



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the Senate Standing Committee on Ethics on
Draft Commission on Governmental Ethics bill
Draft Disclosure by Public Officials bill
S744A – Pay-to-Play Limits and Disclosure of Lobbyist-Legislator Relationships
S743A – Campaign Account Personal-Use and Disposal Restrictions
May 28, 2009

Good morning Chair Sampson and other members of the Senate Standing Committee on Ethics. My name is DeNora Getachew, and I am the director of public policy and legislative counsel for Citizens Union of the City of New York. Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. I thank you for holding this hearing and giving us the opportunity to present Citizens Union's views on this important topic.

New York's ethics laws are in a state of major disrepair and if left unattended threaten to further the public perception that elected officials in New York State are not only beholden to special interest groups but, even worse, are beyond the jurisdiction of the law's current enforcement authority – meaning these individuals can betray the public's trust and not be held accountable for their actions. We applaud the Senate for seizing on this critical opportunity to engage the public in a discussion about how best to reform the state's ethics laws. State legislative hearings on pending bills is unprecedented, and is a much-needed change that we applaud the Senate for embracing. Citizens Union today testifies in philosophical support of the package of ethics bills being considered by the committee today and I will address each bill in turn below.

Draft Bill – Commission on Governmental Ethics

New York's ethics oversight structure is antiquated and in need of immediate and meaningful reform, despite recent reforms to the law in 2007. The Inspector General's release of his report about the mishandling of the Commission on Public Integrity's investigation of the "Troopergate," only brought to light a long dormant issue that continues to plague the public's perception about the lack of effective state ethics oversight. Moreover, the string of questionable ethics issues and the long-pending vacancy in the Legislative Ethics Commission only further necessitates immediate action to revamp state ethics oversight.

The current bifurcated system, where there is the Commission on Public Integrity (CPI) comprised mostly of gubernatorial appointees that oversees the executive branch, and a separate Legislative Ethics Commission (LEC) comprised only of legislative appointees that oversees the legislative branch, is the minority approach in ethics oversight nationwide. Instead like the majority of states nationwide – twenty-nine to be exact – New York must reform its ethics oversight to ensure that the body is truly independent and that both branches of government are overseen equally by the law.

Citizens Union supports the approach behind the proposed bill sponsored by Senator Squadron, which is very similar to a proposal assembled by the Citizens Union, Common Cause, the League of Women Voters and the New York Public Interest Research Group, because it would eliminate the CPI and LEC. The bill would replace these structures with a new, unified ethics oversight entity, the Commission on Governmental Ethics (CGE) which would have jurisdiction for monitoring and enforcing the state's ethics laws for both the legislative and executive branches. The CGE's appointment structure wherein the nine members would be appointed by the governor, the legislative leaders, the comptroller and attorney general, with no one elected official controlling a majority of appointments, would more fairly balance the interests of all parties subject to oversight by the CGE and hopefully address any separation of powers arguments put forth in opposition to the bill.

We support the bill's requirement that either the chair or vice-chair of the CGE be selected from among the appointees of the legislative branch because it will ensure that both branches are equally represented in the CGE's leadership. Citizens Union also strongly supports the bill's approach to empower the CGE to enforce Article 14 of the election law relating to campaign finance. We believe that it is critical that there be only one entity charged with evaluating the nexus of all intersections of money and state politics, so it makes sense that the CGE will handle ethics oversight for all state elected officials, regulation of lobbyists, and campaign finance enforcement. Finally, we support the requirement that not only the outcome, but also the transcript of the proceeding will be required to be publicly disclosed. This requirement will allow the public to fully examine the record of the proceedings and hold the CGE accountable for its findings.

Citizens Union proposes an amendment to the current version of the bill to ensure that lobbyists registered in New York, in addition to lobbyists registered in other states or at the federal level which are already covered by the bill, should not be allowed to be appointed to the CGE. We have other technical amendments to this and the other bills that we would be happy to forward to the Senators and staff later today.

Draft Bill – Disclosure by Public Officials

Citizens Union supports in principle the draft disclosure by public officials bill sponsored by Senator Squadron. Assuming no change to combine legislative and executive ethics, the bill would require the CPI and LEC to conduct random audits of financial disclosure forms required to be filed by public officers. The bill would also require public officers who retain, employ, designate or otherwise do business with a lobbyist to file a report with the CPI within thirty days of the start of the business dealings. Such report would require the public officer to list his or her own information, the lobbyist's contact information, a description of the general subject of the transactions between the public officer and lobbyist, and the compensation, including expenses, to be paid for the business dealings.

Citizens Union recommends that if the version of the bill that will ultimately be introduced will keep legislative ethics oversight separate from executive ethics then the bill must be amended to ensure that there are the same penalties for legislators' failure to respond to notice of failure to file a financial disclosure statement. As this bill is currently drafted, section two includes violations for those subject to CPI, not the legislative ethics commission.

Citizens Union has a few technical amendments to suggest, which it will forward to the committee.

S.744-A – “Pay-to-Play” Limits and Disclosure of Lobbyist-Legislator Relationships

Citizens Union has consistently urged for substantial restrictions on those who do business with the state – both contractors and lobbyists. The lack of “pay-to-play” restrictions at the state level, despite the countless pay-to-play scandals, has created an appearance of impropriety that Citizens Union believes directly affects the public’s perception of state elected officials and how they conduct business. We commend the senate for taking steps to reduce the undue influence of lobbyists and those who do business with the state when their lobbying is coupled with campaign contributions.

Citizens Union supports the goal of A.744-A, sponsored by Senator Krueger, to reduce contribution limits for lobbyists, state contractors, and certain business entities, as well as the senior managerial employees and immediate family of such persons or entities.

In particular, Citizens Union supports the bill’s efforts to limit business entity contributions by restricting such entities, which includes those who own at least ten percent of a business entity, any person in a managerial capacity in a business entity or immediate family member of such entity, from making contributions above \$500 dollars for statewide office and \$4,000 in the aggregate per election for political committees. While this is an encouraging step in the right direction with respect to reducing the influence of such business entities, Citizens Union recommends that the effort go further to outright ban contributions from these institutional entities, which includes business corporations, limited liability companies, and partnerships, among other entities to participating candidates when the state eventually adopts some form of public financing.

Citizens Union strongly supports limiting the contribution limits for lobbyists and state contractors to \$500 for statewide office, \$350 for senate and \$250 for assembly. We believe that these limits strike the appropriate balance in limiting the perception of undue influence associated with those who do business with the state with the ability of those persons to contribute and express their voice through political speech. We are concerned, however, that a state contract limit of \$50,000 may be too low of a threshold for the pay-to-play limits, especially when in a comparable system at the city level, the contract threshold is \$100,000.

The bill provides that those with state contracts cannot contribute for twelve months after a contract bid or proposal until twelve months after completion of contract or until the elected official’s term expires – whichever is later. While Citizens Union is not as familiar with the state contracting timeframes, the proposed timeframes may pose an unreasonably long restriction on the contribution ability of the state contractor, which may not be as narrowly tailored as may be necessary to obviate the requisite legal hurdles. In the New York City system, contract bid or proposals are restricted from submission of bid until twelve months after the bid and for approved contracts until the contract is completed. Citizens Union recommends the legislature further study this issue in order to ensure that the current timeframes are no longer than necessary.

The bill requires lobbyists, those with ten percent ownership interest in a business entity, any person in senior managerial capacity, immediate family members of such persons, or any political committee established by such persons to file a report with the state board of elections within seven days of a contribution. Whereas, the new section 14-132 would require government contractors to report to the state board of elections within seven days of the contribution if the contribution is within thirty-six days of the election or if the contribution is made at any other time within thirty-six days of the contribution. Citizens Union supports the goal of these provisions – to ensure adequate disclosure of these

contributions – but we recommend that you conform the provisions so that the same standard applies regardless of the whether a contributor is a lobbyist or a state contractor.

We also support the bill's restriction that lobbyists, state contractors and their near relatives cannot be appointed to a state public board or commission which has authority over awarding an award. While this provision may narrow the field of candidates eligible to serve on commissions or boards, we believe it serves the greater public purpose by eliminating any conflicts or potential conflicts of interest.

Finally, Citizens Union will forward its proposed technical amendments to the current bill draft to the committee.

S.743-A - Personal Use & Disposal Requirements

Citizens Union supports S.743-A sponsored by Senator Krueger because we believe it is necessary to clearly define how candidates can expend personal contributions. The current statutory language is very weak and leaves too much room for candidate's subjective determinations of permissible expenditures. Creating a comprehensive list of permissible and impermissible campaign contributions will establish the parameters for permissible conduct.

Citizens Union also philosophically supports the concept of requiring candidates or political committees to dispose of their excess campaign contributions within two years after the later of (a) the end of the individual's most recent term of office; or (b) the date of the election in which the candidate was last field by a committee. The bill goes on to enumerate the manner in which the candidate can dispose of such funds. Specifically the bill would require candidates to:

1. return pro rata portion to each contributor;
2. donate the funds to charitable organization(s) that meet 501(c)(3) requirements;
3. donate to state university;
4. donate to state's general fund;
5. transfer to a political party committee registered with state board; or
6. contribute to a candidate or political committee as long as don't exceed contribution limits.

While Citizens Union is not prepared to take a definitive position on the proposed options at this time, we would far prefer that the campaign funds be disposed of via options 1 -4. We acknowledge that the goal of allowing a candidate to share its excess funds with the political party or another candidate may be a laudable purpose, but without significant restrictions on intra-party transfers to put meaningful limits in place for such transfers, we think it is more appropriate for such funds go to a more public purpose.

In conclusion, Citizens Union supports in concept, with a few amendments as noted in the testimony, the ethics bills being considered by the committee to revamp ethics oversight, eliminate pay-to-play issues, clarify what constitutes the personal use of campaign funds and require auditing of financial disclosures by public officials. We look forward to working with the Senate to incorporate our proposed amendments to strengthen the bills' and to enact these bills in to law.

Chair Sampson, Citizens Union again thanks you for holding this important hearing and for making it possible for us to express our views.