Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by repealing Part 6200.10, and replacing it in whole with a new Part 6200.10 to read as follows:

§6200.10 Disclosure of Independent Expenditures

(a) Purpose and Overview

The purpose of this Regulation is to set forth the requirements under the New York State Election Law regarding compliance with the Independent Expenditure disclosure.

The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election Law ("EL") sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

(b) Definitions

(1) **"Independent Expenditure"** means:

(a) an expenditure made by a Person conveyed to five hundred (500) or more members of a General Public Audience in the form of (i) an audio or video communication via broadcast, cable or satellite, (ii) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads or (iii) other published statements which:

(i) irrespective of when such communication is made, contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the election or defeat of the Clearly Identified Candidate, or

(ii) refers to and Advocates For or Against a Clearly Identified Candidate or ballot proposal on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot. (EL 14-107(1) (A)).

For purposes of this regulation "Advocates for or Against" means – in the absence of explicit words of advocacy for or against a candidate or ballot proposal, through the use of images, photos, or language which promotes, supports, attacks, or opposes for or against the Clearly Identified Candidate or ballot proposal.

For purposes of determining whether or not a communication is advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

a. Whether it identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate's platform or biography;
b. Whether it expresses approval or disapproval for said candidate's positions or actions;
c. Whether it is part of an ongoing series by the group on the same issue and the series is not timed to an election;
d. Has the issue raised in the communication been raised as a distinguishing characteristic amongst the candidates; and
e. Whether its timing and the identification of the candidate are related to a non-electoral event (e.g.. a vote on legislation or a position on legislation by an officeholder who is also a candidate).

However, even if some of the above factors are found, the communication must still be considered in context before arriving at any conclusion.

(b) an Independent Expenditure shall not include communications where such candidate, the candidate's political committee or its agents, or a political committee formed to promote the success or defeat of a ballot proposal or its agents, did authorize, request, suggest, foster or cooperate in such communication. (EL 14-107(1) (A)).

(c) Independent Expenditures do not include expenditures in connection with:

(i) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled by any political party, political committee or candidate; or

(ii) a communication that constitutes a candidate debate or forum; or

(iii) internal communication by members to other members of a Membership Organization of not more than five hundred (500) members, for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards, or similar types of general public communications; or

(iv) a communication published on the internet, unless the communication is a paid advertisement. (EL 14-107(1)(B))

(2) **"Clearly Identified Candidate"** means that:

(a) the name of the candidate involved appears;

(b) a photograph or drawing of the candidate appears; or

(c) the identity of the candidate is apparent by unambiguous reference. (EL 14-100(12))

(3) **"General Public Audience"** means an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does not mean an audience solely comprised of members, retirees and staff of a labor organization or members of

their households or an audience solely comprised of employees of a corporation, unincorporated business entity or members of a business, trade or professional association or organization. (EL 14-100(13))

(4) **"Labor Organization"** means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the State of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this regulation, each local, parent national or parent international organization of a statewide labor organization, and each statewide federation receiving dues from subsidiary labor organizations, shall be considered a separate labor organization. (EL 14-100(14)).

(5) **"Membership Organization"** means a group that has a recognized organizational structure and maintains a list of its members, such as a professional, fraternal, patriotic, or social association or organization, a cooperative, a corporation without capital stock, and is not organized primarily for the purpose of influencing the nomination for election, or election, of any candidate for office covered by Article 14 of the Election Law of the State of New York, or any ballot proposal covered therein.

Factors that shall be examined when determining whether or not a group shall be considered a "Membership Organization" for this purpose shall include, but not be limited to the following:

a) Whether or not the organization is composed of members, some or all of whom are vested with the power or authority to administer the organization pursuant to membership by-laws, constitution or other formal organizational documents;

b) Expressly states the qualifications for membership, including special membership status such as "retired" or "lifetime" member;

c) Expressly solicits persons to become members;

d) Expressly acknowledges the acceptance of membership, such as by issuing a membership card or sending confirming correspondence;

e) Distributes newsletters or other informational messages to its members;

f) Has a mission statement that is available for the members and the public to see;

g) Is not organized for the purpose of influencing the nomination for election, or election, of any candidate for office or any ballot proposal covered by Article 14 of the Election Law.

(6) **"Person"** means for purposes of this section, a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee. (EL 14-107(1)(C)).

(c) Registration

(1) Before any person makes an independent expenditure, they shall first register with the New York State Board of Elections ("the Board") as a political committee in conformance with Article 14 of the Election Law, and shall comply with all disclosure obligations required for political committees by law. (EL14-107(3)(A))

a. On forms prescribed by the Board, the person seeking to register an independent expenditure committee, formed to support or oppose unauthorized candidates, shall fully complete, sign and submit the Committee Registration Treasurer and Bank Information Form (CF-02) and the Committee Authorization Status Form (CF-03) to the Board.

i. Independent Expenditure Committees formed to support or oppose candidates shall submit a fully completed and signed Committee Registration Treasurer and Bank Information Form(CF-02), declaring itself as an "Independent Expenditure – type 8" Committee in the section B field for "Committee Type" to the Board .

ii. On the Committee Authorization Status Form (CF-03), each independent expenditure committee must complete part B, listing unauthorized candidates.

b. Independent Expenditure Committees formed to support or oppose a ballot proposal shall submit a fully completed and signed, Committee Registration Treasurer and Bank Information Form(CF-02), declaring itself as a "Ballot Issue Committee – type 9B"in the section B field for "Committee Type" to the Board .

(2) Before such a political committee may receive any receipt or contribution, or make any expenditure or incur any liability, the treasurer of such political committee must first register with the State Board, pursuant to the procedures set forth by the State Board. Registration forms are available from the State Board. (EL14-118)

(d) Filing Financial Disclosure Statements

(1) Committees making independent expenditures are obligated, as are all political committees, to file campaign financial disclosure statements pursuant to and in the manner set forth in EL 14-102. For each election in which they support or oppose candidates or ballot proposals, the committee must submit election reports (3 primary, and 3 general and/or special, as applicable), as well as campaign financial disclosure periodic reports, due on January 15 and July 15 of each year in accordance with EL 14-108, NYCRR 6200.2. (EL 14-107(3)(A)).

a. All independent expenditure committees are required to file applicable election reports for each election unless the independent expenditure committee submits a fully completed Notice of Non-Participation in Election(s) (CF-20), electronically or by mail, as prescribed by the Board.

(2) Weekly Disclosure regarding Independent Expenditures: any person who has registered with the State Board pursuant to paragraph (A) of EL 14-107(3) as a political committee for the purposes of disclosing Independent Expenditures, shall disclose to the State Board electronically, once a week on the Friday following the receipt of any contribution to such person over one thousand dollars ($1,000) or expenditures made by such person over five thousand dollars ($5,000) made at any time during the year except during the 24-hour notice disclosure period before an election (EL 14-107(3)(B)). All contributions, loans or expenditures that are required to be disclosed via a weekly disclosure must also be disclosed on the next applicable financial disclosure statement.

(3) Independent Expenditures Committee 24 Hour Disclosure: any person who has registered with the State Board pursuant to paragraph (A) of EL 14-107(3) as a political committee for the purposes of disclosing Independent Expenditures, shall disclose to the State Board electronically, within twenty-four (24) hours of receipt, any contribution or loan to such person over one thousand dollars ($1,000) or expenditure by such person over five thousand dollars ($5,000) made within thirty (30) days before any primary, general, or special election. (EL14-107(3)(C)). All contributions, loans or expenditures that are required to be disclosed via the Independent Expenditure 24-hour notice must also be disclosed on the 11 day pre-election financial disclosure statement or on the post-election financial disclosure statement, as applicable.

(4) Every statement shall be filed electronically with the State Board. (EL 14-107(6)).

(e) Additional Information Required Regarding Independent Expenditures

(1) The Weekly and 24 Hour Disclosures required by subdivision (3)(B) and (C) of EL 14-107, as set out in (e) (3) and (4) above, shall include, in addition to any other information required by law:

(a) the name, address, occupation and employer of the person making the statement;

(b) the name, address, occupation and employer of the person making the Independent Expenditure;

(c) the name, address, occupation and employer of any person providing a contribution, gift, loan, advance or deposit of one thousand dollars ($1,000) or more for the Independent Expenditure, or the provision of services for the same, and the date it was given;

(d) the dollar amount paid for each independent expenditure, the name and address of the person or entity receiving the payment, the date the payment was made and a description of the Independent Expenditure; and

(e) the election to which the Independent Expenditure pertains and the name of the clearly identified candidate or the ballot proposal referenced. (EL 14-107(4)).

(2) The provisions of this regulation are in no way intended to effect the application or validity of Election Law 14-120.

(f) Disclosure of Political Communications / "Campaign Materials"

(1) All political committees whose activity requires the filing of primary, general and/or special election reports, must at the same time the applicable post-election campaign financial disclosure report is due and made, submit copies of all the filer's political communications, also known as campaign materials, associated with that election. Copies shall include a copy of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, and reproductions of statements or information published to five hundred or more members of a general public audience by computer or other electronic device including but not limited to electronic mail or text message, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be. Such copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing thereof. (EL14-106)

(2) In addition to the requirements of subparagraph 1 herein, for statements filed in conjunction with (d) (3) and (4) above, a copy of all political communications paid for by the independent expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to one thousand or more members of a general public audience by computer or other electronic devices shall be filed with the State Board with the statements required by (e)(3) and (4).(EL 14-107(5)).

(g) Attributions and Identification of Independent Expenditures

(1) Whenever any person makes an Independent Expenditure that costs more than one thousand dollars ($1,000) in the aggregate, such communication shall clearly state the name of the person who paid for or otherwise published or distributed the communication and state, with respect to communications regarding candidates, that the communication was not expressly authorized or requested by any candidate, or by any candidate's political committee or any of its agents. (EL 14-107(2)).

(h) Non-compliance

(1) Any person who falsely identifies or knowingly fails to identify any Independent Expenditure as required by subdivision 2 of section 14-107, as outlined in (g) (1), “Attributions and Identification of Independent Expenditures” above, shall be subject to a civil penalty up to one thousand dollars ($1,000) or up to the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the State Board Chief Enforcement Counsel or imposed directly by the State Board. For purposes of this subdivision, the term "person" shall mean a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization or political committee. (EL 14-126(3)).

(2) In addition to any other penalty that may otherwise pertain, a knowing and willful violation of the provisions of subdivision (3) of EL 14-107 shall subject the person to a civil penalty equal to five thousand dollars ($5,000) or the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the Board or imposed directly by the Board. (EL 14-107(3)(D)).