



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the New York City Campaign Finance Board
Re: Proposed Rules for Receiving Text Message Contributions un Local Law 116 of 2013
November 24, 2014

Good morning, chairwoman Gill Hearn, members of the Campaign Finance Board (the “Board”), and staff. My name is Peggy Farber, and I am legislative counsel of Citizens Union, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. We serve as a civic watchdog, combating corruption and fighting for political reform.

We commend the Board’s proposed rules implementing Local Law 116, and have just a few comments. I note that we have updated our comments since we submitted a copy of our testimony last week.

Political giving through text messaging has the potential to broaden grass roots participation in political campaigns and to democratize campaign financing. At the same time, this new technology is complex and poses new challenges. The Board should be guided by its policies and practices with respect to contributions by check and credit card. Specifically, the Board should match the amount actually received by the candidate, and should deliver the matching funds only when the contribution has been received by the campaign. The Board should not serve as a bank providing a bridge loan using taxpayer dollars.

In arriving at our recommendations, we have surveyed rules adopted in other states such as California and Maryland to implement laws in those states allowing political contributions by text message, as well as advisory opinions on the topic issued by the Federal Election Commission.

1. The Board should develop guidelines related to “factoring” and other transaction charges.

Text message political contributions involve four parties: the donor, the wireless service provider to which the donor subscribes, a third-party vendor (the “messaging vendor”), and the political candidate’s authorized committee. This model is also used in charitable donation campaigns, where, for example, donors contribute to disaster relief organizations by text message. In a typical transaction, the wireless service provider and the messaging vendor charge fees so that the total amount received by the recipient, say, a nonprofit organization or a political campaign committee, is a percentage of the total amount authorized by the contributor.

Messaging vendors typically also engage in a transaction called “factoring” with the recipient, here, a political campaign committee. These transactions are described in an advisory opinion issued by the Federal Election Commission.¹ Essentially, the campaign committee sells its accounts receivable to the messaging vendor at a discount in order to obtain a percentage (or “factor”) of the contribution more quickly. After the messaging vendor receives payment from the wireless service provider, it reconciles the factored payment and the actual amount the campaign committee is entitled to receive, and remits

¹ Federal Election Commission Adv. Op. 2012-17 at 3-4 (June 11, 2012).

the difference so that the committee ends up with the entire amount it is entitled to receive, net of service fees.

Because of the transaction fees there can be a significant gap between the amount authorized by the contributor and the amount delivered to the candidate committee. The Federal Election Commission reports that in federal election campaigns fees can be as high as 50 percent of the amount authorized by the contributor.²

Under the Board's proposed rules, contributions will not be matched until those contributions have been paid by the donor and the contribution, net of fees, has been delivered to the candidate's committee. In its Notice of Proposed Rulemaking, the Board asks whether there are ways to match contributions earlier in the process.

In light of the multi-step transaction, and the questions it triggers, Citizen Union makes the following recommendations:

- The Board should deem the amount of the contribution to be the amount delivered to the candidate, not the amount authorized by the contributor. This is consistent with the Board's practices with respect to contributions by check and credit card.
- The Board should match the amount delivered to the candidate, rather than the amount authorized by the contributor. Though there are strong advantages to text contributions, there are certain drawbacks with the new technology. The public should not compensate for drawbacks in the service.
- The Board should match the contribution when all steps of the transaction have been completed and the candidate has reported delivery of the contribution.

2. The Board should analyze text message contributions for its post-election reports

Citizens Union recommends that the Board include an analysis of text message contributions in its post-election reports to inform the public about the use and prevalence of text contributions as a form of campaign finance and total amounts raised. The analysis should also provide information about the fees charged by all companies involved in the transaction so that future candidates can negotiate better rates and the public can have a clearer understanding of the fees.

3. The Board should include details about the limits on text contributions and on to whom the contribution will be attributed

Citizens Union recommends that the Board add details, either in the regulations or, at a minimum, in training materials. Because some candidates and candidate staff will consult the regulations only, and not Local Law 116, it is important to underscore certain details. Specifically, Citizens Union recommends adding:

- A statement informing candidates of Local Law 116's provision limiting the amount that a contributor may donate via text message to \$99.00 per contributor per candidate for all covered elections in the same calendar year.

² *Id.* at 3, no. 6.

- A definition of “registered user of a phone,” so that it is clear that “registered user” means the person who is the cell phone service subscriber, and that contributions will be attributed to that person.

I thank you for holding this hearing today regarding on the proposed rules for text message political contributions, and welcome any questions you may have.