



June 6, 2013

The Honorable Andrew Cuomo  
Governor, State of New York  
Capitol Building  
Albany, NY 12224

**VIA EMAIL**

Dear Governor Cuomo:

In light of recent corruption scandals in Albany, we have appreciated the leadership you have provided with regard to identifying and advancing important solutions to cure the culture of corruption in our state government.

The program bills you have introduced – Program Bills 3, 4 and 5 – contain much-needed reforms in the areas of elections, campaign finance, and anti-corruption efforts, and are important markers for the way forward in realizing change in Albany. Citizens Union has reviewed elements of the legislation, and provides below recommendations and analysis of the legislation, as well as recommendations regarding independent expenditures. It is our hope that elements of the legislation will be contained in any final agreement that is passed before the end of the legislative session.

**I. Program Bill #3 – “The Public Trust Act”**

Citizens Union supports the legislation’s intent to create new penalties regarding public corruptions, make changes to the existing statutes regarding bribery and provision of immunity to witnesses, and provide new prohibitions for those who are convicted of corruption such as prohibiting such persons from serving as public servants, registered lobbyists, and receiving certain government benefits and contracts.

Citizens Union provides below its analysis of the legislation, with specific recommendations.

- a. Bribery provisions** – The legislation as drafted would change existing statute to no longer require proof of an agreement or understanding between parties in order to bring bribery charges, instead changing the standard to “intend to influence, in whole or in part, such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant.” The memorandum on this legislation states that this was intended to align New York State with federal law in this area. In order to fully realize the goals of the proposal, Citizens Union recommends the following:

- i. Given that federal law provides a more clear definition of “official duties,” than existing state law, the legislation should be amended to more clearly align with federal law in this area.
- ii. The legislation should align with the state’s gift ban to clarify what are permissible gifts that would not result in prosecution for bribery.

**b. Prohibitions on Receiving Certain Benefits/Contracts**

- i. Citizens Union supports that those convicted of public corruption should be prohibited from serving in civil office and registering as lobbyists with the state.
- ii. Citizens Union believes, however, that the prohibitions went too far in the area of benefits such as tax credits. These benefits should not be automatically denied to individuals convicted of corruption, as they relate to state programs meant to benefit numerous individuals, and would bring unintentional harm to other individuals like shareholders in residential coops whose tax benefits would be forfeited if one member has been convicted of corruption.
- iii. Citizens Union also believes that judicial discretion should be applied to the remaining disqualifications, such as contracting with the state, and should take into consideration the severity of the offense.

## **II. Program Bill #5 – Election Reform Proposals**

Citizens Union supports the following provisions of this legislation:

1. Pre-registration of 16 and 17 year olds;
2. Reducing signature requirements for candidates getting on the ballot;
3. Simplifying the ballot;
4. Allowing for affidavit ballots to be used if voters are in the right county but wrong polling place; and
5. Reducing to 10 days before the election the registration deadline.

In supporting the proposals, Citizens Union offers the following recommendations to strengthen the legislation with regard to simplifying the ballot:

- a. **The font size for names of candidates should be, as is practicable, twelve point or one-sixth of an inch or more rather than a nine point font as written in the current bill.**
- b. **Placement of political parties or independent bodies in relation to candidate’s names should be consistent for all candidates on the ballot.**
- c. **The State Board of Elections should be required to select colors for primary ballots that are consistent with public perceptions of any existing colors affiliated with such parties.** For instance, the Board should choose blue for the Democratic primary ballot; red for the Republican primary ballot; green for the Green Party primary ballot. Choosing different colors will only serve to confuse voters.

- d. Language should be added requiring boards of election to provide sample ballots online in advance of election day**, possibly in lieu of posting in print publications or in addition to reduced print requirements, as required by §7-118(3) of the Election Law, specifically including the following:
- i. Links to online ballots should be placed through a conspicuous link or icon on the home page** of all county boards of elections and the state board of elections websites;
  - ii. to the extent that county boards of elections provide poll site locators on their websites, they should be required to allow users to view a ballot that is tailored to their specific election and assembly district** based on entering their home address in the poll site finder;
  - iii. if counties do not have poll site locators, it should be specified that ballots should be listed by town or well-known political subdivisions** as opposed to just by election district or election contest to ensure that users are able to easily find their sample ballot; and
  - iv. that ballots made available online before the election conform to §7-128(1)**, which requires sample ballots be open to public inspection 28 days before an election, rather than one week before an election as currently required in §7-118(3) of the bill.

### **III. Strengthening Enforcement at the State Board of Elections**

Citizens Union has also reviewed the proposed appointment of an enforcement counsel in Program Bill #4 (note that we have not fully vetted all proposals in this program bill, though generally support reducing party registration deadlines).

We recognize that this proposal reflects recommendations made by Citizens Union in 2009 to professionalize the State Board of Elections. In seeking to strengthen the proposal, we recommend the following:

- a. In order to increase independence of the enforcement counsel, a nominations board should be created to recommend a set number of candidates from which the governor will select an enforcement counsel.** The nominations board should be composed of appointees from the governor and the four legislative leaders. The current proposal only provides that the senate confirm the governor's appointee.

Also regarding the proposal, Citizens Union strongly supports the ability of the enforcement counsel to move forward on any proceedings should there be gridlock at the State Board of Elections, as well as the ability for the counsel to take over investigations from local boards of election and appear in any county with the powers of a district attorney.

### **IV. Additional Proposals for Regulating Independent Expenditures**

Citizens Union has previously supported robust disclosure of independent expenditures for both express advocacy communications as required under existing state law and electioneering or issue-based communications that name a candidate that are made just prior to an election. Our existing positions are as follows:

- a. **The State should require disclosure of Independent Expenditures that contain words that are the functional equivalent of express advocacy.** Currently, New York State Board of Elections regulations require reporting for expenditures that contain the so-called “magic words” of express advocacy — words like “vote for,” “elect,” or “defeat.” Federal rules and numerous Supreme Court cases, however, recognized that even communications that do not use the magic words are the functional equivalent of express advocacy, and are appropriately regulated as such. Accordingly, to ensure that all express advocacy is disclosed, New York should adopt a definition of express advocacy that applies not only to communications that contain the magic words, but also to speech that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate, or to approve or reject any proposed ballot measure or referendum.
- b. **New York should require disclosure of such sham issue ads as Electioneering Communications because outside spenders frequently choose to run advertisements that avoid express advocacy but include appeals to vote for or against candidates made in the guise of “issue advocacy.”** Electioneering Communications are communications that refer to a clearly identifiable candidate; that are issued in the weeks immediately preceding an election; and that are targeted to the candidate’s electorate. At the federal level, Electioneering Communications include television and radio advertisements; in the more than two dozen states with similar laws, Electioneering Communications encompass those and various other media types.
- c. **New York should also require reporting of the identity of major donors who contributed more than \$10,000 to an entity making Independent Expenditures or Electioneering Communications within the year preceding the expenditure,** except that such a contribution need not be disclosed if the major donor expressly directs that the contribution not be used for Independent Expenditures or Electioneering Communications. Such a rule is necessary to allow voters to understand who is actually paying for election advertising nominally sponsored by groups with innocuous, uninformative names. To ensure that the funders of outside election spending are not able to easily disguise their identities simply by routing donations through one or more shell entities, New York should adopt a rule that “follows the money” to its original source. A useful model for such language can be found the federal DISCLOSE 2013 Act (H.R. 148). The source disclosure rule should also make clear that multiple contributions shall be treated as contributions from a single source if they are received from any person, persons, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled by the same person, persons or entity.
- d. **New York should adopt a rule, similar to the kind of “stand by your ad” disclaimers used in federal elections, for both Independent Expenditures and Electioneering Communications. Such a rule would require disclaimers identifying the top funders whose contributions pay for outside groups’ political spending, if their contributions surpass a specific dollar threshold or represent a percentage of the independent spenders’ budget above a specific threshold.** It is appropriate for the number of donors required to be listed in a given communication to vary depending on the medium used.

Given the need for additional means to regulate independent expenditures, Citizens Union provides below our expanded recommendations in this area, which reflect new research and thinking, looking at other models for regulation in other states.

- e. **Require disclosure of an independent expenditure by any person or political committee within 48 hours of a contract being made arranging for the expenditure.** West Virginia passed a law, H.B. 4647, doing this.
- f. **Require any entity making independent expenditures to acquire approval from its board of directors or organizational leadership body, and to report such expenditures to its shareholders or members and make the report public on its website.** Iowa passed in 2010 Senate File 2354 which prohibits an entity, including “without limitation” any corporation or union, from making an independent expenditure without authorization from a majority of its board or decision-making body. Disclosure of the independent expenditure further provides, “A certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the independent expenditure or use of treasury funds for the independent expenditure by resolution or other affirmative action within the calendar year when the independent expenditure was incurred.”

Citizens Union is currently considering means to clarify what constitutes coordination between candidates and independent committees, and will propose additional recommendations in this area before the end of the legislative session.

Given the urgency for action to cure the culture of corruption in state government, we hope that elements of these proposals – including Citizens Union’s recommendations for improvements – are contained in any final agreement that passes before the end of the legislative session. We remain committed to ensuring that our elected leaders address these important issues, and are available to discuss these and any other proposals with your office.

Sincerely,



Dick Dadey  
Executive Director

Cc. Larry Schwartz, Secretary to the Governor  
Mylan Denerstein, Counsel to the Governor  
Josh Vlasto, Chief of Staff  
Jeremy Creelan, Special Counsel for Public Integrity and Ethics Reform