



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council Governmental Operations Committee on Legislation and a Resolution Related to Campaign Finance Reform

April 25, 2014

Good afternoon Chair Kallos and members of the Governmental Operations committee. My name is Alex Camarda. I am the Director of Public Policy & Advocacy at Citizens Union. Citizens Union of the City of New York is an independent, nonpartisan, civic organization of members who promote good government and advance political reform in the city and state of New York.

In an age of growing removal of restrictions on who can give and how much money can be contributed to political campaigns, Citizens Union strongly supports in robust disclosure of campaign contributions and spending. We believe it is vital to provide meaningful information to voters about sources of funding to candidates or independent spenders. We further support providing telling and informative “paid for by” disclaimers in campaign ads that effectively communicate the organization, candidate or source behind the communication. We think that campaign donor information should be made openly known , publicly available, and in an easily accessible way that is meaningful and informative and allows for knowledge and analysis by the press, advocacy organizations and the general public.

Both Intro No. 6 and No. 148 seek to provide needed information to New York City voters. We support Int. No. 6 believing that candidates, many of whom use taxpayer funds, should not be able to anonymously send mailers or air ads, while disclaimers for independent expenditures who use no public funds require identification of who is issuing it.

While Citizens Union supports the intent behind Int. No. 148 requiring donor disclosure within campaign communications like advertisements, the technique that is used to accomplish this effectively is very important. We neither support nor oppose 148 in its current form, but would like to present a number of issues that need to be addressed before this bill moves forward and we feel comfortable supporting it.

The critical question for us is how to provide effectively needed donor disclosure without burdening the means of communication with requirements that make the advertisement more about the disclaimer and less about the content of the message, and risking infringement on constitutional rights protected by the first amendment. The correct balance needs to be struck between needed voter information and the right to participate in political campaigns.

Agree with it or not, the U.S. Supreme Court has made its views well-known that influencing elections through communication is not corrupting unless there is perception of or evidence of a quid pro quo. Attempts to limit speech during a campaign are viewed increasingly as suspect unless it meets that defined but open to interpretation standard.

Donor disclosure is beneficial in that voters gain better insight into who is behind the ads as they are delivered. Full and strong disclosure of donors may also contribute to more civil campaign communications because donors will be unlikely to put their names to more negative advertising. However, top donor disclosure in ads as proposed by Intro 148 may be both cumbersome and have minimal revelatory impact given that the donors often are entities with names that may not mean much to voters. It also may shift the focus of ads from the message to the source which makes speech more burdensome particularly when it consumes substantial space or time in ads. More descriptive disclaimers with information about how to access detailed information about all donors to the independent expender may be a better technique.

Below are our detailed thoughts on the proposed legislation and feedback.

Int. No. 148 (Lander)

The *Citizens United* and other decisions by the U.S. Supreme Court in recent years have given way to a dramatic increase in outside spending. In New York City during the 2013 elections, \$15.9 million was spent by independent groups, including \$6.3 million in Council races alone¹, a marked increase from previous election cycles of 2005 and 2009.

Citizens Union, because of its support for robust donor disclosure of campaign donors and spending pushed for, and supported, the charter amendment approved by the voters in 2010 that required independent spending be disclosed in addition to contributions above \$1,000 if spenders made \$5,000 or more in expenditures.

The Campaign Finance Board has done an excellent job presenting information about independent spenders on its website. The CFB has placed prominently on its homepage a banner that states, "See the Impact of Independent Expenditures on 2013 races."² This provides a race-by-race account of all independent spending by every independent spender for each election as compared to candidate spending with links to each independent spender's profile page. Each independent spenders' profile page displays the name, address, website, executive officers and spending for and against each candidate.³ Clicking on the total

¹ See NYC Campaign Finance Board, Independent Expenditure Summary. Available at: http://www.nycfb.info/VSAppls/WebForm_Finance_Independent.aspx?as_election_cycle=2013

² See <http://www.nycfb.info/>

³ See for example, independent spending for each primary election at http://www.nycfb.info/PDF/IE_Candidate_Spending_Charts_Primary.pdf

expenditures link for an independent spender provides a further listing of every contributor which can be sorted and downloaded to a spreadsheet for further analysis.

Int. No. 148 seeks to make available some of this online information about independent spenders in the campaign communication itself. Currently, independent communications are already delivered to voters with a “paid for by” message which names only the organization making the ad. These disclaimers are not very revealing to voters because independent spenders often have innocuous and generic sounding names that reveal little about their mission or financial backers. Below were the top 5 independent spenders in the 2013 NYC elections.

Top Independent Spenders in the 2013 NYC Elections	Expenditures in 2013 Elections
Jobs For Growth	\$4,901,830
United for the Future	\$3,465,849
New York Progress	\$1,044,742
NYCN4S	\$856,762
Progress NYC	\$632,508

If each of these independent spenders were to disclose its top 5 donors and executive officers as required in print mediums by Int. No. 148, the following information would be disclosed:

Name of Independent Spender	Expenditures in 2013 Elections	Top 5 Donors in 2013 Elections (in all ads except those less than 15 seconds)	Top Executives (required in print ads)
Jobs For Growth	\$4,901,830	1. Jamestown, L.P. 2. 7 World Trade Center II, LLC 3. AGS Ventures II, LLC 4. BFP One Liberty Plaza Co., LLC 5. Brookfield Properties One WFC Co., LLC <i>Note: donors 2-10 gave the same amount to Jobs For Growth. Only 2-5 are listed.</i>	1. Rob Speyer 2. Steven Spinola 3. William Auberbach
United for the Future	\$3,465,849	1. Educators United 2. UFT Cope 3. American Federation of Teachers	1. Paul Egan

Name of Independent Spender	Expenditures in 2013 Elections	Top 5 Donors in 2013 Elections (in all ads except those less than 15 seconds)	Top Executives (required in print ads)
		4. UFT Cope Local 5. <i>No 5th donor</i>	
New York Progress	\$1,044,742	1. Hotel Workers for a Stronger Middle Class 2. United Federation of Teachers COPE 3. 32 BJ SEIU Empire State Pac 4. Carpenters and Joiners of America PAC 5. New Yorkers Together	1. Kevin Curtin among many others listed as Director
NYCN4S	\$856,762	1. CWA, Local 1180 2. Central Parker Real Estate Consulting, LLC 3. Hugo Neu Recycling, LLC 4. Wendy Neu 5. Stephen Nislick	1. Arthur Cheliotos 2. Stephen Nislick 3. Wendy Neu
Progress NYC	\$632,508	1. 1199 SEIU NYS Political Action Fund 2. Mason Tenders District Council 3. NYC District Council of Carpenters PAC 4. United Federation of Teachers COPE 5. District Council #9 PAC <i>Note: donors 6 and 7 gave the same amount District Council #9 PAC.</i>	1. Matthew Rey

As shown on the chart above, donor disclosure is revealing in certain instances but not in others. Some voters may be able to get a sense of who is behind the ads. For instance, the listing of donors reveals to some degree that educational interests, particularly unions are behind United for the Future. However, often donors are obscured by acronym-laden LLCs and PACs that won't likely mean much to the typical voter if rattled off in succession at the end of

an ad. Even individual's names may not mean much to voters without further information. The value of the names of donors to voters must be weighed against the burden on freedom of speech of the independent spender. The lengthier disclaimers in campaign communications could consume a significant portion of campaign ads, and the cost could be a significant burden which may raise issues of infringement on freedom of speech.

We believe what is most important is that full and meaningful information about donors is easily accessible and well presented to the public so the media, advocacy groups and campaigns' own opposition research can provide fuller context and explanatory information through sources other than the ads to voters. An ad may not be the best technique for providing meaningful and effective voter information about the background and interest of donors to independent spenders. Donor disclosure in ads needs to avoid resulting in the unintended consequence of chilling speech during campaigns.

It may be preferable, for example, to instead to include in campaign ads with the current "paid for by" disclaimer additional language specifying a precise *url* that links directly to profile information about the independent spender and its top donors either on the Campaign Finance Board's website and/or an Internet donor disclosure website or page created by the independent spender on their existing or newly established website. This requirement exists in other donor disclosure legislation introduced in other states, including California.⁴

Beyond the major issue of whether donors should be disclosed within the ad, Citizens Union makes the following recommendations pertaining to Int. No. 148:

- 1) We support the intent of section 1(b) of the bill to pierce the veil and ensure that independent spenders disclose their original individual named donors to the Campaign Finance Board. This is critically important as we have seen how the organization Common Sense Principles, which sent issue-based mailers to voters in competitive New York State senate districts in previous election cycles, shielded its donors from disclosure of its lobbying activity to the Joint Commission on Public Ethics (JCOPE).⁵ Instead of disclosing its actual donors, Common Sense Principles instead disclosed one donor: a limited liability corporation (LLC) named the Center for Common Sense, LLC.⁶

⁴ See SB 52, section 12. *A committee that has paid for political advertisements and that has received cumulative contributions that meet or exceed the disclosure threshold shall establish and maintain a disclosure Internet Web site. If the committee has an Internet Web site, that site may also serve as the disclosure Internet Web site. The homepage of the disclosure Internet Web site and any landing pages that visitors are directed to on the Internet Web site and any other Internet Web sites maintained by by the committee shall include a disclosure area...* Available at: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0051-0100/sb_52_bill_20130516_amended_sen_v95.pdf

⁵ See <http://www.commonsenseprinciples.com/>

⁶ Veilkind, Jimmy. "Drumroll: Common Sense Principles releases its donors," *Capitol Confidential*. February 6, 2013. Available at: <http://blog.timesunion.com/capitol/archives/177691/drumroll-common-sense-principles-lists-its-donor/>

While we support the intent of this section, the language seems to suggest an individual or entity would have to register as an independent spender because it contributed to one or, because it is perceived to have contributed to one, for the purpose of independent campaign expenditures. This we do not support.

We suggest the language below instead:

Amend subparagraph b of subsection 15 of section 1052 of the New York City Charter to read:

(b) Every individual and entity that makes independent expenditures aggregating one thousand dollars or more in support of or in opposition to any candidate in any covered election, or in support of or in opposition to any municipal ballot proposal or referendum, shall be required to disclose such expenditure to the board. In addition, every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more in support of or in opposition to any candidate in any covered election shall disclose the identity of any entity that contributed to the entity reporting the expenditure, and any individual who, in the twelve months preceding the covered election, contributed one thousand dollars or more to the entity reporting the expenditure. In addition, every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more in support of or in opposition to any candidate in any covered election shall ADDITIONALLY disclose the identity of any entity that INDIRECTLY OR DIRECTLY TRANSFERS to the entity reporting the expenditure, and any individual who, in the twelve months preceding the covered election, INDIRECTLY OR DIRECTLY TRANSFERS one thousand dollars or more to the entity reporting the expenditure. The campaign finance board shall promulgate rules for determining what shall be deemed to be a transfer for the purpose of making independent expenditures under this subparagraph.

- 2) The United States Supreme Court has upheld donor disclosure⁷ (outside of the context of campaign communications) provided there is no evidence that shows donors for the organization engaging in campaign communications have been subject to harassment, threats, reprisals or harm.⁸ **The legislation would therefore benefit from a process by which organizations could petition the Campaign Finance Board to exempt disclosure from ads individual donors or donors to the entire organization.** New York State has a

⁷ The majority decision in *Citizens United* states there is a governmental interest in providing the electorate with information about election-related spending sources, that disclaimers in ads and disclosure requirements are valid, that they make clear ads are not from candidates, that disclaimers in one medium but not another are not problematic, that disclosure can cover issue-based or so-called electioneering ads, and that proof of chilling speech is needed to make a case against disclosure. See.

⁸ See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 LRRM 2961 (2010) [2010 BL 15350]. "*The Buckley Court explained that disclosure can be justified by a governmental interest in providing 'the electorate with information' about election-related spending sources. 424 U. S., at 66...However, the Court acknowledged that as-applied challenges would be available if a group could show a 'reasonable probability' that disclosing its contributors' names would 'subject them to threats, harassment, or reprisals from either Government officials or private parties.'*" and "*Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make § 201 unconstitutional as applied.*"

similar donor exemption process at the state level for disclosure of donor of lobbying organizations.⁹

- 3) **The bill should exempt from disclosure donors to 501(c)(4) organizations who indicate their donation should not be used for independent expenditure, but rather for public education or lobbying activities.** This compartmentalization of funds is permitted in federal and state election law.
- 4) **The bill should require in television and radio communications the disclaimer in a similar pitch and tone as the ad itself in addition to the requirement the message be “clearly spoken.”** As anyone who has listened to speed readers clearly deliver disclaimers at the end of automobile commercials, requiring the same pitch and tone in addition to the message being clearly spoken is equally important, if not more so. This requirement exists in other donor disclosure legislation introduced in other states, including California.¹⁰ It should be added to any disclaimer legislation whether it is inclusive of top donors or not.
- 5) **Though we have concerns about burdensome donor disclosure in the ads themselves, if donor disclosure in ads is to be enacted, a mechanism needs to be put in place to indicate to independent spenders which donors to disclose in the event more than five donors have given the top five contributions in dollars.** As shown on the chart above, Jobs For New York’s second through tenth highest contributors gave the same contributions. Progress New York had three donors tied for the 5th largest contributor.
- 6) **Though we have concerns about burdensome donor disclosure in the ads themselves, if donor disclosure in ads is to be enacted, a mechanism needs to be put in place when numerous people are effectively the executive director of the independent entity to determine which person should be named in print communications.** Progress New York, for example, has 10 Directors with none clearly named as the Executive Director.

The complications of addressing recommendations numbers 5 and 6 point to the hurdles that must be crossed, which makes full and explicit donor disclosure online more appealing and workable.

⁹ See NYS Legislative Law, Article 1-A, section 1-h(c)(4)(ii). *This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.*

¹⁰ See SB 52, section 9(a). *A political advertisement that is a radio advertisement or prerecorded telephonic message shall include a disclosure at the end of the advertisement read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement...* Available at: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0051-0100/sb_52_bill_20130516_amended_sen_v95.pdf

Int. No. 6 (Garodnick)

Citizens Union strongly supports this legislation as written believing the loophole allowing candidates to send communications to voters anonymously should have been closed long ago. During the 2013 campaign, anonymous communications were made by candidates for comptroller, public advocate and city council. This legislation will ensure for future elections all candidate communications disclose the candidate who is behind them with a “paid for by” disclaimer that already applies to independent spending.

Resolution 75 (Williams)

Citizens Union has advocated for campaign finance reform at the state level for many years and supports the intent of this resolution, which calls on the state legislature to establish a public matching system for its elections. However, we believe the Council should pass a resolution calling on the legislature to pass public campaign financing along with other needed elements of reform including: 1) lower contribution limits for all candidates, participating and non-participating; 2) robust disclosure of independent expenditures and other campaign contributions and spending; 3) reductions in contributions to party committees and transfers by party committees; 4) stronger enforcement, ideally in the form of an independent entity outside the Board of Elections as is the case with the city’s Campaign Finance Board; and 5) restrictions on personal use of campaign funds. We urge the Council to modify its resolution to express its support for principles of campaign finance reform rather than any one particular bill. Bills introduced by Senate Co-President Klein and Governor Cuomo, like the Silver bill, improve the current system in New York State. We believe the Council’s resolution would carry more weight in the near term and the future if it expressed support for desired campaign finance principles rather than one specific piece of campaign finance reform legislation.

I welcome any questions you may have.