SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BILL DE BLASIO, *Petitioner*, -against- NEW YORK CITY CONFLICT OF INTEREST BOARD and THE CITY OF NEW YORK, *Respondents*.	Index No. **VERIFIED PETITION**

Petitioner Bill de Blasio, by and through his attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP and Laurence D. Laufer. Esq., for his Verified Petition, alleges as follows:

Overview

1. Can the Government lawfully burden a public official's First Amendment speech and Fourteenth Amendment Due Process rights by forcing him to personally subsidize the City of New York's ("the City") costs of police protection provided during his time in office? And, does the City's compelling interest in protecting its Mayor from harm—an interest reflected in the policy and practices of the New York Police Department ("NYPD") and a decade-old advisory opinion of the Conflicts of Interest Board (the "COIB")—end at or within driving distance of the City's borders?

2. This case raises both important questions. The law, under the United States Constitution and the Charter of the City of New York, answers both the same way: with a resounding "No." For at least the past six decades, the City of New York has expressed its powerful and unwavering interest in protecting its Mayor from harm by deferring to the judgment of the NYPD, the largest and most sophisticated municipal law enforcement

agency in the world. Under City law and precedent, the NYPD's judgment in this regard is unquestioned, unencumbered, and uninfluenced by politics or personality. The NYPD provides protection to *all* Mayors *because* they are Mayor, and it does so at the City's expense. Never has the Mayor himself, or any political committee with which he is associated, been asked to pay any part of this expense.

3. The reason is simple: the City's interest in protecting its Mayor is not personal to the Mayor; rather, it is governmental. The Mayor is the City's Chief Executive Officer, on duty during his term for 24 hours per day, seven days per week, 365 days per year. Keeping the Mayor safe ensures continuity of City government, creating a secure channel by which the Mayor can communicate with other City leaders, officials, and constituents; govern; and respond during any crisis. It also ensures that no one can deprive New Yorkers of their elected leader by an act of violence or intimidation.[1]

4. Threats to a Mayor's personal safety are, by nature, unpredictable. The risk of harm to the Mayor is not confined to the Mayor's government office hours. Accordingly, where exactly the Mayor is located and what exactly he is doing—whether he is within the five boroughs or not; governing; relaxing; travelling; running for another office; or attending to personal matters—does not matter in the NYPD's calculus of the level and scope of protection. What matters is that he is the Mayor, and that the NYPD has decided that he must be protected.

5. All of this was well understood and unquestioned for every Mayor of the City of New York in modern history until May 2019. In May 2019, then-Mayor Bill de Blasio

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[1] And, to protect the Mayor from extortion or coercion via threats on his family, when the NYPD determines that police protection for the Mayor is warranted, it typically extends the same protection to members of the Mayor's immediate family.

decided to seek the nomination of the Democratic Party for President of the United States. Out of an abundance of caution, counsel sought confidential advice from the COIB about whether running for President impacted the City's and NYPD's expenditures to protect him and his family. Of course, since Day One of Mr. de Blasio's Mayoralty, NYPD had deemed him a "Category 1" elected official, meaning that he and his family required around-the-clock protection by the NYPD. And, one decade earlier, the COIB had issued a formal Advisory Opinion which held that a Mayor's NYPD protective detail could lawfully protect and transport him to political events in and around the City at the City's expense. It was a "City purpose" to protect the Mayor from harm wherever he was.

6. But this time was different. When the question came to the COIB in May 2019 about Mr. de Blasio and his presidential campaign, the COIB reversed course, abandoned decades of precedent and its own written guidance, and issued a Confidential Advice Letter (the "Confidential Advice Letter" or "CAL") riddled with internal inconsistencies.

7. The May 15, 2019 CAL began with a correct statement of settled law. It acknowledged that protecting the Mayor was and is a "City purpose," and therefore, expenditures associated with such protection were lawfully borne by the City of New York. But then, the CAL partially reversed course. The CAL found that it would not violate New York City's Charter or ethics rules for the City to cover *all* expenses associated with the Mayor's NYPD protective detail, including salary, overtime, and other incidental costs coverage, during *local* political trips within the five boroughs or driving distance of the City; however, should the Mayor decide to *fly* to a political event and stay *overnight*, *outside* the City's environs, there was entirely different "rule." For such out-of-City trips, the salary and overtime costs of the Mayor's NYPD protective detail were properly and lawfully a City

expense, but, somehow, the associated "incidental" costs of the protection—hotels, meals, and flights for the NYPD personnel who protected the Mayor—were not. *Those* costs, the CAL opined, would need to be charged to the Mayor's presidential campaign committee—and it would be unlawful for the City to pay them.

8. This distinction is nonsensical and lacking in any legal basis. If the Mayor's safety at all times is a "City purpose," and the salary costs associated with an NYPD detective providing protection are lawfully and appropriately born by the City, how can it be inappropriate, much less unlawful, for the City to cover the costs for that same detective to travel to and spend the night in the same town as the Mayor while serving on the team charged with keeping him safe? If it is ethical for the City of New York to pay all of NYPD's costs of protecting the Mayor in Philadelphia, how could it be unethical for the City to pay the same costs for the Mayor's trip to Pittsburgh?

9. The COIB had never before made this distinction, even as to Mayor de Blasio. The City has covered all expenses—salaries, benefits, and incidental costs—for the NYPD protective detail provided to Mayors on overnight trips going back to the Mayor Lindsay Administration, or earlier. It covered all protection-related expenses incurred by the NYPD during political trips when New York City Mayors ran for United States Senate or Governor; when they travelled to raise money and support for other candidates or their political party; and when they travelled on personal and other non-City business. It even did so when Mayor de Blasio or other Mayors went on vacation with their families.

10. Distinguishing presidential campaign-related trips from every other sort of overnight trip was not just a departure from past unbroken practice: it was arbitrary, capricious, discriminatory, and lawless. The CAL created an unworkable test of determining

what portion of the Mayor's NYPD-determined protective detail was attributable to the City and what was attributable to the Mayor's campaign based on the type of event the Mayor was attending and where it was located. In doing so, it upended not just its own governing precedents, settled expectations, and basic common sense, but it intruded upon the NYPD's discretion to determine the security needs of the City's highest ranking official at a time of unprecedented threats to the Mayor's person.

11. By determining that the "incidental expenses" of NYPD protective personnel travelling with the Mayor would need to be paid by the de Blasio *presidential committee*, a federal campaign committee set up to further Bill de Blasio's campaign for the presidency and his national political message, the COIB also vastly exceeded its authority. The COIB simply does not have the authority to regulate or set federal campaign finance or ethics rules.

12. Indeed, far from having authority over *any* political committee, federal state or local, the COIB, acting through the CAL, had no actual regulatory power at all. The CAL was simply a confidential, non-binding letter of *advice*. Because the COIB never engaged in rulemaking in this area, the CAL carries no force of law and cannot lawfully support an order of reimbursement, much less one imposing penalties. Yet it purported to shift significant costs associated with an NYPD protective detail—costs that historically and should properly have been born by the City of New York—to a federally-regulated campaign committee engaged in the core First Amendment activity of electioneering. The amount in costs would later to be determined to be over $319,000.

13. The COIB's conduct in this case not only violates Article 78 of the Civil Procedure Laws and Rules ("CPLR") and the City Charter, but also the United States Constitution. By purporting to assign what are properly *the City's* costs to the Mayor,

personally or to his presidential committee, the COIB imposed a significant and unconstitutional burden on a federal political candidate's and his voters' rights under the First and Fourteenth Amendments to the United States Constitution. The burden is especially acute where, as here, the candidate was not independently wealthy and for whom the incidental costs associated with the NYPD's protection are consequential. The COIB's decision to burden a political candidate with such costs serves no legitimate government interest.

14. An administrative Law Judge of the New York City Office of Administrative Hearings and Trial ("OATH") upheld the COIB's reading of the law in a decision dated May 4, 2023 (the "OATH Decision"), and the full COIB adopted that reading by resolution on June 15, 2023 (the "COIB Order") (together, Exhibit A). By doing so, the COIB has now ordered Mr. de Blasio to personally pay the costs that it had previously said the presidential committee was required to pay; it has also sought to penalize Mr. de Blasio with a $155,000 fine.

15. This Court must intervene. The imposition of any costs or penalties in this case is an unconstitutional burden on Petitioner's rights under the First and Fourteenth Amendments. It violates the New York City Charter, and it is arbitrary and capricious government action. This Court should employ its plenary authority to declare the COIB's Order to be unlawful and a nullity, in violation if the United States Constitution, and exercise its powers under Article 78 of the CPLR to invalidate and vacate the COIB Order.

Parties

16. Petitioner Bill de Blasio is a resident of Brooklyn, New York. He served as the

109th Mayor of New York City, from 2014 through 2021.

17. Respondent the New York City Conflicts of Interest Board (or, COIB) is a New York City agency headquartered at 2 Lafayette Street, New York, New York 10007. It is tasked with administering, enforcing, and interpreting certain ethics provisions of New York City's Charter and legal code.

18. Respondent the City of New York (or, the City) is a municipal corporation organized and existing under the laws of the State of New York.

Additional Interested Entity

19. De Blasio 2020 is a presidential campaign committee established in 2019 with a registered address in Brooklyn, New York.

Jurisdiction and Venue

20. This Court has subject-matter jurisdiction to decide this Petition pursuant to Sections 3001 and 7803 of the CPLR and general original jurisdiction in law and equity as provided in Article VI, Section 7(a) of the New York State Constitution.

21. Venue is proper in New York County Supreme Court pursuant to CPLR 504(c), 506(b), and 7804(b) because Petitioner brings his claims against a City agency for actions taken in New York County, and because COIB's principal offices are in New York County.

No Prior Application

22. No prior application for relief sought herein has been made in this or any other court.

Statement of Facts

A. Mr. de Blasio's Background and Career.

23. Bill de Blasio was born in New York, New York in 1961 and is a career public

servant and political operative.

24. Before attaining elective office for himself, he worked for the City in Mayor David Dinkins' administration, as New York's Regional Director for the United States Department of Housing and Urban Development in the Clinton Administration, and as a campaign manager for Charles Rangel's successful campaign to represent New York in the United States House of Representatives and Hillary Rodham Clinton's successful campaign to represent New York in the United States Senate.

25. In 2001, Mr. de Blasio was elected to represent the 39th District of Brooklyn in the New York City Council. He was re-elected twice, serving a total of three terms.

26. In 2009, Mr. de Blasio was elected Public Advocate of the City of New York, where he served one term, from 2010 through 2013.

27. In 2013, Mr. de Blasio was elected Mayor of the City of New York. He served two terms, from 2014 through 2021.

28. On or about May 16, 2019, while serving as Mayor of the City of New York, Mr. de Blasio announced his intention to seek the Democratic Party nomination for President of the United States. He ended his campaign approximately four months later.

29. In 2022, Mr. de Blasio served as a Fellow at Harvard Kennedy School Institute of Politics.

30. Since 2023, Mr. de Blasio has served as a Visiting Fellow at the New York University Wagner School of Public Service.

B. The City Has a Historic, Abiding, and Compelling Interest in the Personal Safety of its Mayor and His Family.

31. In the case of every Mayor in modern history, the City has deferred to the professional judgment of the NYPD, the largest and most sophisticated municipal law

enforcement agency in the world, as to whether and to what extent the Mayor and his family require NYPD protection. *See* Charter § 434.

32. It is the practice of the NYPD to conduct an ongoing threat assessment facing each Mayor and to provide a protective security detail to all designated protectees—including the Mayor and his family—as it deems necessary based on the threats they face.

33. The City, and the NYPD, do all of this for one reason only: to protect and advance the City's interests in a functioning City government. Beyond securing the Mayor's safety, NYPD's protective services create a constant channel for City officials, secure information about City business and operations, and governance during times of crisis.

34. The City of New York has a compelling interest in securing the safety of its Mayor.

C. The NYPD Provided the Same Protection to Every Mayor Before and After Mr. de Blasio.

35. On information and belief, for at least the past 60 years, the NYPD has covered the costs of a protective detail to every Mayor, and at no personal cost to the Mayor or any political committee associated with him.

36. On information and belief, the City of New York budgeted for the entirety of any NYPD protective detail, including travel expenses, for every single Mayor in recent history, including events inside and outside of New York City and political events in connection with any campaigns for higher office.

37. On information and belief, of the seven Mayors of the City of New York from 1966 through Mr. de Blasio's tenure, at least five of them pursued or explored higher office while still serving as Mayor, and all were provided with an NYPD protective detail at City

expense during those campaigns or prospective campaigns.

38. On information and belief, NYPD recommended and provided security to all of them for official, political, and personal events, both inside and outside of the City of New York, including Mayor John Lindsay's run for President of the United States, Mayor Rudy Guiliani's run for United States Senate, and Mayor Koch's race for Governor.

D. NYPD Determined that Mr. de Blasio and His Family Required 24/7 Protection.

39. While serving as Mayor, Mr. de Blasio and members of his family were the subject of numerous threats to their safety. In its professional judgment, the NYPD deemed those threats to be credible, multifaceted, and immediate.

40. The NYPD's Intelligence Bureau Threat Management Unit recorded at least 292 known threats to Mr. de Blasio that required investigation, and at times, increased security. In 2019 alone, the year he ran for President and travelled nationally in pursuit of that office, there were at least 38 threats to Mr. de Blasio that the NYPD documented and investigated.

41. Based on its own analysis, the NYPD determined that Mr. de Blasio was a "Category 1" elected official, meaning that Mr. de Blasio and his family required a protective detail 24 hours per day, seven days per week. This designation was the same for Mr. de Blasio as for all previous mayors in recent City history.

42. The decision to treat Mr. de Blasio as a "Category 1" elected official was the NYPD's and the NYPD's alone, acting in its best professional judgment.

43. At no point did Mr. de Blasio ever question, interrogate, influence, or overrule the NYPD's security determination or attempt to increase, modify, or reject the protective detail provided by NYPD. Mr. de Blasio deferred to the NYPD's mission and relied upon its professional judgment about the appropriate nature and level of its protective services for

him and his family.

44. For the entirety of his tenure as Mayor, at the direction of the NYPD, and under its supervision, the NYPD detail was in place to protect the Mayor whether he was at City Hall, or on the road; at Gracie Mansion awake or asleep; working on City business; attending to private matters; or engaged in political activities.

45. For example, the NYPD provided a full-time protective detail to Mr. de Blasio and his family during family vacations. All of the expenses for this protective detail were borne by the City of New York, and there was never a request from the NYPD or any other City agency otherwise. In 2014, Mayor de Blasio travelled to Italy in part on official City business and in part for a family vacation. The NYPD protected Mayor de Blasio in Italy and the City covered the costs of doing so with absolutely no distinction between the different parts of the trip.

46. During Mayor de Blasio's tenure, he also travelled outside the City, on overnight trips, for political purposes, including political fundraising, support of other candidates or the Democratic Party, and political meetings. NYPD provided a full-time NYPD protective detail to Mr. de Blasio on all of those occasions, and all of the expenses for this protective detail were borne by the City of New York. There was never a request from the NYPD or any other City agency otherwise.

47. In 2019, NYPD assessed that the threat to Mr. de Blasio and his family during his presidential campaign was particularly high and credible, exacerbated by inflammatory statements made by then-President Donald J. Trump.

48. As just two examples, one individual threatened, "Im gonna kill you for opening your f*cking mouth. You a real f*cking piece of sh*t. Im gonna f*cking kill you"; and

another individual stated, "[The Mayor is] gonna be assassinated for not supporting the NYPD and for supporting n*ggers."

49. More broadly, in 2019, the NYPD identified threats or risk to Mr. de Blasio's and his family's safety and security by various militia groups, including the Oath Keepers (a far-right anti-government militia whose leaders were later convicted in connection with the January 6 insurrection), the Three Percenters (an anti-government militia), The Base (a neo-Nazi paramilitary group), and QAnon (a conspiracy network with broad, diffuse following predicated on the idea that, among other things, certain Democratic Party politicians were part of a global cabal of child molesters conspiring against then-President Trump).

50. Under its authority to use its best law enforcement judgment to protect the City's Mayor, the NYPD provided a full-time protective detail to Mr. de Blasio for 31 out-of-state political events between May and September 2019 as he travelled in connection with his candidacy for President of the United States.

51. The NYPD's protective services of Mayor de Blasio in 2019 was of a piece with its protection of the Mayor throughout his term in office. That is because the NYPD determined, on an ongoing basis, that the threats that Mayor de Blasio faced throughout his term in office were credible, genuine, and immediate.

52. For example, before and after his presidential campaign, Mayor de Blasio was informed of reconnaissance of Gracie Mansion by a self-avowed follower of ISIS considering an attack on the Mayor's official residence; he also learned that a person who later supported the January 6 insurrection had been arrested across the street from Gracie Mansion for possessing an assault weapon, a shotgun, a pistol, and hundreds of rounds of

ammunition.

53. These threats came against the backdrop of a marked rise in violence directed at elected officials generally during the past decade, including the shooting of Congresswoman Gabby Giffords (D-AZ) in 2011 and Congressman Steve Scalise (R-LA) in 2017, and the January 6, 2021 insurrection, among numerous others.

E. In An Advisory Opinion Issued in 2009, the COIB Found that Providing an NYPD Protective Detail to the Mayor as He Travelled Locally for Political Purposes Was a "City Purpose" and Did Not Violate Any Ethics Rule.

54. The New York City Charter prohibits any public servant and his or her immediate family from engaging "in any business, transaction or private employment" or having "any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Charter § 2604(b)(2).

55. Between the ratification of the New York City Charter and the events of this case, neither the COIB nor any other similarly-situated New York City agency has taken the position that the City of New York's payment for any portion of the NYPD Mayoral detail violates the conflict of interest provision for that Mayor.

56. Indeed, on March 12, 2009, the COIB officially ratified the City's coverage of the totality of the costs associated with NYPD's protective detail for the Mayor, finding that the City's payment of these expenses—even when the Mayor's activity is for non-City purposes—furthers the interests of the City of New York by protecting the Mayor and his family and facilitating the administration of the City's business.

57. On that date, the COIB issued a public Advisory Opinion (the "2009 Advisory Opinion") addressing the use of New York City-owned cars and NYPD personnel to drive and protect those officials in connection with non-official activities, including local

transportation to and from political events.

58. In the 2009 Advisory Opinion, a lengthy written decision reflecting the agency's analysis of New York City's past practices and those of other comparable jurisdictions, the COIB reasoned that the need to protect a Category 1 elected official, such as the Mayor, was the same whether the official was performing an official task or a personal one. It wrote:

> [T]he need for protection and security remains the same whether the official ventures forth to perform a personal rather than an official task or to attend a private social function rather than a public event. . . . [The official] may also use City vehicles, drivers, and security personnel when they attend political events, such as campaign fundraisers, and personal non-City business events, provided that the official's participating in such activities does not otherwise result in a conflict of interest. The Elected Official may even use the car and driver to travel outside of the City, if consistent with security determinations by the NYPD. That conclusion also reflects sound public policy, because it will encourage public officials to follow and adhere to security recommendations, and not ignore them in order to avoid violating the ethics law.[2]

59. The COIB also found that Category 1 elected officials need not reimburse the City of New York for any use of the protective detail not deemed "official." COIB wrote:

> Since officials in this category are subject to security determinations by the NYPD requiring them to use City vehicles to the maximum extent possible for all local transportation, official or otherwise, it would be unfair to require them to pay for any use deemed unofficial.[3]

F. In 2019, the COIB Purportedly Reversed Decades of Precedent Via Confidential Letter on the Eve of Mr. de Blasio's Announcement of Candidacy for President of the United States.

60. On May 8, 2019, in anticipation of the possibility of Mr. de Blasio's candidacy for President of the United States, out of an abundance of caution, Counsel to the Mayor

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[2] 2009 Advisory Opinion, *available at* https://www.nyc.gov/assets/coib/downloads/pdf5/aos/2004-2013/AO2009_1.pdf.

[3] *Id.*

Kapil Longani contacted the COIB to confirm its findings from its 2009 Advisory Opinion issued a decade prior.

61. Specifically, Mr. Longani sought confirmation that, in accordance with the 2009 Advisory Opinion, the City would continue to provide and cover the costs of Mr. de Blasio's and his family's protective detail for out-of-state political events should the NYPD deem it necessary.

62. The Mayor's Counsel's written request for confidential advice informed the COIB that Mr. de Blasio would be travelling out of state in connection with his run for the Presidency.

63. On or about May 15, 2019, the COIB issued a confidential response to the Mayor's Counsel, *i.e.*, the Confidential Advice Letter (or, CAL) that is at issue in this litigation.

64. While the CAL reaffirmed the basic reasoning set forth in the 2009 Advisory Opinion—that expending City funds to protect the Mayor in accordance with NYPD's security determinations was a "City purpose"—it applied that principle in a manner wholly inconsistent with decades of precedent, and wholly devoid of common sense.

65. The CAL stated that the City of New York could lawfully cover the salary and overtime of NYPD's protective detail accompanying Mr. de Blasio to political events in connection with his campaign for non-City office, but that it would be *un*lawful for the City to pay any travel and lodging expenses (the "incidental costs") incurred by members of the NYPD detail travelling with the Mayor to provide security.

66. COIB wrote that "these [incidental] costs must be paid or reimbursed by the

Mayor's campaign committee."

67. Subsequently, Mr. de Blasio and members of his family attended a total of 31 out-of-state political events in connection with his presidential campaign.

68. Mr. de Blasio or his campaign committee paid 100% of his and his family's own travel and incidental expenses, inclusive of airfare, hotels, meals, and other such items, for these trips. No City funds were used to cover such costs.

69. The incidental costs associated with the NYPD's protective detail for the Mayor and members of his immediate family on those out-of-state trips was budgeted and paid by the NYPD from funds dedicated to protection of City officials. The COIB now represents that those costs totaled $319,794.20.

70. These incidental costs were expenses that NYPD had deemed necessary and which NYPD incurred at its own discretion based on its professional judgment of the security needs of the City, its Mayor, and the NYPD detail charged with protecting the Mayor.

71. A few months after Mr. de Blasio launched his campaign for President, the New York City Department of Investigation ("DOI") embarked on a review of the NYPD's expenditure of funds for Mr. de Blasio's protective detail. DOI turned over the results of its investigation to the COIB on or about October 2021, but the COIB took no action on them during Mayor de Blasio's term in office.

72. The COIB did not determine that it wished to commence enforcement efforts to collect reimbursement of these expenses until after Mayor de Blasio left office.

73. In fact, to this very day, the City of New York has *never* sent Mr. de Blasio or De Blasio 2020, his campaign committee, an invoice, statement, or other accounting reflecting the incidental expenses. Nor has the NYPD nor the City contacted Mr. de Blasio seeking

reimbursement of these expenses.

74. Mr. de Blasio left office at the end of his second term, on December 31, 2021.

75. Only after Mr. de Blasio ended his term as Mayor and left office did the COIB initiate enforcement proceedings against him seeking reimbursement for incidental costs incurred and paid by the NYPD to their provision of protective services during travel related to his presidential run. At that point, for the first time, the COIB also asserted a right to recover penalties from Mr. de Blasio, based on an alleged violation of New York City Charter § 2604(b)(2).

76. On information and belief, the COIB did not notify the NYPD in advance of its April 2022 decision to seek reimbursement of its expenses from former Mayor de Blasio or of its enforcement action to seek reimbursement and penalties.

77. On information and belief, the COIB had never consulted with Mr. de Blasio, any of his Deputy Mayors, or the City Corporation Counsel while Mr. de Blasio was in office before levying its charges. The COIB also made no effort to consult the current Mayor.

78. On May 4, 2023, following a hearing, an Administrative Law Judge ("ALJ") from OATH issued a Report and Recommendation (the OATH Decision) as to whether Mr. de Blasio was required to reimburse the City for these incidental expenses and potentially also pay the maximum fines sought by the City.

79. Relying on the CAL, the OATH Decision found Mr. de Blasio responsible for reimbursing the City for the incidental expenses incurred and paid by the NYPD in the amount of $319,794.20. It also levied a fine against Mr. de Blasio in the amount of $155,000.

80. Mr. de Blasio files the instant challenge to the COIB's abrupt policy reversal,

reflected in the CAL and its subsequent enforcement action on the grounds that the unprecedented and unwarranted charges and penalties levied against him infringed on his rights as a candidate for elected office under the First and Fourteenth Amendments to the United States Constitution and violated CPLR Article 78 as arbitrary and capricious abuses of discretion that exceeded COIB's authority.

81. Mr. de Blasio seeks declaratory judgment that the City of New York is responsible for paying the incidental expenses incurred by an NYPD security detail in protecting him and his immediate family, which the NYPD recommended and provided in the ordinary and customary course of its operations; an order invalidating the CAL, the OATH Decision relying on it, and the COIB Order; and all attorneys' fees and costs associated with bringing this action.

First Cause of Action
First and Fourteenth Amendments to the United States Constitution
42 U.S.C. § 1983

82. Petitioner repeats and realleges the preceding paragraphs as though fully set forth herein.

83. The First and Fourteenth Amendments to the United States Constitution guarantee "freedom of association," which protects the rights of political candidates and voters from undue burdens imposed by the state. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). They also guarantee all persons the "equal protection of laws." U.S. Const. amend. I, XIV.

84. When the rights of political candidates are subject to severe restriction, state regulation must be "narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 288 (1992). *See also Bullock v. Carter*, 405 U.S. 134, 144 (1972) (striking down a $8,900 filing fee for political candidates because the state had failed

to establish the requisite justification).

85. When analyzing infringements on the rights of political candidates and voters, courts evaluate the legitimacy of the state interest in the infringement: "the fact that [the state's] asserted interests are 'important in the abstract' does not necessarily mean that its chosen means of regulation 'will in fact advance those interests.'" *Green Party of New York State v. New York State Bd. of Elections*, 389 F.3d 411, 421 (2d Cir. 2004) (citations omitted).

86. The CAL opined that a campaign committee for non-City office associated with Mr. de Blasio must reimburse the City of New York for a substantial portion of the expenses incurred by his NYPD protective detail. The COIB is now relying on the CAL—a confidential and non-binding advice letter—to support an order that Mr. de Blasio personally reimburse the City for such expenses and pay penalties. These are undue burdens on the Petitioner and his federal campaign committee. They create an unequal burden between candidates who were independently wealthy, and those like Mr. de Blasio—a career public servant—who are not. The COIB also reversed decades of precedent and practice to the contrary.

87. The CAL furthered no legitimate state objective, and in fact, undermined core interests of the City of New York that the COIB had previously articulated: promoting the administration of the business of the City of New York and protecting its elected leader.

88. To the extent that COIB claims that the state interest in seeking unprecedented reimbursement and fines was to save the City money, it was not reasonably calculated to achieve that objective. The City of New York and NYPD have spent millions of dollars per year on protective details for Category 1 elected officials irrespective of whether those

officials were conducting official City business, taking vacations, traveling on political trips, or engaging in any other non-official activities. The City has never before sought reimbursement for any portion of these expenses. The New York City Council has never required that such expenditures be re-captured in any way.

89. Pursuant to the NYPD's mission to protect Mayor de Blasio while he was travelling out of state for his presidential campaign, the City, acting through the NYPD and its independent security assessment of the need for such protection, covered the expenses incurred by the NYPD protective detail. The City of New York had not sought reimbursement for any of these funds.

90. Now, the COIB seeks reimbursement of $319,794.20 directly from Mr. de Blasio. This amount is a small fraction of the total resources expended for the NYPD detail of New York City's Category 1 protectees annually, or even for the protection of Mayor de Blasio himself; it has no appreciable effect on the budget of the NYPD or the City of New York. Further, the COIB's mandate is not to protect the public fisc; rather, it is charged with overseeing certain ethics questions.

91. Recoupment by the NYPD of the incidental expenses associated with Mayor de Blasio's out-of-state travel during a four-month period in 2019 has no legitimate state purpose, or at least no substantial or compelling one. The fine of $155,000 sought by the COIB also has no legitimate state purpose, or at least no substantial or compelling one. It is an unconstitutional burden on Mr. de Blasio's right to seek high office.

92. To the extent that the COIB claims that reimbursement of certain expenses associated with Mr. de Blasio's and his family's NYPD protection was required by New York City's ethics rules, this too does not constitute a compelling or substantial state interest

justifying the burden imposed on Mr. de Blasio and future candidates for higher office. There is no material difference in the ethics of using City funds to protect the Mayor during the day but refusing to spend City funds on the NYPD security detail's hotel room that evening.

93. Finally, the City's and the COIB's efforts to require Mr. de Blasio to reimburse it for the incidental costs described above, all in the absence of prior notice, a legally-enforceable rule, or any lawfully-enacted prior condition on his service as Mayor, are unlawful and constitute violations of Petitioner's rights under the First and Fourteenth Amendments.

Second Cause of Action
Arbitrary and Capricious Administrative Determination, CPLR § 7801 *et seq*.

94. Petitioner repeats and realleges the preceding paragraphs as though fully set forth herein.

95. An Article 78 proceeding raises for review "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." CPLR 7803(3).

96. "Administrative rules are not judicially reviewed pro forma in a vacuum, but are scrutinized for genuine reasonableness and rationality in the specific context." *N.Y. State Ass'n of Counties v. Axelrod*, 78 N.Y.2d 158, 166 (1991). An agency's action is arbitrary and capricious where it lacks a "sound basis in reason" or a "rational basis" in the record. *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974) (quoting *Colton v. Berman*, 21 N.Y.2d 322, 329 (1967)).

97. An administrative agency's action may be set aside where, among other things, it is "not based on a rational, documented, empirical determination," where it fails to consider

an important aspect of the problem, or where "the calculations from which [it is] derived [are] unreasonable." *N.Y. State Ass'n of Counties*, 78 N.Y.2d at 166, 168 (alterations in original) (citations omitted). *See also Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, 52 (1983); *NRDC v. EPA*, 808 F.3d 556, 569, 574 (2d Cir. 2015).

A. The CAL Is Irreconcilable with the 2009 Advisory Opinion.

98. The 2009 Advisory Opinion found that affording the Mayor, a Category 1 elected official, and his family, a fulltime NYPD protective detail at the City's expense was lawful and consistent with the ethics provisions of the New York City Charter. The protective detail furthered the City's interests in the continuity of City business and protecting the safety of its chief executive and highest elected official, the Mayor.

99. By contrast, in the CAL, the COIB arbitrarily refashioned the City's interests in Mayoral safety. Ten years after the 2009 Advisory Opinion, the COIB's new position was that the City's interest in protecting Category 1 elected officials was overruled by the need for the City to collect incidental travel expenses incurred by the NYPD for protective services the NYPD deemed necessary in its professional judgment and discretion. And these expenses, the CAL stated, were to be reimbursed by Mr. de Blasio's campaign committee, not Mr. de Blasio himself.

100. The CAL, the ensuing OATH Decision, and the COIB Order, were an arbitrary and capricious departure from the public policy of the COIB and the City of New York without any rational or legitimate basis.

B. The CAL Lacked Sound Reasoning by Drawing Arbitrary Distinctions Between Costs of the Protective Detail.

101. The CAL, the ensuing OATH Decision, and the COIB Order, were all arbitrary

and capricious because they drew arbitrary distinctions as to when the City could cover incidental expenses of Mr. de Blasio's NYPD protective detail.

102. The 2009 Advisory Opinion stated that it would not violate the New York City Charter's ethics rules for the City of New York to pay all expenses for the NYPD Mayoral protective detail that the NYPD deemed necessary, including transportation and security for official business, unofficial business, political events, and personal events, both inside and outside the City of New York.

103. By contrast, the CAL reasoned that the City should pay all salary and overtime of the NYPD protective detail for the Mayor when Mr. de Blasio took out-of-state trips in connection with a non-City candidacy, but not the incidental expenses; those would supposedly be for the Mayor's personal benefit to such a degree as to overrule the City of New York's interest in keeping the Mayor safe.

104. There is no sound logic or reasoning distinguishing coverage of the incidental expenses by the City, which the COIB has now disallowed—for the first time—from coverage by the City of NYPD salary and overtime for members of the Mayor's protective detail.

105. There is also no sound logic or reasoning to distinguish between incidental expenses incurred by the Mayor's out-of-state campaigning for President of the United States (covered under the 2009 Advisory Opinion but supposedly not covered under the CAL), out of state campaigning for some other purpose (covered under the 2009 Advisory Opinion and the CAL), or a personal vacation (covered under the 2009 Advisory Opinion and the CAL).

106. Further, the CAL's analysis requires the COIB to make individualized determinations as to the purpose of a Mayor's political engagements, and whether such

purpose was of benefit to the City of New York, the Mayor himself, or both to varying degrees. The 2009 Advisory Opinion stated that this analysis was impracticable. It was right.

107. Via the CAL, the COIB supplanted the law enforcement judgment of the NYPD and undermined the governmental judgment of the Mayor of New York in favor of its own intuition as to what type of engagement benefits the City of New York, the Mayor, or some combination of the two, and to what degree.

C. The CAL Lacked Sound Reasoning by Drawing Arbitrary Distinctions Based on Geography and Politics Untethered to Ethics Provisions in the Charter.

108. COIB Rule 1-13(b) states:

> Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, title, personnel, equipment, resources, supplies, or technology assets for ***any non-City purpose***. For purposes of this subdivision "technology assets" includes but is not limited to e-mail accounts, internet access, and official social media accounts.

(emphasis added).

109. The NYPD Commissioner has charge of the deployment of NYPD personnel and resources, including for the provision of around the clock protection for the Mayor should the NYPD deem it necessary. Charter § 434.

110. The City and the NYPD had long recognized, and articulated via the 2009 Advisory Opinion, that the use of the NYPD's personnel and resources to provide protection to Category 1 elected officials, such as the Mayor, is not a violation of the New York City Charter because it is in furtherance of a "City purpose." *See* Charter § 2604(b)(2) and COIB Rule 1-13(b).

111. The City and the NYPD cannot achieve that purpose unless the NYPD's protective detail accompanies the Category 1 elected official at all times. As such, it has

been standard practice in modern New York City history for the Mayor of New York City to be accompanied at all times by his NYPD protective detail and for the City to cover its costs.

112. When the COIB reached this issue in May of 2019 via the CAL, it departed from decades of precedent and its own 2009 Advisory Opinion, determining that the "City purpose" standard did not fully apply in certain vaguely described geography and for certain political purposes. The CAL's interpretation constrained the Mayor's movements and engagement in First Amendment protected activities, such as running for higher office or traveling well outside the vicinity of New York City. It undermined the "City purpose" of protecting the Mayor in all places and for all events, and it was inconsistent with the language in the rule. In no other context has COIB Rule 1-13(b) been applied to prohibit NYPD protection to the Mayor or any other Category 1 official.

113. The CAL and COIB Order were arbitrary and capricious because the COIB's determination as to who pays for what is based solely on the geography of the Mayor's location and type of political engagement. It is contrary to the plain language of COIB Rule 1-13(b), under which the NYPD deploys personnel and resources for the same "City purpose" in other locations, and which does not contemplate the possibility of reimbursement as a cure for an alleged violation.

114. The CAL and subsequent enforcement actions endanger all Category 1 elected officials and all NYPD security personnel because it supersedes the authority and discretion reserved to the NYPD Commissioner over the deployment of NYPD personnel and resources for the security of those officials.

D. The CAL Lacked Sound Reasoning and Was Arbitrary and Capricious by Changing Targets and Denying the Mayor of Certain Due Process.

115. The COIB has a duty to promulgate rules with clear guidance, particularly when

they could serve as the basis for enforcement proceedings and penalties. The COIB failed to do so via guidance stated in the CAL.

116. The 2009 Advisory Opinion found that it was a City purpose to pay for the Mayoral protective detail deemed necessary by NYPD. The CAL reversed aspects of the 2009 Advisory Opinion, finding that the City would not pay "incidental costs" of protecting the Mayor at certain events in certain places.

117. COIB offered shifting views as to who or what entity is responsible for paying these incidental costs. Following the 2009 Advisory Opinion and decades of precedent, the City paid. Under the CAL, the Mayor's federal campaign committee—over which it has no jurisdiction—"must" pay. Under the COIB's enforcement action based on its CAL, the former Mayor *himself* should pay, even if the expenses had already been budgeted and paid by the NYPD, the Mayor had left office years prior, and neither the City nor the NYPD had ever sent the Mayor or his campaign committee a notice, invoice, or receipt.

118. The CAL cannot serve as the predicate for an enforcement action against a former Mayor, and in particular, fines, when the CAL made no claim that the Mayor had personal responsibility for the costs at issue.

119. Further, the COIB's evolving commands, evidencing unsound reasoning and arbitrary and capricious decision-making, deprived Mr. de Blasio of certain of his due process rights. When COIB waited approximately three years to first assert a reimbursement demand against Mr. de Blasio by initiating enforcement action *after* Mr. de Blasio had already left office, it deprived him of timely notice and the ability to raise certain defenses only available to the sitting Mayor.

120. The onus was on COIB to proffer clear and timely guidance as to the prevailing

rule, promulgation of its reversal of precedent, notice to Mr. de Blasio and enforcement proceedings. It failed to do so.

121. The COIB, having identified Mr. de Blasio's presidential campaign committee as the party responsible for payment, also failed to name or bring suit against it or take any other steps to notify it that payment was expected.

E. The CAL Was Not Self-Executing and Cannot Serve the Basis for Levying Costs or Fees Upon Mr. de Blasio.

122. On May 8, 2019, Counsel to the Mayor sought the COIB's confidential, non-binding advice as to whether the City of New York would pay for the NYPD protective detail for Mr. de Blasio and his family during a political trip, should the NYPD deem protection necessary.

123. In response, the COIB advised that Mr. de Blasio's campaign committee, which was organized under federal law pursuant to his campaign for federal office, would have to reimburse the City for incidental costs of the NYPD protective detail incurred during out-of-state campaign-related trips—costs that Mr. de Blasio and his family did not expend themselves.

124. The COIB has no jurisdiction over a federal campaign committee, or to determine whether a federal campaign committee should pay the City of New York for protective services provided to the Mayor at the City's discretion.

125. By advising that payment should be made by Mr. de Blasio's federal campaign committee, over which the COIB has no lawful oversight, the COIB exceeded its jurisdiction. Any enforcement proceedings based thereupon exceed the lawful authority of the COIB and lack rational basis.

126. The City of New York never sent Mr. de Blasio or De Blasio 2020 a request or

bill for the services it now seeks recompense via the COIB's enforcement action. Now finding Mr. de Blasio in violation of the Charter for non-payment of a bill never directed to him or his campaign committee is manifestly arbitrary and capricious.

127. Exacting a penalty of $155,000 for this case of first impression would be manifestly unjust and violate the rule of lenity.

128. The 2019 CAL is not an enforceable rule and has no force of law. Absent formal rule-making and proper advance notice that a rule requires such reimbursement, none of which occurred here, the COIB has no lawful power to order Petitioner or De Blasio 2020 to reimburse the City for incidental expenses for the Mayor's NYPD protective detail, or to pay penalties.

PRAYERS FOR RELIEF

WHEREFORE, Petitioner respectfully requests judgment as follows:

1. Declaratory judgment that the City of New York will pay for all of the expenses associated with the security detail that the NYPD recommended and provided to Mr. de Blasio and his family.

2. An order vacating the CAL, the OATH Decision, and the COIB Order.

3. Judgment in favor of Petitioner and against Respondents pursuant to Article 78 of the CPLR.

4. Attorneys' fees, costs, and disbursements in an amount to be determined at trial.

5. Such other and further relief as the Court may deem just and proper.

Dated: June 15, 2023
New York, New York

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL, LLP

/s/

Andrew G. Celli, Jr. (New York Bar No. 2434025)
Daniel M. Eisenberg (New York Bar No. 5353909)
600 Fifth Avenue, 10th Floor

New York, New York 10020
(212) 763-5000
acelli@ecbawm.com
deisenberg@ecbawm.com

Laurence D. Laufer (New York Bar No. 2040103)
Attorney At Law
49 Mt. Pleasant Rd.
Mt. Tremper, New York 12457
(212) 867-2781
ldlaufer@ldlauferlaw.com

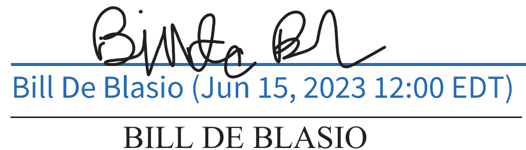
Attorneys for Petitioner Bill de Blasio

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BILL DE BLASIO, *Petitioner*, -against- NEW YORK CITY CONFLICT OF INTEREST BOARD and THE CITY OF NEW YORK, *Respondents*.	Index No. **VERIFICATION**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Bill de Blasio, being duly sworn, states that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.



BILL DE BLASIO

This electronic notarial act involved a remote online appearance involving the use of communication technology

Sworn to before me this 15th day of June 2023.

NOTARY PUBLIC
DYMOND V. WELLS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01WE6390652
Qualified in New York County
My Commission Expires 04-22-2027

Exhibit A

THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD
____x

In the Matter of

BILL DE BLASIO

COIB Case No. 2019-503

OATH Index No. 587/23

Respondent.

____x

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings ("OATH"), including the annexed Report and Recommendation (the "Report") of OATH Administrative Law Judge ("ALJ") Kevin F. Casey dated May 4, 2023, in the above-captioned matter, the Board hereby adopts in full the findings of fact and conclusions of law contained in the Report, which finds that Respondent violated Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b). The Report recommends the Board impose a fine of $155,000 pursuant to Charter Section 2606(b) and, in addition, order payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), which recommendation the Board adopts.

Both parties were reminded of their right, pursuant to Board Rules Section 2-03(h), to submit a post-hearing comment on the Report; neither party submitted such a comment within the time period provided for in the rule.

Without limiting the foregoing, and in summary of its findings and conclusions, the Board notes the following:

Between May 2019 and September 2019, while serving as Mayor, Respondent was a candidate for President of the United States. During this time, Respondent had the City pay the travel expenses for an NYPD security detail to accompany Respondent or his spouse on 31 out-of-state trips in connection with his presidential campaign. This NYPD security detail incurred $319,794.20 in travel costs, excluding NYPD salary and overtime, during these 31 trips.

The City's conflicts of interest law, codified in Chapter 68 of the City Charter, exists to "preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency." Charter Section 2600. Charter Section 2604(b)(2), as implemented in Board Rules Section 1-13(b), forwards this critical purpose by prohibiting public servants from using City resources for any non-City purpose. When a public servant uses City resources for private purposes, it erodes the public's trust and makes City government less efficient. For this reason, the Board has routinely enforced this prohibition, particularly where a public servant uses City resources for the non-City purpose of advancing a campaign for elective office or other political activity.[1]

Respondent's conduct plainly violates this prohibition. Although there is a City purpose in the City paying for an NYPD security detail for the City's Mayor, including the security detail's salary and overtime, there is no City purpose in paying for the extra expenses incurred by that NYPD security detail to travel at a distance from the City to accompany the Mayor or his family on trips for his campaign for President of the United States. The Board advised Respondent to this effect prior to his campaign; Respondent disregarded the Board's advice.

Having found the above-stated violations of the City Charter, and for the reasons set forth in the Report, the Board adopts the Report's recommended fine of $5,000 for each of Respondent's 31 violations of Chapter 68, for a total fine of $155,000 pursuant to Charter Section 2606(b), and payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), the value of the gain or benefit obtained by the Respondent as a result of the violation.

Respondent claims that the Board cannot impose a penalty upon Respondent because of the requirement, contained in Charter Section 2606(b), that the Board consult "with the head of the agency involved, or in the case of an agency head, with the mayor" before imposing a fine for violations of Charter Section 2604. Charter Section 2603(h)(3) contains a similar provision. As discussed in the Report, and as the Board has held previously, because Respondent was an executive branch elected official, this requirement does not apply here. *Report* at 19-20. *See COIB v. Holtzman*, COIB Case No. 93-121 (1996), OATH Index No. 581/94 at 41 n. 3, *aff'd Holtzman v. Oliensis*, 91

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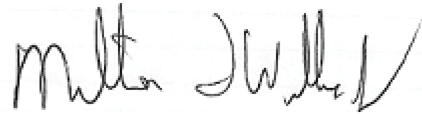
[1] *See*, *e.g.*, *COIB v. Oberman*, COIB Case No. 2013-609, OATH Index No. 1657/14 (2014), affirmed 148 A.D.3d 598 (1st Dept., 2017) (imposing $7,500 fine against former Executive Agency Counsel at the New York City Taxi and Limousine Commission who used his City phone during business hours to work on his campaign for the New York City Council); *COIB v. Hynes*, COIB Case No. 2013-771 (2018) (imposing $40,000 fine against District Attorney who used City computers, email, and personnel for his re-election campaign); *COIB v. Mosley*, COIB Case No. 2013-004 (2013) (imposing $2,500 fine against an administrative manager at the New York City Office of the Comptroller who used her City computer and email account to perform campaign work for a candidate for the New York State Assembly).

N.Y.2d 488 (1998); *COIB v. Markowitz*, COIB Case No. 2009-181, OATH Index No. 1400/11 at 4.

WHEREFORE, IT IS HEREBY ORDERED that Respondent be assessed a fine of $155,000 pursuant to Charter Section 2606(b) and payment to the City of $319,794.20 pursuant to Charter Section 2606(b-1), a total of $474,794.20, to be paid to the Conflicts of Interest Board within 30 days of service of this Order.

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board



By: Milton L. Williams Jr., Chair

Fernando A. Bohorquez Jr.
Wayne G. Hawley
Ifeoma Ike

Georgia M. Pestana did not participate in the consideration or decision of this matter.

Dated: June 15, 2023

Attachment

cc: Laurence D. Laufer, Esq.
Counsel for Respondent
49 Mount Pleasant Rd.
Mount Tremper, New York 12457

Arthur L. Aidala, Esq.
Aidala, Bertuna & Kamins PC
Counsel for Respondent
546 Fifth Avenue
New York, New York 10036

Administrative Law Judge Kevin F. Casey
Office of Administrative Trials and Hearings
100 Church Street
New York, New York 10007

Conflicts of Interest Bd. v. De Blasio

OATH Index No. 587/23 (May 4, 2023)

Petitioner proved that respondent violated the City Charter and petitioner's rules by using City funds for campaign-related travel expenses. Fine of $155,000 and restitution of $319,794.20 recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against –
BILL DE BLASIO
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board ("the Board"), brought this proceeding against respondent Bill de Blasio, former Mayor of New York City, under Chapter 68 of the New York City Charter and Title 53 of the Rules of the City of New York. The petition alleges that respondent violated section 2604(b)(2) of the City Charter and section 1-13(b) of the Board's rules by having the City pay the out-of-state travel expenses incurred by respondent's New York City Police Department ("NYPD") security detail in 2019, during respondent's presidential campaign (ALJ Ex. 1). Respondent denies any wrongdoing (ALJ Ex. 2).

At trial on December 20, 2022, held remotely via videoconference, petitioner relied on testimony from two witnesses and documentary evidence, including a transcript of an interview with respondent. Respondent offered documentary evidence and testimony from two witnesses. The record was closed on February 2, 2023, following receipt of post-trial submissions.

For the reasons below, I find that petitioner proved the charges and recommend that respondent be fined $155,000 and ordered to reimburse the City for $319,794.20.

BACKGROUND

The material facts are undisputed. When respondent was Mayor, from 2014 through 2021, NYPD provided him and his immediate family with police security. From May 2019 to September 2019, NYPD security accompanied respondent or his wife on 31 out-of-state trips in connection with respondent's presidential campaign. Neither respondent nor his presidential campaign reimbursed the City for $319,794.20 in travel costs incurred by NYPD for those campaign trips.

Petitioner, the independent agency responsible for interpreting and enforcing the City's conflicts of interest laws, contends that requiring the City to pay out-of-state travel expenses incurred by NYPD for respondent's presidential campaign violates the ban against using City resources for a non-City purpose (ALJ Ex. 1). Respondent disagrees and contends that the travel costs were for a City purpose (ALJ Ex. 2). Because out-of-state travel costs incurred by NYPD for respondent's presidential campaign were not for a City purpose, respondent violated the Charter and petitioner's rules by failing to reimburse the City for those costs.

Petitioner's Evidence

The Board's May 15, 2019, advisory letter

On May 8, 2019, Kapil Longani, Counsel to the Mayor, wrote to the Board and stated that "we would greatly appreciate" guidance on two questions based on "the assumption that NYPD has determined that security is required" (Pet. Ex. 1). First, "[C]an the City pay all costs associated with providing NYPD-approved security for the Mayor on a political trip?" (*Id.*). Second, "[C]an the City pay all costs associated with providing security for the Mayor's immediate family members on a political trip?" (*Id.*).

On May 15, 2019, the Board sent a written response to Longani (Pet. Ex. 2). The Board stated that section 2604(2) of the Charter, as interpreted by section 1-13 of petitioner's rules, "prohibits a public servant's use of City time or City resources for any non-City purpose, including to advance a political campaign" (*Id.* at 1). After noting that Longani's questions were of "first impression" and "not clearly covered by any Board Rules or prior advisory opinions," the Board said that Advisory Opinion No. 2009-1 was the closest that it had come to addressing this issue (*Id.* at 2). Summarizing the 2009 opinion, the Board stated, where NYPD determines that a car and security personnel are required to protect an elected official, the elected official could use the car and NYPD personnel for any lawful purpose, "including pursuit of outside business and

political activities, without any reimbursement to the City, provided that the Elected Official is in the vehicle for all such use" (*Id.*, quoting Conflicts of Interest Bd. Advisory Opinion No. 2009-1 at 17 (Mar. 12, 2009)).

The Board cautioned, however, that the 2009 Advisory Opinion addressed the proper use of official City vehicles and accompanying personnel, "and the kind of travel that could be accomplished by using a City vehicle, that is, presumably travel within driving distance of the City" (Pet. Ex. 2 at 2). Recognizing the need to protect the Mayor at official, private, or political events, wherever they occur, the Board found that the City was obligated to pay for the salaries and overtime for NYPD security personnel (*Id.* at 3).

According to the Board, "the more difficult question" was whether the City must pay the additional costs associated with travel at a distance from the City in connection with a Mayor's campaign for a non-City office (*Id.*). The Board observed that the extra costs of providing police security at a distance from the City differ from a local event and "may require substantial public expenditure to support purely political activity" (*Id.*). In the Board's view, requiring the City to pay those additional non-salary costs would be using City resources for a non-City purpose and using an official position for financial gain or "personal or private" advantage in violation of the petitioner's rules and the Charter (*Id.*). The Board concluded that, when the Mayor or the Mayor's family travels outside of the City seeking non-City elective office on behalf of the Mayor, the City may pay for the salary and overtime of NYPD security personnel, but "[a]ll other costs associated with such travel—such as airfare, rental cars, overnight accommodations, meals, and other reasonable incidental expenses—must not be borne by the City. Rather, these costs must be paid or reimbursed by the Mayor's campaign committee" (*Id.* at 4-5).

On May 16, 2019, the day after the Board responded to Longani's request for guidance, respondent announced his campaign for President of the United States (ALJ Ex. 1 ¶ 6). During respondent's four-month campaign, NYPD paid $319,794.20 for travel-related expenses associated with providing security details for respondent and his wife on their out-of-town campaign trips (Pet. Ex. 18 at 5). Those expenses included airfare, car rentals, overnight accommodations, meals, and other incidentals (*Id.* at 1). Members of the security detail used NYPD credit cards, submitted expense reports and receipts, and received approval for all expenses, which NYPD deemed "for official NYPD business" (Pet. Ex. 5 at 2).

Department of Investigation ("DOI") investigation

A few months after respondent launched his presidential campaign, petitioner asked DOI to investigate the costs of cars, hotels, food, and ancillary items incurred by the NYPD's security detail for respondent's presidential campaign (Tr. 38). DOI Senior Inspector General Eleonora Rivkin and Inspector General Juve Hippolyte testified about their investigation (Rivkin: Tr. 38; Hippolyte: Tr. 56-57, 71-72). Because DOI was already investigating reports regarding respondent's use of NYPD security personnel, and the inquiries involved many of the same witnesses, DOI combined petitioner's request with the existing investigations (Tr. 38).

From September 2019 to April 2020, NYPD sent DOI hundreds of documents related to travel expenditures (Tr. 42, 44; Pet. Ex. 6). As of April 2020, when NYPD redeployed staff due to the COVID pandemic, DOI was still missing information about a few campaign trips in September 2019 (Tr. 45-47, 50-52, 77, 81-82). In July and October 2020, an attorney for respondent's presidential campaign provided DOI with a list of all of respondent's campaign trips, stated that respondent's campaign had not reimbursed or made any payments to NYPD, and referred DOI to public disclosure reports that the campaign filed with the Federal Elections Commission ("FEC") (Pet. Ex. 19). In January and April 2021, DOI sent follow-up emails to NYPD regarding outstanding document requests (Tr. 52). By May 28, 2021, DOI received all the documents that it had requested from NYPD (Tr. 54-55, 78, Pet. Exs. 9, 10). DOI also interviewed 15 to 20 people, including each member of respondent's security detail, NYPD supervisors, City Hall staff, and federal security officials (Tr. 56-57).

In July 2021, DOI interviewed respondent and his wife (Tr. 96).[1] Petitioner introduced transcripts of those interviews at trial (Pet. Exs. 3, 4). During her interview, respondent's wife stated that she went on three or four campaign trips, including two trips without respondent, to South Carolina (Pet. Ex. 4 at 73-75). She acknowledged that she was repeatedly told and it was "commonly known" that "government resources are not to be used for campaign purposes" (*Id.* at 77-78). However, she said that she did not know whether the campaign was obligated to reimburse the City for the NYPD security detail's travel costs and she asserted that neither she nor respondent received guidance regarding reimbursement for those costs (*Id.* at 78).

[1] On July 22, 2021, one week before DOI interviewed respondent and his wife, Longani wrote to the Board asking it to reconsider its May 2019 advisory letter (Resp. Ex. 5). The Board declined the request for reconsideration because it was untimely (Resp. Ex. 9). *See* Charter § 2603(c)(2) ("Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant.").

During respondent's DOI interview, he stated that NYPD Inspector Howard Redmond and Deputy Commissioner John Miller advised him about security issues (Pet. Ex. 3 at 8, 27, 36, 78). Threats to respondent and his family increased after President Trump commented on respondent's campaign (*Id.* at 69). Respondent deferred to NYPD regarding the amount of security to be provided (*Id.* at 8-9, 31).

Respondent told the interviewers that if he had questions about the City's conflicts of interest laws, he checked with the Corporation Counsel or Mayor's Counsel Longani (*Id.* at 11). As for using his NYPD security detail on campaign trips, respondent repeatedly told the interviewers that he had received conflicting advice and he suggested that it was an issue for others to resolve. For example, when asked if he received any guidance on how to use the security detail in connection with his presidential campaign, respondent replied, "I certainly talked to my counsel, [Kapil] Longani," and possibly the Corporation Counsel, and "it was obviously incumbent upon my counsel to advise what steps were appropriate" (*Id.* at 66-67).

After clarifying that he was referring to Mayor's Counsel Longani as "my counsel," respondent said that there were many conversations between Longani and the attorney for the presidential campaign and "other members of the campaign team" regarding the security detail's travel (*Id.* at 67). Respondent said that Longani reported having a "very clear" conversation with the Board's counsel and that Longani reported "what he viewed as absolutely contradictory or different" guidance (*Id.* at 67-68). At that point, respondent's personal attorney, Jonathan Bach, interrupted the interview and said that he wanted to be careful that no privilege was being waived (*Id.*).

Respondent continued and said that, as far as he could tell, there was "very different guidance" and "an unresolved issue" (*Id.* at 68). DOI's Commissioner told respondent, that unlike privileged communications between respondent and his personal or campaign attorneys, any privilege regarding conversations between respondent and Longani "belongs to the City" (*Id.*). Conversations between respondent and Longani could not be disclosed to the public or a third party without Corporation Counsel's approval; however, respondent was authorized to disclose those conversations during the DOI interview (*Id.*). Bach expressed his appreciation for that explanation and asked for a brief break to confer with respondent (*Id.*).

When the interview resumed, an interviewer asked respondent about the guidance that Mayor's Counsel had received and respondent replied that he "obviously" remembered "broad

discussions" about security (*Id.* at 69). The interviewer followed up and asked respondent, "Did you seek any guidance about the cost of traveling with a security detail on your presidential campaign?" (*Id.*). Respondent replied that it was the job of campaign staff and campaign counsel "to figure out everything that would be entailed and how to handle it" (*Id.*). After acknowledging that there were "efforts to get clarity on that front," respondent stated, "[F]rom my point of view that was something that lawyers obviously had to work out" (*Id.* at 69-70). Respondent said that, in addition to his campaign's attorney, the "specific role" of Mayor's Counsel was to "liaise" with the Board and "to understand in this unusual situation what was appropriate" (*Id.* at 70). According to respondent, he did not receive what he "felt was a fully clear understanding," he still did "not have a 100% clear understanding," and it remained "an unresolved issue" (*Id.*).

Asked whether he was aware of any correspondence between Longani and the Board regarding the travel costs of the security detail, respondent said that he was aware of a "dialogue," but he did not know what was written (*Id.* at 74-75). When the DOI interviewer showed respondent the Board's May 2019 letter to Longani, respondent said that he was unsure whether he recognized the document, but he knew that there was written guidance and he had discussed it with NYPD (*Id.* at 75, 77-78). Asked if he was aware the Board had advised Longani that NYPD had to be reimbursed for the security detail's travel costs, respondent replied that it was his understanding that there was "more than one type of guidance provided" and it was "still an open question" (*Id.* at 76). Respondent said that he had received "multiple points of information from multiple agencies, plus a historic record, wherein different pieces were in conflict. Including how previous mayors had been treated" (*Id.* at 77).

Based on information provided by NYPD and respondent or his campaign, DOI prepared a spreadsheet with all of the travel costs incurred by NYPD's security detail on trips to Iowa, South Carolina, and other destinations for respondent's presidential campaign (Tr. 101-02; Pet. Ex. 18). It is unrebutted that the total travel cost of the security detail for the campaign was $319,794.20 (Pet. Ex. 18 at 5).

Respondent's evidence

Respondent did not testify at trial. Instead, he called two witnesses: John Miller and Henry Berger. Miller, who previously worked as an assistant director for the FBI and NYPD Deputy Commissioner for Intelligence and Counterterrorism, oversaw respondent's security detail in 2019 and testified about those security arrangements (Tr. 131-32). According to Miller, NYPD made ongoing threat assessments for mayors and other elected officials (Tr. 134). Those elected officials never received a bill from NYPD for security details (Tr. 145). Miller emphasized that mayors are always on duty and expected to conduct the City's business wherever they travel (Tr. 140-41). For example, when respondent and his family traveled to Italy in 2014, NYPD paid the salaries and travel expenses of the security detail (Tr. 136). Miller recalled that in 2019 threats across the country were "extraordinarily high" from militias and other groups (Tr. 136). In Miller's view, requiring an elected official to pay the costs associated with security would create a risk that the official would ignore NYPD's advice and forego security (Tr. 142-43). That, in turn, would pose a threat to safety and continuity of government (Tr. 143, 145).

Berger, an attorney who previously served as chair of the State's Commission on Judicial Conduct, a member of the City Council, an attorney for numerous campaigns, and Special Counsel to the Mayor from February 2014 to July 2018, testified about other campaigns and respondent's travel (Tr. 149-51). For example, he recalled that he was an attorney on then Council Speaker Vallone's campaigns for New York Governor in 1998 and New York City Mayor in 2001, and Vallone had the same security personnel for each campaign (Tr. 164-66). According to Berger, the Board did not distinguish between those state and city campaigns when it came to the use of city resources (*Id.*).

Prior to 2019, Berger served as Mayor's Counsel and he spoke with the Board's general counsel if there were questions regarding compliance with the City's conflicts of interest laws (Tr. 151). When respondent and his family vacationed in Italy in 2014, Berger and the Board's general counsel had a general discussion regarding staffing and security (Tr. 152). Respondent and his family paid their own expenses for that trip and the City paid all of the costs for the NYPD security detail, a press secretary, and two other aides (Tr. 158; Resp. Ex. 5).

Berger acknowledged that the City's conflicts of interest laws restricted the use of City resources and personnel for political activity (Tr. 163). He said that there was a "bright line test" regarding political activity and respondent had received "a couple" of warning letters, including

one regarding the use of his Blackberry to comment on political issues (Tr. 164). According to Berger, the only exception to that rule related to security (*Id.*). In his view, the Board's rules and prior advisory opinions were "fairly clear" and the Board's 2009 advisory opinion authorizes security for respondent's political activity and campaigning outside of the City (Tr. 152-53, 156). He recalled that respondent went on political trips to England in 2014, Iowa in 2015, Wisconsin in 2016, and the Democratic National Convention in Philadelphia in 2016, and there was never any issue about the cost of the security detail (Tr. 152, 154, 156-57, 159-162).[2]

The Charges

New York City's conflicts of interest laws prohibit any public servant from engaging "in any business, transaction or private employment" or having "any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Charter § 2604(b)(2) (Lexis 2023). Petitioner's rules state that the use of City personnel or resources for a non-City purpose violates the Charter. 53 RCNY 1-13 (Lexis 2023); *see* NY Const., art. VIII, § 1 (prohibiting local governments from using public funds for a "private undertaking"); *see also Stern v. Kramarsky*, 84 Misc. 2d 447, 452-53 (Sup. Ct. N.Y. Co. 1975) ("Public funds are trust funds" and they may only be used for government operations).

Petitioner alleges that, by requiring the City to pay for travel expenses incurred by NYPD's security detail on 31 campaign-related trips, respondent violated the City's conflicts of interest laws (ALJ Ex. 1 at 3). First, petitioner contends that respondent acted in conflict with the proper discharge of his duties, in violation of section 2604(b)(2) of the Charter. Second, petitioner alleges that respondent used City resources for a non-City purpose, in violation of section 2604(b)(2) of the Charter, pursuant to section 1-13(b) of the Board's rules. Petitioner proved both charges.

The Mayor is responsible for the "effectiveness and integrity of city government operations" (Pet. Mem. at 9, citing Charter § 8(a)). Respondent violated section 2604(b)(2) of the Charter because his failure to reimburse the City for his security team's travel expenses conflicted with his duty to prevent the misuse of City resources. Respondent also violated section 2604(b)(2)

[2] Two days before trial, respondent sought to adjourn the proceedings because one of his witnesses, Longani, was out of town (Tr. 166). I denied respondent's request to adjourn the trial for one witness and offered to schedule a second day of trial to accommodate Longani's schedule, but respondent rested after calling two witnesses and declined to call Longani as a witness (Tr. 166-67).

of the Charter, pursuant to section 1-13(b) of the Board's Rules by using City resources for a non-City purpose: his presidential campaign.

In its May 2019 advisory letter, responding to the request for guidance, the Board agreed that salaries and overtime for NYPD's security detail serve the City's purpose of protecting the Mayor. However, the Board explained that requiring the City to pay additional out-of-town travel costs incurred by NYPD's security detail for respondent's presidential campaign, would be a use of City resources for a non-City purpose, within the meaning of section 1-13(b) of the Board's Rules (Pet. Ex. 2 at 4). The Board's conclusion turned on three factors: 1) salaries and overtime for the NYPD security detail would generally be the same wherever the Mayor and the Mayor's immediate family were located; 2) additional costs to put security in place at a distance from the City (including airfare, hotels, rental cars) may require substantial public expenditure to support purely political activity; and 3) ordinarily, those additional costs would not be incurred for political travel within the City, "but would be incurred as part of the Mayor's campaign for non-City elective office for himself" (*Id.*).

Despite the Board's clear guidance, respondent failed to reimburse the City for $319,794.20 in travel costs incurred by his security detail for 31 campaign trips. As a result, he used City resources for a non-City purpose, in violation of the Charter and the Board's rules. *See, e.g., Conflicts of Interest Bd. v. Peterson*, OATH Index No. 2275/19 (May 14, 2020), *modified on penalty*, COIB Case No. 2016-126 (Jan. 29, 2021) ($2,500 fine imposed for using City resources to operate an unauthorized senior trip program); *Conflict of Interest Bd. v. Kuczinski*, OATH Index No. 1305/19 (Apr. 20, 2020), *adopted*, COIB Case No. 2017-156c (Mar. 12, 2021) ($15,500 fine imposed where a Department of Correction deputy commissioner used a City vehicle for personal trips that were unrelated to his commute or City work, in violation of section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules); *see also Matter of Hynes*, COIB Case No. 2013-771 (Mar. 23, 2018) ($40,000 fine imposed for violating section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules, where District Attorney used City resources for a non-City purpose by using office computers, email, and personnel for his re-election campaign).

Among other claims, respondent contends that the charges should be dismissed because the Board acted too hastily and failed to engage in formal rulemaking (Resp. Mem. at 8, 12, 16, 18); the Board's May 2019 advisory letter is contrary to its 2009 Advisory Opinion (*Id.* at 2, 8); the Board failed to defer to NYPD expertise (*Id.* at 12, 33); and this proceeding is barred by the

doctrine of laches because the Board acted too slowly by not commencing this action while he was still in office (*Id.* at 42). Respondent's claims are unavailing.

The Board is not required to engage in additional rulemaking

Respondent contends that the Board seeks to "enforce the May 2019 advice letter" without first conducting required rulemaking (*Id.* at 12). On the contrary, the Board already has a rule prohibiting respondent's conduct. No additional rulemaking is required.

Section 1-13(b) of the Board's rules prohibit public servants from using City resources "for any non-City purpose." That provision covers a wide range of conduct. *See, e.g., Conflicts of Interest Bd. v. Allen*, OATH Index No. 1791/07 at 5 (June 12, 2017), *adopted*, COIB Case No. 2006-411 (Sept. 11, 2017) (excessive use of a City vehicle for personal business violates section 1-13(b) of the Board's rules); *Conflicts of Interest Bd. v. Oberman*, OATH Index No. 1657/14 (Sept. 4, 2014), *adopted*, COIB Case No. 2013-609 (Nov. 6, 2014), *aff'd*, 148 A.D.3d 598 (1st Dep't 2017) (using work phone to solicit donations for political campaign violates section 1-13(b) of the Board's rules); *see also Conflicts of Interest Bd. v. Powery*, COIB Case No. 2004-466 (Apr. 7, 2005) (school custodian violated section 1-13(b) of the Board's rules by directing a secretary to type and edit private business documents on City time, using City equipment); *Dep't of Parks & Recreation v. Softleigh*, OATH Index No. 1545/15 at 12 (July 24, 2015) (park worker violated Rule 1-13(b) by using City truck to pick up wood from a private residence without authorization). The Board is not required to issue a new rule to address every possible scenario where a public servant misuses City resources for a non-City purpose. Public servants can seek guidance from the Board, which will provide advice based on the facts presented. *See* Charter § 2603(c). That is what happened here.

The City's Administrative Procedure Act ("CAPA") requires agencies to provide public notice and an opportunity to comment on new rules before they are issued. Charter 1043[b]. CAPA defines a rule as "any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency." Charter 1041(5). However, the public notice and comment requirement does not apply to a statement or communication of "general policy, which in itself has no legal effect but is merely explanatory." *Id.* at 1041[5][b][i]-[ii].

In its confidential May 2019 advisory letter, the Board made clear that it was addressing the specific questions before it.[3] It was not creating a new rule of general applicability. *See* Charter § 2603(2)(c)(1) (the Board's advisory opinions only apply to the public servant who requested advice). After reviewing the facts presented and analyzing a prior advisory opinion, the Board interpreted its existing rule [1-13(b)] as it applied to respondent's prospective conduct. The Board was not required to engage in rulemaking. *See De Jesus v. Roberts*, 296 A.D.2d 307, 310 (1st Dept. 2002) (CAPA rulemaking process only required when an agency establishes precepts that remove its discretion by dictating specific results in specific circumstances; rulemaking is not mandated for "ad hoc decisions based on individual facts and circumstances").

Advisory Opinion No. 2009-1 does not require a different result

Respondent claims that the Board's May 2019 response to Longani, "ignores and essentially reverses" the 2009 Advisory Opinion (Resp. Mem. at 10). The Board did not ignore the 2009 Advisory Opinion. Indeed, the Board's May 2019 advisory letter explains at length how the 2009 Advisory Opinion, entitled "Use of City-owned Vehicles," addressed a limited and different issue. The 2009 Advisory Opinion states, where NYPD determines that security "in the form of a car and security personnel is required," an elected official "may make any lawful use of the official vehicle and personnel prescribed by the NYPD for personal purposes that are not otherwise a conflict of interest, including pursuit of outside business and political activities, without reimbursement to the City" as long as the elected official is in the vehicle (Resp. Ex. 3 at 15). That Advisory Opinion does not create a blanket exception to the ban on using City resources for a non-City purpose.

In a 2012 Advisory Opinion, the Board stated that "political activities *always* fall within the prohibition on use of City time or resources" for any non-City purpose (Resp. Ex. 4, Advisory Op. 2012-5 at 2). The Board noted, the "exception to this flat ban, enunciated in Advisory Opinion No. 2009-1" allows some elected officials to use "a City-owned car" for personal purposes, including political activities, "provided that the elected official is in the vehicle during all such use" (*Id.* at 2 n. 1). The 2012 opinion further demonstrates that the 2009 Advisory Opinion's exception for political activity is limited to the use of City-owned vehicles.

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[3] It appears that the Board's letter was confidential because public disclosure, even with redactions, would have disclosed respondent's identity.

The Board's May 2019 letter did not "reverse" the 2009 Advisory Opinion. Instead, the Board's May 2019 letter responded to the specific questions presented and distinguished between the use of a car and personnel for local activities and the substantial additional travel costs associated with a presidential campaign. The Board concluded that the City should not be required to pay additional travel costs resulting from the Mayor's presidential campaign because that would be for a non-City purpose. And the Board emphasized, "this advice has addressed *only one type of political travel*—travel by the Mayor or members of his immediate family in connection with the Mayor's candidacy for non-City elective office" (Pet. Ex. 2 at 6) (emphasis added).

Respondent points to Council Speaker Vallone's campaigns two decades ago as if they established a binding precedent (Resp. Mem. at 26-27). But respondent offered no evidence to show that out-of-town travel expenses were incurred by NYPD security for those campaigns or the amount of such expenses. Similarly, respondent poses several hypotheticals about future actions by the Board. For example, respondent expresses concern that officers on his security detail could face liability as accomplices (*Id.* at 14). There is no basis for believing that NYPD officers, who are subordinate to the Mayor, would be liable for respondent's failure to reimburse the City. The remote specter of possible action against others does not excuse respondent's actions. Respondent also asks whether NYPD security would be limited if members of the City Council went to Buffalo to announce their candidacy for state office (*Id.* at 16). Such candidates should not assume that the City will pay the travel expenses for their NYPD security details. If those candidates have specific questions, they should seek the Board's guidance and they should recognize the risk of ignoring that guidance.

This case does not concern a Council Speaker's gubernatorial campaign two decades ago or hypothetical Councilmembers' future campaigns for the state legislature. Rather, it is limited to the question of whether the travel costs incurred by NYPD for respondent's presidential campaign served a City purpose. As the Board explained in its May 2019 advisory letter, a presidential campaign is fundamentally different in scope than a run for local office and it involves a significant expenditure of resources. And, unlike a campaign for local office, where it may be difficult to distinguish between the travel costs associated with City and non-City business, the travel costs of providing out-of-town security for a presidential campaign are readily identifiable.

The Board does not question the need for security

Respondent contends that petitioner is "throwing out deference to decades of NYPD practice" and has "abandoned deference to NYPD security decisions" (Resp. Mem. at 12, 30). There is no dispute regarding the need for security. The Board has not interfered with NYPD's assessments of security threats or questioned NYPD's security expertise. There is also no dispute that the City will pay the salaries of the Mayor's security detail. However, the Board maintains that respondent should not expect the City to assume the substantial additional travel expenses caused by his presidential campaign.

In respondent's view, the Board's position creates the risk that a Mayor would forego NYPD security to avoid having to reimburse the City for travel expenses (*Id.* at 33-34). Thus, respondent reasons, the possibility that a future Mayor might exercise exceedingly poor judgment and disregard NYPD's security advice gives him the authority to ignore the Board's advice and compel the City to pay for all costs related to security no matter where and why he travels.

The Board is responsible for interpreting and enforcing the City's conflicts of interest laws. In its 2019 advisory letter, the Board rationally distinguished between costs associated with local security needs and substantial out-of-state travel costs associated with a presidential campaign. The Board found that those additional costs were for a non-City purpose. That conclusion is consistent with the Board's long-standing interest in limiting the extent to which public servants use City resources for political activity. *See Hynes*, Conflicts of Interest Bd. Case No. 2013-771 at 5 (imposing a fine for elected official's using office computers, email, and personnel for his re-election campaign); *Oberman*, OATH 1657/14 at 14 (fine imposed where agency attorney used office phone to perform work on his political campaign); *see also Golden v. Clark*, 76 N.Y.2d 618, 623 (1990) (discussing factors that led to Charter revision "to protect public against corruption and undue influence of a business or political nature").

Respondent contends that the Board's position conflicts with its earlier treatment of the travel costs incurred by NYPD security for respondent's other political trips and his family vacations (Resp. Mem. at 28). He further argues that it is contradictory for the Board to treat the salaries of security personnel differently than travel costs (*Id.* at 22, 24). In reply, petitioner argues that seeking broader support for policies may serve a City purpose and a Mayor can be re-invigorated by vacations, but a candidate's personal quest for the presidency does not serve a City purpose and "a successful campaign would deprive the City of its duly elected leader" (Pet. Mem.

at 15-16). The Board also asserted that security personnel salaries would be similar wherever the Mayor was located, but the significant out-of-town travel costs incurred to provide security for respondent's presidential campaign only served his personal endeavor (*Id.* at 7).

Not all of petitioner's arguments are persuasive. For example, the City might derive more benefit from a Mayor's participation in a policy discussion at a campaign forum than would result from the Mayor's beach vacation. And the City might benefit from having a former Mayor in the White House. Some may argue that the City must cover all travel expenses incurred by NYPD security, regardless of the distance, frequency, or purpose of the travel. However, the fact that reasonable people may interpret the Charter and Board's rules differently does not render the Board's analysis irrational or unreasonable. *See Molinari v. Bloomberg*, 596 F. Supp.2d 546, 579 (E.D.N.Y.) ("The advisory opinions of the Board should be given considerable weight by the courts"), *aff'd*, 564 F.3d 587 (2d Cir. 2009) (citation omitted); *Elcor Health Services, Inc. v. Novello*, 100 N.Y.2d 273, 278-280 (2003) (agency interpretation of a regulation "will not be disturbed in the absence of weighty reasons," and the fact that a regulation could be interpreted differently does not make that interpretation irrational) (citations omitted); *Matter of Schuss*, OATH Index No. 2066/12 at 14 (Mar. 25, 2013) ("An agency's interpretation of a statute which it is charged with enforcing is entitled to deference," as long as that interpretation is not irrational or unreasonable).

It is within the Board's authority to conclude that using City funds to pay out-of-state travel costs associated with a presidential campaign does not serve a City purpose and violates section 1-13 of the Board's rules. Hence, the City should be reimbursed for those costs. To hold otherwise would give respondent, rather than the Board, the sole power to decide that City resources can be expended for his presidential campaign.

This proceeding is not barred by laches

Laches is an equitable doctrine that bars enforcement where there has been an unreasonable and inexcusable delay that causes prejudice to a party. *See Office of the City Clerk v. Metropolitan New York Coordinating Council on Jewish Poverty*, OATH Index No. 1940/12, mem. dec. at 4 (Aug. 30, 2012) (citing *Cortlandt Nursing Home v. Axelrod*, 66 N.Y.2d 169, 177 (1985)). Respondent contends that petitioner unreasonably and unjustifiably delayed the commencement of this action for three years, which created "substantial prejudice," compromised his

"constitutional right to receive and rely on legal counsel," and deprived him of "his right to due process prior to the ordering of any penalty" (Resp. Mem. at 45).

As a preliminary matter, respondent failed to show that petitioner, rather than DOI, was responsible for the bulk of any delay. *See Dep't of Correction v. Roman*, OATH Index Nos. 1026/05, 1926/05 at 22 (Feb. 10, 2006), *appeal dismissed*, NYC Civ. Serv. Comm'n Item No. CD07-22-D (Mar. 5, 2007) (rejecting claim that disciplinary action for fraud committed by a correction officer was barred by laches and finding that five-year delay was caused by DOI rather than the agency that brought the charges). Moreover, petitioner presented credible evidence that DOI acted diligently. Respondent launched his presidential campaign in May 2019. Less than four months later, petitioner asked DOI to investigate. DOI acted reasonably when it combined this investigation with two other similar investigations; DOI made diligent efforts to obtain documents from NYPD, at the height of the pandemic, for all of respondent's campaign trips; and DOI acted prudently by interviewing 15 to 20 witnesses. DOI completed its investigation by interviewing respondent and his wife in July 2021, DOI issued a 47-page report in October 2021, and petitioner served respondent with the petition less than one year later (ALJ Ex. 1; Tr. 19, 40).

Respondent contends that DOI's investigation was redundant because respondent's FEC filings showed that his campaign had not reimbursed NYPD (Resp. Mem. at 45). Thus, respondent suggests, there was no need for a thorough and independent investigation; DOI should simply have relied on respondent's FEC filings (*Id.*). That argument lacks merit. Respondent's campaign filings did not show the travel expenses that NYPD incurred. For that information, DOI needed documents from NYPD and it needed to compare the information that it received from NYPD with the information provided by respondent and his campaign.

According to respondent, he relied on advice from Mayor's Counsel Longani (*Id.* at 42). The Law Department asserted that if there were privileged communication between Mayor's Counsel and the Mayor, the privilege belongs to the City and cannot be waived by respondent (Pet. Ex. 3 at 68; Resp. Ex. 11). Respondent suggests, without citing any authority, that he could have waived that privilege if he was still Mayor. Thus, respondent contends, he was prevented from presenting evidence regarding the advice he received from Longani because petitioner did not bring this proceeding until after he left office (Resp. Mem. at 45).

The central flaw in respondent's argument is that a public servant who uses City resources for a non-City purpose cannot blame that conduct on bad or inadequate advice from counsel. When

Longani sought the Board's guidance in May 2019, he was doing so as Mayor's Counsel and on respondent's behalf. One week later, the Board replied. Without equivocation, the Board advised that travel costs incurred by respondent's security detail for a presidential campaign would constitute the use of City resources for a non-City purpose in violation of the Charter and the Board's rules.

Based on the answers that he gave during the DOI interview, where he conceded that he knew that there was written guidance and he claimed he had received conflicting information, it can be inferred that respondent was aware of the Board's response. If respondent had any doubt or uncertainty about the Board's advice, he could have done what any other City employee is expected to do—he could have asked the Board himself. Instead of seeking clarification from the Board or promptly requesting reconsideration, respondent launched his presidential campaign, used City resources for a non-City purpose, and waited two years before submitting an untimely request for reconsideration (Resp. Ex. 1).

As respondent acknowledged, he knew that Longani had communicated with the Board and that there was written guidance. Respondent knew or should have known of the Board's response, which was quite clear, and he chose to ignore it. Deliberate indifference to the Board's response is not a defense. *See Holtzman v. Oliensis*, 91 N.Y.2d 488, 498 (1998) (rejecting former Comptroller's contention that she lacked actual knowledge of personal benefit she received from a bank's dealings with the City, where evidence showed that staff members, including a top aide and former campaign manager, were aware of the bank's dealings, and Comptroller knew that she had received a personal advantage or exhibited a "studied indifference" to evidence that she had been insulated from such knowledge). As the Court recognized in *Holtzman*, to allow high-ranking public servants to insulate themselves from awareness of conflicts of interest, or to allow them to shift blame to subordinates, "would inevitably undermine enforcement of this important statutory scheme 'to preserve the trust placed in public servants of the city . . . and to protect the integrity of government decision-making.'" *Id.* (citing Charter § 2600).

Even if respondent's attempt to shift blame to Longani could constitute a defense, which it does not, he was not prevented from raising it. During the DOI interview, which took place while respondent was in office and represented by his personal attorney, DOI's Commissioner told respondent that the Law Department allowed him, during that investigative interview, to reveal any communication that he had with Longani. Respondent did not do so. Instead, he told the

interviewers that he was aware that the Board had provided written guidance, he recalled that he had discussed it with NYPD, and he stated his belief that there was "more than one type of guidance provided" (Pet. Ex. 3 at 75-58). Notably, even though he was free to tell the interviewers everything that Longani had told him, respondent offered vague generalities about the specific advice that he supposedly relied upon.

The charges are sustained

The facts of this case are unique. Prior to respondent, it had been 50 years since another incumbent mayor ran for president; long before the Board existed (Tr. 137). But the legal principles are not unique. In response to an inquiry on respondent's behalf, the Board unequivocally advised that the proposed course of action would involve the use of City resources for a non-City purpose. Respondent elected to ignore that advice. As respondent correctly notes, it does not violate the Charter for a public servant to disagree with the Board (Resp. Mem. at 2-3, 4 n. 3). However, the Board acted within its authority and the advice that it provided is consistent with the Charter and its rules. Thus, the charges that respondent acted in conflict with his official duties and used City resources for a non-City purpose should be sustained.

FINDINGS AND CONCLUSIONS

1. Respondent violated section 2604(b)(2) of the Charter by acting in conflict with his official duties, as alleged in the petition.

2. Respondent violated section 2604(b)(2) of the Charter, pursuant to section 1-13(b) of the Board's rules, by using City resources for a non-City purpose, as alleged in the petition.

RECOMMENDATION

Petitioner seeks the maximum allowable fine of $775,000 ($25,000 x 31 campaign trips) for each occasion that respondent used City resources for a non-City purpose (Pet. Mem. at 19). *See* Charter § 2606(b) (authorizing fines up to $25,000 for violations of the conflicts of interest law). In addition, petitioner seeks reimbursement to the City for $319,794.20, the value of campaign-related travel expenses incurred by the security detail (Pet. Mem. at 16, 19). Respondent contends that fines are unauthorized because the alleged violation did not involve conduct prohibited by the Board's rules; the Board failed to comply with the statute's consultation requirement; reimbursement is not authorized; and he cannot be held personally liable (Resp. Mem. at 19-20, 35-36).

Because respondent's conduct violated the Board's rules, a fine may be imposed

Section 2606(d) of the Charter states:

> Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

Respondent emphasizes that "fairness to public servants dictates that no punishment be imposed for actions not previously identified as prohibited" (Resp. Mem. at 19), quoting Charter Revision Commission, *Report of the NYC Charter Revision Commission* (1988).

In support of his contention that his conduct violated no rule, respondent places great weight on one line in the May 2019 advisory letter (Resp. Mem. at 11, 19, 31). The Board began its discussion by stating, "The questions you have asked are ones of first impression for the Board, not clearly covered by any Board Rules or prior advisory opinions" (Pet. Ex. 2 at 3). That isolated quote ignores the Board's analysis and conclusion. After reviewing relevant provisions of the Charter and the Board's rules, and weighing competing considerations, the Board concluded, "Therefore, requiring the City to pay these additional costs for out-of-City travel incurred as part of the Mayor's campaign for non-City elective office would be a use of City resources for a non-City purpose within the meaning of Board Rules Section 1-13(b)" (*Id.* at 4).

Read in its entirety, the May 2019 advisory letter unequivocally states the Board's position that requiring the City to pay NYPD travel expenses for respondent's presidential campaign

violates Rule 1-13(b). Consistent with section 2606(d) of the Charter, the Board fairly identified the specific rule that prohibited respondent's proposed conduct. Though respondent may disagree with the Board's position, he cannot earnestly maintain that the Board did not identify the relevant rule or prohibited conduct. Thus, the Board may impose a fine.

Consultation requirement

Section 2606(b) of the Charter states:

> Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to twenty-five thousand dollars . . . .

Respondent contends that no fine can be imposed against him because petitioner failed to consult with the "head of the agency involved" or the Mayor (Resp. Mem. at 36). According to respondent, that requirement cannot be satisfied by consulting with him now, because he is no longer a public servant (*Id.* at 37). Respondent also claims that consultation with a current Mayor about a former Mayor would be "equivalent of inviting a fox into a henhouse" (*Id.* at 39 n. 19). Apparently, respondent takes the view that petitioner can never fine a former Mayor, Comptroller, or Borough President without consulting with them before they leave office. The law does not require such an illogical result, which would enable high-ranking elected officials to use the consultation requirement to evade fines. *See Jenkins v. Fieldbridge Assoc.,* 65 A.D.3d 169, 173 (2d Dep't 2009) (declining to interpret the Administrative Code in a manner that would lead to an absurd result).

The obvious design of the consultation requirement is to allow for input from the City official responsible for overseeing a public servant's work. Respondent acknowledges that agencies have a compelling interest in disciplining their employees (Resp. Mem. at 38). Though not required to adopt an agency's recommendation, the Board may wish to consider the agency's input before imposing a fine (*Id.*). When a Mayor, Comptroller, or Borough President violates the conflicts of interest laws, there is no higher-ranking person to consult. Like any other public servant, however, those elected officials may submit comments to the Board before imposition of any penalty. 53 RCNY § 2-03(h) (Pet. Mem. at 18 n. 14). *See Conflicts of Interest Bd. v. Markowitz*, Conflicts of Interest Bd. Case No. 2009-181 at 4 (July 21, 2011), *aff'g* OATH Index

No. 1400/11 (May 5, 2011) (consultation requirement "plainly not intended to include elected officials," such as a Borough President, who is not appointed by or subject to oversight by the Mayor); *Conflicts of Interest Bd. v. Holtzman*, Conflicts of Interest Bd. Case No. 93-121 at n. 3 (Apr. 3, 1996) (consultation requirement does not apply to Comptroller, an elected official who does not report to the Mayor or an agency head).

A $155,000 fine is appropriate

In support of its request for the maximum allowable fine, petitioner correctly contends that repayment alone would be inadequate because it would leave respondent in the same position that he would be in if he had followed the Board's advice from the outset (Pet. Mem. at 17-18). A substantial fine is necessary because respondent, as the City's highest-ranking official, should be held to a strict standard of ethical conduct. Respondent chose to ignore the Board's explicit guidance and violated the Charter and the Board's Rules on 31 occasions. It is also troubling that during his DOI interview respondent repeatedly attempted to shift blame to his lawyers and campaign staff, while failing to recognize his personal responsibility for following the law.

The penalties for high-level officials who violate the conflicts of interest laws range from approximately $1,000 to $7,500 per violation. *See Conflicts of Interest Bd. v. Katsorhis*, Conflicts of Interest Bd. Case No. 94-3451 (Sept. 17, 1998), *aff'g in part, modifying in part*, OATH Index No. 1531/97 (Feb. 12, 1998) ($84,000 fine imposed upon City Sheriff for 17 violations of the Charter, including repeatedly using City resources, including letterhead, for his private law practice, for an average penalty per violation of nearly $5,000); *Markowitz*, Conflicts of Interest Bd. Case No. 2009-181 ($20,000 fine imposed on Borough President who, despite the Board's warning, accepted free travel and accommodations for his wife on three trips to Europe); *Matter of Holtzman*, COIB Case No. 93-121 ($7,500 fine imposed for single violation of the Charter); *see also Conflicts of Interest Bd. v. Sanders* OATH Index No. 747/19 (Dec. 17, 2019), *adopted*, COIB Case No. 2017-110 (Dec. 8, 2020) ($15,000 fine imposed where former City Council Member violated conflicts of interest laws by accepting prohibited valuable gifts on 18 occasions); *Matter of Hynes*, COIB Case No. 2013-771 (Mar. 23, 2018) ($40,000 fine imposed for violating section 2604(b)(2) of the Charter and section 1-13(b) of the Board's rules, where District Attorney used City resources for a non-City purpose by using office computers, email, and personnel for his re-election campaign). Respondent, as the highest-ranking official in the City, repeatedly violated

the Charter and the Board's rules despite specific advice regarding prohibited conduct. Thus, a substantial fine is necessary.

However, petitioner has not shown that it is necessary or appropriate to impose the maximum available penalty of $25,000 for each violation. Unlike the respondents in *Katsorhis*, *Markowitz*, and *Holtzman*, who directly benefited from their violations, respondent received an indirect benefit. Imposing a significant penalty for each violation along with an order to repay $319,794.20 for the misused funds will be a powerful deterrent to other high-ranking elected officials. Contrary to petitioner's suggestion, respondent should not receive an enhanced penalty for "dragging out his repayment for years" (Pet. Mem. at 18). Though respondent ignored the Board's advice, he should not be unfairly penalized for exercising his right to trial. Thus, I recommend a fine of $5,000 for each violation, for a total fine of $155,000.

Repayment

Petitioner seeks an order directing respondent to repay the City $319,794.20 for the campaign-related travel expenses incurred by NYPD's security detail (Pet. Mem. at 16). Repayment is authorized by section 2606(b-1) of the Charter, which states:

> In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three.

Respondent argues that "in addition" means that reimbursement can only be required where a penalty is imposed and it is not a "standalone sanction." To support this argument respondent relies on language from the 2010 Charter Revision Commission's report discussing the rationale for increasing the maximum fine from $10,000 to $25,000. The Commission noted, "The increased fine, along with the disgorgement requirement, may also have a deterrent effect, and ensure that individuals will not benefit financially from activities that violate Chapter 68" (Resp. Mem. at 35, quoting Charter Revision Commission, *Final Report of the 2010 NYC Charter Revision Commission* at 33-34 (2010).[4]

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[4] www.nyc.gov/assets/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf.

Here, the Board has authority to impose a fine and one has been recommended. Thus, even under respondent's reading of the statute, the Board may order reimbursement. If no civil penalty or fine is imposed, repayment of the misused City resources can still be ordered. Petitioner correctly contends that repayment is different than a fine or penalty (Pet. Mem. at 17). A penalty is designed to punish a wrongdoer and deter future violations; repayment is designed to make the victim whole.

Respondent's interpretation of section 2606(b-1) of the Charter and the phrase "in addition to" is mistaken. "In addition to" does not mean that a fine is a prerequisite to reimbursement. On the contrary, "in addition to" is synonymous with "besides." *See Adelman v. Adelman*, 191 Misc.2d 281, 285 (Kings Co. Sup. Ct. 2002) (where a statute authorizes punitive damages "in addition" to pecuniary damages, court relied upon dictionary definitions to find that "in addition" means "besides" or "over and above" and rejected construction of the statute that would require pecuniary award as a prerequisite to punitive damages); *see also Mount Lemmon Fire Dist. v. Guido*, 139 S. Ct. 22, 25 (2018) (finding that "also" means "in addition" or "besides"). Repayment can be ordered even if the Board is unable or declines to impose a fine.

Respondent also argues that he cannot be held personally liable for repayment because he did not receive "any gain or benefit," the Board's May 2019 advice letter did not mention that he could be held personally liable, and NYPD never sent him a bill (Resp. Mem. at 25, 32, 36; Tr. 111-12, 136). Those arguments are similarly mistaken.

As petitioner notes, presidential campaigns are very expensive. Making the City pay for the travel costs incurred by his security team benefited respondent because it left him and his campaign with more money to spend elsewhere. Thus, respondent indirectly received a substantial benefit from the misuse of City resources.

In response to Longani's specific request ("[C]an the City pay all costs associated with providing" NYPD security for the Mayor and his family on a political trip?) the Board advised that all other costs associated with the security team's travel for respondent's presidential campaign, "must not be borne by the City. Rather, these costs must be paid or reimbursed by the Mayor's campaign committee" (Pet. Ex. 2 at 5-6). Seizing on the reference to the "campaign committee," respondent claims that he cannot be held personally liable for his security team's travel expenses because the letter does not refer to personal liability (Resp. Mem. at 20).

The Board's letter should not be construed as a waiver of its authority to seek repayment of City resources. Respondent ignored the Board's guidance and used City resources for a non-City purpose. He knew or should have known that one of the remedies for violating the Charter and the Board's Rules is that he would be required to repay the City. Requiring repayment from one who benefits from the misuse of City resources for a non-City purpose is consistent with the statute and Board's precedents. *See Conflicts of Interest Bd. v. Martinez*, OATH Index No. 1354/18 (Feb. 23, 2018), *adopted*, Conflicts of Interest Bd. Case No. 2016-162 (May 14, 2018) (school payroll secretary order to pay $10,000 fine and $2,040 in restitution for misappropriating school funds); *Conflicts of Interest Bd. v. Ponte*, Conflicts of Interest Bd. Case No. 2017-156 (July 12, 2018) (enforcement action brought against former Commissioner of Department of Correction ("DOC") who used his City vehicle for 30 personal trips that were unrelated to a City purpose; settlement reached where former Commissioner agreed to an $18,500 fine after reimbursing DOC for $1,043 for gasoline and $746 for tolls that were paid for with DOC-issued card and E-Z Pass); *Conflicts of Interest Bd. v. Brann*, Conflicts of Interest Bd. Case No. 2017-156b (Nov. 8, 2017) (enforcement action brought against former Deputy Commissioner of DOC who used her City vehicle for a non-City purpose on 16 occasions; settlement reached where former Deputy Commissioner agreed to a penalty of $6,000, to forfeit eight personal days valued at $5,824, and to reimburse DOC for the mileage incurred during the personal trips, valued at $493.67).

The Board issued a specific warning that respondent's conduct would constitute the use of City resources for a non-City purpose, prohibited by section 1-13(b) of the Board's Rules. Petitioner did not have to send respondent a bill before commencing an enforcement action. Rather, respondent should be held to the same ethical standard as a school payroll secretary or DOC official who misuses City resources for a non-City purpose.

In support of his argument that he should not be held personally liable, respondent relies on cases interpreting the City's Campaign Finance Act (Resp. Mem. at 20). *See e.g. Fields v. NYC Campaign Finance Bd.*, 81 A.D.3d 441, 446 (1st Dept 2011) (Campaign Finance Act does not require candidate to use personal assets to repay Campaign Finance Board for unspent funds). However, the cited subsection specifically refers to "excess funds" left over after an election. Admin. Code § 3-170(2)(c) ("candidate and committee shall *use such excess funds* to reimburse the fund") (emphasis added). Thus, courts have interpreted the express language of that statute to

limit liability to excess public matching funds received by a campaign. That statute has no application here.

Respondent also suggests that federal election law preempts the Board's authority to order repayment (Resp. Mem at 46 n. 23; ALJ Ex. 2 at ¶69, citing 52 U.S.C. § 30143(a)). In the May 2019 advisory letter, the Board acknowledged its lack of expertise in federal election law while stating that FEC regulations "appear instructive" and require a campaign or campaign traveler to repay a local government for the use of a private vehicle (ALJ Ex. 2 at ¶ 67; Pet. Ex. 2 at 3, citing 11 CFR § 100.93(e)(3)). Respondent points out that the regulation cited by the Board refers to non-commercial travel aboard government aircraft and a different regulation applies for commercial travel used by respondent's security detail (ALJ Ex. 2 at ¶¶ 67-68, citing 11 CFR § 100.93(a)(2)). According to respondent, the FEC does not require campaigns to reimburse state or local governments for the cost of security personnel who travel with a candidate and do not engage in political activity (Resp. Ex. 2 at 20, citing First General Counsel's Report, *In re Bush*, MUR 5135 at 8 (Mar. 28, 2002), available at www.fec.gov/data/legal/search/enforcement (finding that the State of Texas, then-Governor Bush, and campaign committees did not violate Federal Election Campaign Act ("FECA") by failing to report the value of security personnel provided by Texas during the 2000 primary and presidential campaign).

Rejecting a similar preemption argument, the Court of Appeals has held that FECA did not limit the Board's ability to enforce violations of the City's conflicts of interest laws. *Holtzman*, 91 N.Y.2d at 494. Even if federal campaign finance regulations do not require reporting or repayment of the travel expenses incurred by respondent's security detail, the Board has broad authority to seek repayment for "the value of any gain or benefit obtained by the respondent as a result of a violation." Charter § 2606(1-b). The Board has acted within that authority to seek reimbursement from respondent.

In sum, respondent received a substantial benefit by failing to reimburse the City for travel expenses incurred by NYPD security for his presidential campaign, in violation of the Charter and the Board's Rules. Accordingly, I recommend a $155,000 fine and an order directing respondent to repay the City $319,794.20.

Kevin F. Casey
Administrative Law Judge

May 4, 2023

SUBMITTED TO:

RICHARD BRIFFAULT
Chair

APPEARANCES:

JEFFREY TREMBLAY, ESQ.
CAROLYN LISA MILLER, ESQ.
Attorneys for Petitioner

LAURENCE LAUFER, ESQ.
Attorney for Respondent

AIDALA, BERTUNA & KAMINS PC
Attorneys for Respondent
BY: ARTHUR L. AIDALA, ESQ.