaign sponsored fundraising events, hosts do not need to be reported as intermediaries, and (ii) for non-campaign sponsored events, "[w]here there are multiple individual hosts . . . the hosts shall designate one such host as the intermediary." These provisions appear to afford a myriad of ways that campaigns can avoid reporting persons who solicit contributions as intermediaries -- either by the campaign itself sponsoring an event or by a committee being formed for a non-campaign sponsored event and then choosing not to list as an intermediary the person who truly solicited and attracted the donors. But, even these host committee clauses appear to contradict the clause providing that people "clearly identified" as solicitors are "presumed" to be intermediaries.

Consider the following example. A committee is formed to sponsor an event. A person not on that committee sends letters clearly identifying herself as the solicitor of contributions for that event. The host committee simply shows up at the event and designates one of its members as the intermediary for contributions received at that event. Is the campaign permitted to report the designated member of the host committee as the intermediary? Or, must the campaign report the person it knows to have been soliciting contributions for the event as the intermediary? And, what is a campaign to do when it knows that both the designated host committee intermediary and others not on the host committee have been "clearly identified" as having solicited a contribution? The Rule creates multiple ambiguities, is inherently contradictory, and affords too much compliance discretion to campaigns to be effective without further guidance from the CFB.

More basically, how are campaigns to reconcile a strict construction of the Rule with its purpose and intent? Are campaigns supposed to provide their best, good faith disclosure of who they believe to have been principally responsible for soliciting a contribution in making out an intermediary report? Is the purpose of the Rule to require

disclosure of the person whose solicitation played the most significant procuring role in a campaign obtaining a contribution? Or, will the CFB be satisfied with the disclosure of someone who technically qualifies as an intermediary, whether or not that person played a material or causal role in the donor contributing to the campaign?

We would appreciate an Advisory Opinion clarifying these matters prior to the July 11 deadline for the next periodic disclosure statements so that campaigns will have clear guidelines for implementing the new Intermediary Rule and so that the public will have the confidence of knowing that each of the campaigns is disclosing intermediaries based on one clear and common standard.

I will be available to the CFB or its staff to answer any questions or to provide any further information required to respond to this request.

Respectfully submitted,



John Siegal