Rhode Island Affiliate
American Civil Liberties Union

STATEMENT TO THE BOARD OF ELECTIONS
ON ADVISORY OPINION 95-1
April 11, 1996

The ACLU of Rhode Island is pleased that the Board of Elections has agreed to revisit, at the request of the Chamber of Commerce, the advisory opinion issued last year concerning the Chamber's solicitation of funds from members for advocacy on ballot questions. We share the Chamber's concerns about that opinion, and we too urge that it be reversed.

The Board's interpretation of the relevant statutory provisions not only seems to us unduly strained and illogical, but it also needlessly raises significant constitutional issues in the process. We wish to briefly point out those issues in this testimony.

Time and again, the U.S. Supreme Court has emphasized that there is a critical distinction between campaign finance reform efforts directed at candidate elections and those directed at referenda campaigns. While certain restrictions -- such as contribution limits -- have been upheld in the former situation, they have not been allowed in the latter setting.

That is because, in the seminal case of Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court found that the state had a compelling interest in restricting contributions to candidate campaigns in order to prevent possible quid pro quo corruption between a contributor and a candidate. The Court concluded that

10 Abbott Park Place - 3rd Floor Providence, Rhode Island 02903

this "corruption" concern was the only compelling interest government had that could survive this First Amendment challenge. But as the Court noted in First National Bank v. Bellotti, 435 U.S. 765 (1978) in striking down a state ban on corporate contributions or expenditures on ballot measures:

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. Id. at 790.

Keeping this in mind, we believe that the Board's opinion barring the Chamber from obtaining contributions from its members for ballot measure advocacy is flawed for a number of reasons. First, any legislative restrictions on advocacy in referenda campaigns must be narrowly construed in order to avoid constitutional problems that will otherwise be present. (It's worth noting that, as enacted, the state's campaign finance reform law originally banned any corporate expenditures in referenda campaigns. This provision was struck down in Vote Choice v. DiStefano, 814 F.Supp. 186 (D.R.I. 1992).)

Secondly, as the Chamber notes, trying to incorporate into §17-25-10 the "acting in concert" language from another section of the statute dealing with candidate campaigns simply is unworkable. Indeed, "acting in concert" really has no place at all in the context of referenda campaigns.

"Acting in concert" language is generally designed to prevent individuals from skirting the restrictions placed on campaign contributions in the candidate setting. The rationale behind this

language is inapplicable, however, to the referenda setting. In candidate elections, for example, contribution limits by individuals and others can be established, while independent expenditures by those entities cannot be so limited. "Acting in concert" provisions are designed to ensure that a person is not able to avoid the limits on contributions to candidates by purporting to make independent expenditures, or by attempting to hide contributions through another entity. However, this analysis is completely out of place in the referenda context, where those limits do not exist in the first place.

Frankly, it's unclear what the "acting in concert" language of §17-25-10 means -- or even whether it can constitutionally mean anything -- but it cannot and should not be read to mean the same as that contained in §17-25-23. Of course, the Board need not address this constitutional thicket if it finds, as the Chamber requests, that seeking contributions from its members does not constitute "acting in concert" conduct. We urge the Board to make that finding.

It makes little sense to differentiate the Chamber from its members in the way the Advisory Opinion does. In that vein, we would refer the Board to a recent federal appeals court ruling addressing only a slightly different, but nonetheless very instructive, situation. In Chamber of Commerce of the United States v. Federal Election Commission, 69 F.3d 600 (D.C.Cir. 1995), the appellate court had occasion to consider the definition of "members" for purposes of a Federal Elections Commission regulation. The regulation had narrowly defined the term, thus

limiting the individuals and entities to whom the Chamber could convey political messages and solicitations. The Court found the FEC's cramped interpretation of the term "members" to be "arbitrary and capricious." The Court further emphasized that accepting the FEC's narrow interpretation would raise serious constitutional concerns.

In line with that decision, the Board should be wary of interpreting "acting in concert" language in a way that establishes an obstacle between an organization like the Chamber and its members in participating in the political process. One simply does not "act in concert" with one's own members.

As the Chamber's previous comments have noted, the Board's solution of allowing the Chamber to establish a PAC also raises constitutional problems. See Vote Choice, supra, at 191.

If affirmed, the Board's Advisory Opinion would have a chilling effect on participation in referenda campaigns by a wide variety of non-profit organizations. In order to avoid all of the constitutional implications of that chill, the ACLU urges the Board to reconsider Advisory Opinion 95-1 and to find that the Chamber's solicitation of contributions from its members for referenda expenditures is allowable under state law as not constituting "acting in concert," and that it therefore does not require establishment of a PAC.

We appreciate your attention to our views, and trust that you will give them your careful consideration.

Submitted by: Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island

STATEMENT TO BOARD OF ELECTIONS

April 11, 1996

I. Introduction

The Rhode Island Campaign Contributions and Expenditures Reporting Act was enacted in 1974 because it was deemed to be in the public interest to require the reporting of certain campaign contributions and expenditures made with regard to elections and ballot questions. There is no doubt that such a law serves an important purpose, and the Greater Providence Chamber of Commerce supports the public policy on which the law is founded.

The question before the Board of Elections today is solely whether the interpretation of Section 10(b) of the Reporting Act issued in the Board of Elections' Advisory Opinion number 95-1 is unnecessarily restrictive on non-profit institutions and has an impact which is inconsistent with the public policy.

In the Advisory Opinion, the Board has interpreted Section 10(b) of the Reporting Act to effectively prohibit the Chamber from seeking funds from its members to fund expenditures to advocate its position on ballot questions. The Board has also suggested that the only option of the members is to form a political action committee if they desire to speak in unison in their advocacy of a position on a ballot question. Indeed, the Advisory Opinion seems to suggest that the Chamber could raise such funds if it did not inform the members as to their expected use. The Chamber believes that this is an incorrect interpretation of the law, and respectfully requests that the Board interpret Section 10(b) of the Reporting Act to allow a non-profit, membership organization, such as the Chamber, to turn to its members for contributions to fund expenditures relating to a ballot question without requiring the formation of a political action committee by the Chamber and its members.

II. Background

The particular prohibition at issue today is found in Section 10(b) of the Reporting Act. Generally, the Reporting Act restricts both:

1. Expenditures made to support or defeat a candidate; and

2. Expenditures made to advocate approval or rejection of a ballot question.

Section 10(b) of the Reporting Act, however, makes an exception to these restrictions. This section allows a person or organization to make such expenditures if:

1. The party making the expenditure does so without, in the words of Section 10(b), "acting in concert with any other person or group"; and

2. The party spends its own funds which are not to be repaid.

In its Advisory Opinion, the Board has stated that the Chamber may not solicit funds from its constituent members because by doing so, the Chamber would be acting in concert with its members. The Chamber believes that, in the context of a non-profit, membership organization, these conclusions and restrictions do not serve the policies upon which they are based.

III. Acting in Concert

A. Argument

The Greater Providence Chamber of Commerce is a non-profit Rhode Island corporation whose purpose is to provide a forum for its members to discuss and act on the issues of the day, such as ballot questions affecting commerce and business in Rhode Island. As such, the Chamber receives dues from its membership, which currently exceed 2,500 business and other organizations, large and small. On occasion, the Chamber desires to fulfill its duty to its constituent members by representing the position of the membership on ballot questions through expenditures made to influence the approval or rejection of such questions, and to do so, it may seek funds from its members.

The legislature directed that interpretation of the "acting in concert" prohibition should be guided by the standards set forth in Section 23 of the Reporting Act. It has been noted by many that Section 23 deals only with expenditures made to directly influence the outcome of an electoral contest involving a candidate. Insofar as Section 10(b) addresses spending regarding the election of candidates, the provisions of Section 23 apply easily in that context, but the provisions of Section 23 do not lend guidance to interpreting the "acting in concert" restrictions of Section 10(b) as applied to expenditures regarding ballot questions.

For example, the Chamber employs full-time executives, and any fund-raising or spending done by the Chamber would be done through these executives or by volunteer members. Paragraph B of Section 23 prohibits coordination between the person making the expenditure and another person who is paid to raise or expend funds regarding the election of a candidate. By way of analogy, can it be said that communication and coordination between the members and paid executives or volunteer members of the Chamber in funding and making expenditures regarding ballot questions is the type of "acting in concert" which should be prohibited? The answer must be "no."

Further, to create an arbitrary distinction between the Chamber and its members for purposes of the Reporting Act is a distinction without a difference. One could understand how unaffiliated entities may be prohibited from engaging in concerted efforts without registration, but a membership organization is by definition one in which the members are the organization. Thus, the Chamber submits that the interpretation of Section 10(b) set forth by the Board in the Advisory Opinion must be incorrect insofar as it deems the Chamber and its members to be independent entities. There is no direct public policy that can be served by

such an interpretation because there is no meaningful distinction between the Chamber and its members.

B. Proposed Interpretation

Because Section 23 is of little assistance, we are left with the question of the proper interpretation of Section 10(b) of the Reporting Act, and we must look to its supporting policies to find its meaning. In considering a not dissimilar issue regarding another section of the Reporting Act, the United States District Court in Rhode Island has stated that the only constitutionally acceptable reason for such a law is to prevent corruption in elected representatives, and that a statute which requires an entity to make expenditures for advocating a position on a ballot question through a political action committee is an impermissible infringement on the entity's First Amendment rights. That rationale, if viewed as appropriate guidance for the Board, would lead one to the conclusion that the Advisory Opinion also infringes upon First Amendment considerations unless there is a basis therefor. However, the Chamber believes that no such basis exists. The Chamber believes that the dangers inherent in the potential corruption of a political candidate simply are not present as between the Chamber and its members because, as I have said before, there simply is no meaningful distinction between the Chamber and its members.

Fortunately, however, we need not get entangled in the thorny constitutional issues because it is possible to interpret the Reporting Act in such a way as to give it meaning and fulfill its purpose without unduly burdening the free speech rights of the Chamber. Simply put, the phrase "acting in concert with another" should be interpreted to permit a non-profit organization to seek financial support from its members without the necessity of the formation of a political action committee by the members for the purpose of advocating a position on a ballot question.

IV. Funds Not to be Repaid

A second reason cited by the Board for its position in the Advisory Opinion is that solicitation of its members by the Chamber would violate that provision of Section 10(b) which requires that sums to be expended not be repaid. The Chamber believes that this, too, is an incorrect interpretation of Section 10(b). If the Chamber seeks and receives funds from its members for the purpose of spending those funds in advocating the Chamber's position on a ballot question, then those funds belong to the Chamber when expended. No one repays the Chamber for these expenditures, and the Chamber repays no one. Therefore, the Chamber submits that the Board's position that such funds are somehow to be repaid is in error, and that the Section 10(b) should not be interpreted to prohibit the expenditure of such funds.

V. Conclusion

In conclusion, the Chamber believes that an interpretation of Section 10(b) which prohibits a non-profit, membership organization from turning to its own members for funds to be expended on their behalf is overly broad. There is no meaningful distinction between the Chamber and its members, as there may be between the Chamber and other organizations. To treat the Chamber and its constituent members as unaffiliated parties does not serve the policies behind the Reporting Act, but only imposes a burden on the members' right to speak out on issues which are of common concern. Section 10(b) could be interpreted so as to prohibit coordination of efforts between different organizations or between an organization and non-member third parties, but not to prohibit the Chamber from fulfilling its duties to its members. Accordingly, the Greater Providence Chamber of Commerce respectfully requests the Board of Elections to reconsider its Advisory Opinion number 95-1 in light of the issues presented today, and refine its interpretation of Section 10(b) of the Reporting Act to (i) permit a non-profit, membership organization to seek financial support from its members to advocate a position on a ballot question, and (ii) not require such an organization to create a separate political action committee when it seeks funds from its own members.

207167_1

PARTRIDGE, SNOW & HAHN
COUNSELORS AT LAW
180 SOUTH MAIN STREET
PROVIDENCE, RHODE ISLAND 02903-7120
TEL. (401) 861-8200
FAX (401) 861-8210

NORMAND G. BENOIT*
JOHN M. BOEHNERT
DAVID M. GILDEN
JAMES H. HAHN*
JOHN J. PARTRIDGE*
JAMES E. PURCELL*
STEVEN E. SNOW*
BRIAN J. SPERO*
DENNIS J. DUFFY*
CAROLINE M. GILROY-BROWN*
JEFFREY H. GLADSTONE*

PATRICIA ANTONELLI*
JAMES J. BELLIVEAU*
BRIAN P. CARROLL*
CHRISTINE M. CURLEY
MELISSA E. DARIGAN*
STEPHANIE A. FERGUSON*
MICHAEL A. GAMBOLI*
THOMAS A. GIBLIN*
ALAN J. GLASS*
STEPHEN P. GRIFFIN*
KELLEY A. JORDAN*
EUGENE A. LACROCE*
DAVID J. LAWSON*
MICHELE B. LEDERBERG*
CHARLES A. LOVELL*
DIANA D. MCINERNEY*
THOMAS R. NOEL*
JEFFREY A. ST. SAUVEUR*
PAMELA J. TOROT
THOMAS J. TUYTSCHAEVERS*

*ALSO ADMITTED IN MASSACHUSETTS
†ALSO ADMITTED IN CONNECTICUT

August 17, 1995

The Honorable Roger N. Begin
Chairman
Rhode Island Board of Elections
50 Branch Avenue
Providence, RI 02904

Dear Mr. Begin:

On March 1, 1995, the Greater Providence Chamber of Commerce (the "Chamber") requested the Board of Elections (the "Board") to provide it with guidance on certain matters pursuant to a request for a declaratory ruling. Specifically, we asked:

What are the Chamber's obligations under the Reporting Act if it takes a position regarding a ballot question and then seeks financial support from its members which enables the Chamber to advocate its position with regard to such ballot question?

We received your letter dated July 5, 1995 and understand it to say, in response to the foregoing question, that if the Chamber were to seek financial contributions from its members for the purpose of advocating the Chamber's position on a given ballot question, the Chamber would be in violation of R.I. Gen. Laws § 17-25-10(b) because it would be (i) acting in concert with another and because (ii) sums so expended by the Chamber are not to be repaid by the Chamber to its members. You suggest that the only way for a non-profit organization such as the Chamber to coordinate with its members on ballot questions is to form a separate PAC. If our understanding is correct, we respectfully request that the Board reconsider this question in light of the following.

A. Acting in Concert with Another

1. R.I. Gen. Laws § 17-25-23 does not necessarily provide guidance in interpreting the phrase "acting in concert with any other person" in regard to expenditures made to advocate a position on a ballot question.

We first observe that the statutory language of § 17-25-10(b) is not clear and is susceptible to more than one interpretation. Recognizing this need for interpretation, the statute provides, as noted in your letter, that the provisions of § 17-25-23 are to provide guidance as to what constitutes "acting in concert with any other person." We disagree, however, with the Board's conclusion that § 17-25-23 lends "guidance to the definition of 'not acting in concert with another' as it relates to 17-25-10(b)" insofar as § 17-25-10(b) applies to the Chamber seeking financial support from its members for purposes of advocating its position on a ballot question. While § 17-25-10(b) addresses expenditures made "to support or defeat a candidate or to advocate the approval or rejection of any question," § 17-25-23 addresses expenditures made only "to directly influence the outcome of the electoral contest involving [a] candidate...." If the General Assembly had chosen to apply § 17-25-23 to other than contested elections for public office, it clearly could have done so. Instead, it was silent on this issue, leaving the Board of Elections to deal with the issue either by regulation or on a case by case basis.

While § 17-25-23 may provide guidance in an instance where an organization solicits contributions from non-member third parties and spends the same to advocate a ballot question, we submit that such guidance is not relevant to a non-profit organization which has members who contribute funds to it for the purpose of advocating approval or rejection of any ballot question because there is no meaningful distinction between the Chamber and its members. The Chamber is a body composed of its members and speaks and acts on their behalf.

In this context, we have the following observations regarding the provisions of § 17-25-23.

§ 17-25-23(A)

The phrase "any other person" means a person separate and distinct from the entity. In the case of a membership organization, this is a distinction without a difference. Members support the entity; where the entity asks for funds in fulfillment of its responsibility to its members, such members should not be treated as though they were third parties unaffiliated in their relationship. In soliciting and expending funds from its members, an

officer or paid executive of the Chamber cannot be considered the type of third party with which communication should be prohibited.

§ 17-25-23(B)

Again, the mere fact that an officer or paid executive of the Chamber seeks to raise and expend such funds is superfluous. The funds are being spent by the organization to which its members belong and thus the only authorized person to expend such funds would be an officer or paid executive. Therefore, an officer or paid executive of the Chamber is not the type of person encompassed by this subsection.

§ 17-25-23(C) and § 17-25-23(D)

The job of an executive of a non-profit organization is to advise and counsel members as to issues such as those on a ballot and to solicit funds from members for such purposes. The members pay for the executive's salary and elect its board of directors and its officers. Therefore, such an officer cannot be considered the type of third party with which consultation should be prohibited.

§ 17-25-23(E) and § 17-25-23(F)

If the membership organization were to coordinate its expenditures with other organizations, then perhaps this might be evidence of acting in concert. However, respectfully, this is not the question asked by the Chamber, which only seeks guidance for its own expenditures obtained from its members.

As the foregoing analysis shows, the provisions of § 17-25-23 do not apply where a non-profit organization solicits funds from its members for the purpose of making expenditures to advocate a position on a ballot question. Accordingly, we submit that these provisions were not meant to lend guidance to the interpretation of the phrase "acting in concert with any other person" as it applies to the Chamber in seeking financial support from its members for that purpose, notwithstanding the seeming intent of the statutory language. Thus the question remains as to how to interpret that provision of § 17-25-10(b) which prohibits "acting in concert with any other person...."

2. Suggested interpretation of the phrase "acting in concert with any other person...."

Because the provisions of § 17-25-23 do not lend guidance to the interpretation of the phrase "acting in concert with any other person," we must look beyond the words of the

statute to find its meaning. When a person makes expenditures on behalf of a candidate, the candidate benefits and could potentially incur a political debt to the person making the expenditure, which in turn raises the specter of undue influence. This concern is the basis for statutes regulating expenditures made for political reasons. See Vote Choice, Inc. v. DiStefano, 814 F.Supp. 186 (D.R.I. 1992). Coordination between persons making such expenditures can act to multiply the effectiveness of the expenditures, and thus to increase any political debt. We submit that ballot questions cannot incur political debt. Because there is no meaningful distinction between the Chamber and its members, no such dangers are present as between the Chamber and its members, and therefore, the legislative intent to avoid potential undue influence is not served by interpreting § 17-25-23 so broadly as to prohibit the Chamber from soliciting its members for funds to be used in advocating the Chamber's position on a ballot question. Thus it is our position that the phrase "acting in concert with any other person" may be interpreted to prohibit an entity from acting in concert with other entities, but should not be interpreted to prohibit the Chamber from seeking financial support from its own members for the purpose of advocating its position on a ballot question.

B. Sums not to be Repaid.

With regard to the statement that the Chamber would be in violation of § 17-25-10(b) because the sums would be "repaid," we question how the provision can be violated because there can be no repayment in the factual situation posed by the Chamber. Funds solicited by and given to the Chamber prior to its making an expenditure are, in fact, prior contributions, and are not to be "repaid." We are at a loss to determine how a contribution to the Chamber can be a repayment, and we submit that funds contributed by the Chamber's members are not to be repaid and expenditure of such funds is not a violation of § 17-25-10(b).

C. Conclusion

Although the provisions of § 17-25-23 are clearly applicable to the election of candidates, they do not apply to a non-profit membership organization's solicitation of its members for funds to spend in advocating that organization's position on a ballot question, and should not be applied to interpret § 17-25-10(b), at least insofar as § 17-25-10(b) addresses expenditures made to advocate a position on a ballot question. We submit that there is no legislative reason to prohibit the Chamber from soliciting its own members for funds to advocate the Chamber's position on a given ballot question or to require the creation of a political action committee, and that therefore, the most reasonable way of interpreting § 17-25-10(b) is that it prohibits an entity, such as the Chamber, from coordinating its expenditures

with other entities, but does not prohibit the Chamber from seeking financial support from its members.

Further, because funds given to the Chamber in response to the Chamber's request are given before they are expended, such expenditures are made from the Chamber's own funds, are not to be repaid, and thus such expenditures do not violate § 17-25-10(b).

Finally, we note that requiring the formation of a PAC imposes a significant burden on the Chamber's First Amendment right to advocate its position on such issues. See Vote Choice, Inc. v. DiStefano, 814 F.Supp. 186, 191 (D.R.I. 1992) (statute requiring corporation to filter contributions and expenditures through a PAC "cannot withstand the plaintiff's constitutional challenge under the First and Fourteenth Amendments."). See also FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

Accordingly, we respectfully request that the Board reconsider its position regarding the Chamber's solicitation and expenditure of funds from its members in advocating its position on a given ballot question to conclude that the Chamber is not prohibited from seeking financial support from its members for making such expenditures. In the alternative, we submit that the Board should promulgate regulations pursuant to § 17-25-5 to apply the provisions of § 17-25-10(b) in a manner consistent with the requirements of the statute but also consistent with the position that a membership organization need not organize a PAC to advance its position on a public issue.

Very truly yours,

John J. Partridge

JJP/tjt
cc: Mr. James G. Hagan
247-1
173124_1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS
50 Branch Avenue
Providence, R.I. 02904
401-277-2345

July 5, 1995

John J. Partridge, Esq.
PARTRIDGE SNOW & HAHN
180 South Main Street
Providence, Rhode Island 02903-7120

Re: Board of Elections - Advisory Opinion No. 95-1

Dear Mr. Partridge:

On March 1, 1995, you wrote to the Board of Elections requesting an advisory opinion for answers to the following questions:

1. What are the Chamber's obligations under the Reporting Act if it takes a position regarding a ballot question, and then seeks financial support from its members which enables the Chamber to advocate its position with regard to such ballot question?

The Chamber's obligation for independent expenditures are to report all independent expenditures which exceed $100 within a calendar year to the Board of Elections within seven (7) days of making such expenditure. RIGL 17-25-10 (b).

However, the threshold question to be addressed for the question you ask is whether or not the Chamber can make the contribution if it seeks financial support from its members. As you point out in your letter, a person or entity making independent contributions may not act in concert with any other person or group, and the funds expended must be its own funds which are not to be repaid. 17-25-10 (b). Therefore, if the Chamber seeks financial support from its members with mailings or personal contact requesting the funds for the purpose of advocating or rejecting the Chamber's position regarding a ballot question then that would be deemed to be acting in concert with another person, and the transaction would also violate the provision that the sums to be expended not be repaid. If, however, the Chamber seeks financial support from its members with a general mailing or other general fundraising activity which does not mention the fact that the Chamber needs funds to advocate a particular position regarding a ballot question, then that would not be deemed acting in concert with any other person and the Chamber may make the independent expenditures. If the Chamber is deemed acting in concert with any other person, the Chamber's activities would not fall within the exception for independent expenditures contained in 17-25-10 (b) and, therefore, the Chamber may not make the expenditures (other than

independent expenditures) because to do so would violate the provisions of RIGL 17-25-10.1 (j) which prohibits entities from making any expenditures ". . . on behalf of or in opposition to any . . . ballot question. . . " The members of the Chamber always have the option of creating a PAC for the purpose of advocating the approval or rejection of a ballot question.

Your letter also inquires into the definition of "not acting in concert with another", and you rightly point out that it is when the act is independent of any other entity. You also correctly point out that 17-25-23 refers to whether a person is acting in concert with another person for the purpose of an electoral contest involving a candidate. However, that section does lend guidance to the definition of "not acting in concert with another" as it relates to 17-25-10 (b). For purposes of 17-25-10 (b), a person will be deemed acting in concert with another if: (a) there is any arrangement, coordination, or direction with respect to the expenditure between the person making the expenditure and any other person; (b) if, during the election cycle, the person making the expenditure is, or has been authorized to raise or expend funds on behalf of another person to be used to aid or defeat a ballot question, or if the person making the expense will be receiving any form of compensation or reimbursement from any other person; (c) the person making the expenditures communicated with, advised or counseled other persons on the plans, projects, and needs relating to the aiding or defeating of the election of the ballot question; (d) the person making the expenditure retains the professional services of any individual or other person also providing those services to others in connection with the aiding or defeating of the same ballot question; (e) the person making the expenditures communicated or consulted at anytime during the election cycle about the person's plans, projects, or needs with any other entity, or officer, director, or employer or any other entity that has made, or intends to make expenditures to aid or defeat the ballot question on the same side as the person making the expenditure or any person whose professional services had been retained by another entity that has made or intends to make expenditures to aid or defeat the same ballot question; and (f) the expenditure is based on information provided to the person making the expenditure, directly or indirectly by others making similar expenditures about the person's plans, projects, or needs provided that the other person is aware that the other person has made, or is planning to make expenditures expressly to advocate or defeat the ballot question on the same side as the person making the expenditure.

Assuming that the Chamber is not deemed to be acting in concert with any other person as provided above, the Chamber may seek financial support from its members enabling it to advocate the approval or defeat of a ballot question so long as the Chamber does not inform its members of the reason for its solicitations, or financial support.

The Chamber may make an open request of other organizations to also become involved and expend funds to aid or defeat the ballot question provided that the agency does not assist or provide advice, directly or indirectly, as to how the expenditures may best be made, and there is

no direct or indirect coordination of the expenditures between the different organizations so that expenditures, by both organizations are truly independent of each other. The reporting requirements would be the same as previously discussed in this advisory opinion.

You next ask what the reporting requirements would be if the Chamber were to undertake an advertising effort to advocate the approval or rejection of a ballot question and the names of several organizations appear as sponsors of such advertising effort. That scenario would violate the prohibition against acting in concert with any other person, because in that instance, there is clearly a coordination of efforts between the individual organizations and, therefore, the organizations are indeed acting in concert with each other. In order for the organizations not to be deemed acting in concert with each other, each organization must run its own advertisement, and it would be assumed that if the advertisement run by each organization is identical to the others, that there was collusion between the organizations and they would be deemed acting in concert with each other. If the Chamber were the only organization to expend funds as part of the advertising effort and was the only sponsor listed on the advertisement, the reporting requirements would be as indicated previously in this advisory opinion.

Very truly yours,

Roger N. Begin,
Chairman