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Dear Ms. Loprest:

This firm represents Green for New York, Mark Green's authorized committee on behalf of his candidacy for Public Advocate. I write to request an Advisory Opinion as to how the Campaign Finance Board intends to interpret and implement the law relating to third party expenditures, and, specifically, what constitutes sufficient evidence to warrant a finding of improper "coordination." This inquiry is of importance to every campaign, as well as to every trade association, union, political party, lobbying group, or civic association making an endorsement or committing resources to a campaign this year.

The issue as to what constitutes improper coordination, and thus whether expenditures by third parties are deemed contributions to and expenditures by a campaign, has been raised and litigated in prior election cycles. Despite the lengthy explication by the CFB in Rule 1-08(f), there nevertheless remains ambiguity as to how the Board analyzes this issue. Indeed, in its otherwise very helpful 2009 Campaign Finance Handbook, meant to explain the law and its Rules, the CFB relies upon vague terms such as "connected to the candidate" and "relationship...with the candidate." (Handbook, at 39-40) These phrases are open to considerable interpretation. And the two explanatory Examples provided in the Handbook (Examples 3.3 and 3.4, at 40) are relevant for only the most egregiously improper conduct. We are, therefore, still left with an unclear presentation of what the law is and how it will be applied. An unambiguous clarification by the CFB as to what constitutes improper coordination would, therefore, be useful for my client's

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campaign, as well as, no doubt, for all campaigns this year. Some additional examples might be addressed by your response:

Example A A member-based organization endorses a candidate, and communicates with her campaign in deploying its personnel and using its resources to participate in activities that will reach voters who are not solely its members, such as to train poll watchers; to staff polling places on election day; to design or distribute posters or literature; or to have sound trucks on or immediately prior to election day. Would the CFB deem any or all of these activities improper coordination?

Example B A member-based organization endorses a candidate, and advises her campaign that it will be using its funds, or funds of an affiliated organization, to pay its members to work on election day in ways or in places that inevitably will impact upon potential voters who are not solely its members. Would the CFB deem this conduct to be improper coordination?

Example C In *Avella v. Batt*, 33 A.D.3d 77 (3d Dep't. 2006), the Court held that political parties may expend monies and resources in party primaries (even those of a different political party). After a candidate has sought a political party's endorsement and the party has endorsed her in a primary election (its own or another party's primary), the party then proceeds to spend its money, use its personnel or commit its resources on behalf of the candidate. Assuming the political party had the right to exercise its First Amendment rights to do so, would the CFB nevertheless deem its conduct to be improper coordination for the purposes of the Campaign Finance Law?

These are but a few of the real-life examples that the CFB ought to address in advance of the coming primary election so that all participants fully appreciate how the CFB intends to implement the law and that all campaigns operate on an even playing field.

In addition to the currently ambiguous criteria, there appears to have been uneven scrutiny by the CFB on this issue. In the past, the CFB has questioned certain organizations' use of personnel and monetary resources as the Board sought to determine whether improper coordination with a campaign had occurred. Yet, at the same time, the CFB has refrained from questioning very similar expenditures by organizations with respect

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to other campaigns. Is there a method employed by the CFB in determining where to focus its investigative resources in ascertaining whether improper coordination has occurred?

As you are well aware, Mark Green, one of the original authors and supporters of the Campaign Finance Law, has always been a strong supporter of the CFB and its work. This Request, he hopes, will give his campaign a more complete understanding of how to fully comply with the Campaign Finance Law and CFB Rules. I look forward to an expeditious reply.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerry H. Goldfeder", with a long horizontal flourish extending to the right.

Jerry H. Goldfeder

JHG/db