CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the Office of Attorney General Eric Schneiderman on Proposed Regulations related to Disclosure Requirements for Non-Profit Organizations

January 15, 2013

Good morning distinguished staff of the Office of Attorney General Eric Schneiderman. 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.

Citizens Union commends Attorney General Eric Schneiderman for exercising his authority to oversee charities conducting business in New York to shed light on spending by lobbying entities that too often have engaged in electoral communications under the guise of issue advocacy. The undisclosed contributions to and political spending by 501c4 organizations is a growing national trend that has transformed campaign funding across the country and impacted New York congressional races and state legislative and local contests. Citizens Union appreciates the many elected officials and governmental entities in New York that have actively sought to promote transparency and disclosure in response to the tidal wave of undisclosed money entering our politics because of the permissive environment established by the *Citizens United* decision.

Citizens Union has worked with government to ensure transparency in campaign spending. In 2010, our advocacy resulted in New York City requiring disclosure of independent expenditures and contributors to political actors engaged in such spending. In 2011, we worked with Governor Cuomo to establish provisions in the Public Integrity Reform Act (PIRA), more commonly known as ethics reform, to ensure that lobbying entities that spend$50,000 and 3 percent of their budgets on lobbying in New York must disclose their donors who contribute over $5,000. In 2012, we provided recommendations on the rules pursuant to PIRA to the Joint Commission on Public Ethics (JCOPE) securing the treatment of certain contributions to lobbying organizations as emanating from a single source and helped craft carveout provisions for those facing threats, harm or reprisal from disclosure. We have additionally made recommendations on streamlining lobbying reporting and revamping disclosure databases to the New York City Lobbying Commission whose report to the New York City Council for legislative action is pending.

Lastly, Citizens Union filed a complaint with the Attorney General in November 2012 regarding Common Sense Principles' failure to register with the Charities Bureau. We had hoped the letter would result in more information being known about this political actor; the release of these draft rules by Attorney General Schneiderman exceeded our expectation in filing the complaint in that his response comprehensively addressed the lack of disclosure by charities engaging in electioneering masquerading as lobbying. Testimonies and materials related to Citizens Union's work on this issue are attached for your review in finalizing these rules.

Positive Elements of the Proposed Regulations

1) Protects Donors to Charities and Informs Voter Choice

The Attorney General's issuance of the proposed regulation simultaneously protects donors while ensuring a better informed electorate. By requiring disclosure of donors who contribute to organizations engaging in express advocacy and electioneering, donors will likely be made more aware by such organizations that their contributions may be used for such activity causing the disclosure of their names, address and potentially employers. Consequently donors will be more informed about how their contributions will be used and can direct their funds as they see fit to public education, service-oriented work or other more traditional forms of charitable, or to political communications if that is their preference.

New Yorkers going to the polls will also have a better sense of who is funding the election communications they receive, and will be able to make more informed decisions when voting knowing the funding sources for the political messages they receive. The Attorney General's rule, therefore, benefits the public good by creating an electorate that knows the source of the information they consider in choosing candidates.

2) Establishes Reasonable Thresholds that Foster Transparency

Disclosure Triggers: More than $10,000 in spending and $100 or more for donations
The proposed rule requires disclosure of donors contributing $100 or more to any 501c4 organization spending more than $10,000 in paid express advocacy or electioneering communications. The $10,000 threshold in campaign spending for disclosure of organizations' donors is consistent with triggers in the Disclose Act in the U.S. Congress.[1] The New York City Campaign Finance Board (CFB) requires disclosure of donors by entities independently spending even less, $5,000 or more in the year preceding an

[1]See U.S. Disclose Act, H.R. 5175 available at: http://www.thomas.gov/cgi-bin/query/F?c111:4:./temp/~c111Wc8fTZ:e28336:

election.[2] The New York State Board of Elections requires disclosure of donors (contributing $99 or more) by political committees spending just $1,000 or more during the calendar year, and disclosure to local Boards is required for any spending albeit only for both only express advocacy communications are reported. The $100 threshold for disclosure of donors is consistent with that for disclosure of contributions to political committees in New York State, which Election Law requires itemized disclosure of in periodic campaign filings when contributions exceed $99.[3]

Six-month window for electioneering communications

The proposed window for capturing paid electioneering communications by 501c4 charitable organizations is six months, longer than the federal and CFB windows of 30 days before a primary and sixty days before a general election. Virtually no state legislative or local campaign, let alone a statewide race, is thirty or sixty days so a longer window is warranted. However, the proposed reporting window of six-months may be too long. Given the uncertainty around which month the primary will be held in for state and local contests, a six month pre-election period may also be too lengthy if the primary is moved to June. That would capture spending and contributions dating back nearly one year from a general election that may well be genuinely intended to impact legislation rather than influence the outcome of a primary election. This is particularly concerning because the entities reporting under this regulation to the Charities Bureau will likely largely be engaged in electioneering communications, as those engaged in express advocacy must already respond to the more comprehensive reporting required by the State Board of Elections (which requires the disclosure of expenditures above $50 and contributions to political committees above $99 engaged in express advocacy communications) and therefore appear to be exempt from reporting those expenditures under this rule.[4]

Clear Separation of Funds and Ease of Administration

Another laudatory provision of this rule is that it allows for 501c4s to cleanly distinguish between political and non-political funds by creating separate accounts for each. This also enables organizations to communicate to donors that funds can be earmarked for non-political purposes, thereby allowing for their deposit in the non-political funds account and exempting the donor from disclosure under this rule.

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[2] See NYC CFB Rule 13-02(d)(1).

[3] See NYS Election Law, 14-102. "…receipts and contributions aggregating not more than ninety-nine dollars, from any one contributor need not be specifically accounted for by separate items in said statements…"

[4] The State Board of Elections requires entities to register as political committees and report contributions and expenditures when engaged in express advocacy communications exceeding $1000 in value, and to local boards when spending $1000 or less. See Election Law 14-102(4), "Any committee which is required to file statements with any board of elections pursuant to this article and which raises or spends or expects to raise or spend more than one thousand dollars in any calendar year shall file all such statements pursuant to the electronic reporting system prescribed by the state board of elections…"

Vital Information about Election-Related Expenditures

Lastly, the Attorney General's proposed rule requires disclosure of vital information pertaining to election-related expenditures, which includes not only the targeted candidate, referendum or political party of the expenditure, but also whether the expenditure is in support or opposition. Disclosure of expenditures also importantly requires the purpose of the expenditure be clearly identified.

Recommendations for Improvement/Clarification

1) **Integrate the Electioneering Disclosure Schedule data into the NYOpenGov't.com platform on the OAG site.**

Any rule or law requiring disclosure is only as effective as the mechanism through which the information is made transparent. While the Charities Bureau currently makes information known about 501c4s through PDF disclosures of annual reports, Citizens Union recommends that the Electioneering Disclosure Schedule envisioned by the regulation be integrated within the OAG's own NYOpenGov't.com website, and be made available for download as an Excel or other database file so it can be analyzed by outside entities.

Disclosure will be further enhanced by requiring uniformity and standardization in the submission of information. The use of abbreviations, acronyms and shorthand by filers of election-related expenditure information with the SBOE is a problem that has long frustrated disclosure by stymieing database searches. In any guidance for filing issued by the Charities Bureau, non-profit organizations should be required to provide full and complete names of donors, recipients of spending and candidates targeted. The rules should additionally require the reporting of the subjects of electioneering or express advocacy communications with drop down menus conforming to topics on the JCOPE lobbying registration form provided in any electronic interface for filers to provide information. This will also have the added benefit of enabling comparisons between JCOPE and the OAG to ensure proper accurate and comprehensive filing with both entities.

2) **Clarify the exemption to disclosure when information is reported to another government agency**

The OAG regulation does not require the itemized reporting of expenditures or contributions if the information is already reported to another government agency. Clarity is needed as to which information needs to be reported under the regulation when it is mostly but not entirely reported to another agency. For example, a 501c4 may report all of its lobbying expenditures and donors to the Joint Commission on Public Ethics (JCOPE). Yet the full dollar amount contributed by donors to JCOPE may

not be reported, as the proportion of the donation disclosed is a ratio of the organization's lobbying expenditures in New York relative to its overall lobbying expenditures. Will the OAG require the undisclosed dollar amount be made known to the OAG even while the donor and part of the contribution already have been disclosed to JCOPE? Likewise electioneering communications disclosed to the NYC CFB do not indicate whether communications are in support or opposition to a candidate. Will this small portion of the expenditure information have to be disclosed to OAG even while all other information about the expenditure has already been disclosed to the CFB?

3) Align annual report submission and/or the Election Disclosure Schedule more with the filings submitted by candidate committees to the SBOE.

Under current practice, the OAG receives annual reports from organizations filing with the Charities Bureau at different times during the course of the year. Organizations determine when they file based on their own fiscal years. The OAG should require as part of these rules that annual reports or the Election Disclosure Schedule be submitted in a manner that aligns more closely with the schedule for submission of reports by candidate committees so election activity by non-profit organizations can be processed by the public as they are considering candidates and referenda during campaign season. Under 8.1-4(h) of the Estates, Powers and Trust law, the attorney general can make rules and regulations "as to the timing for filing reports, the contents thereof, and the manner of executing and filing them."

We have also attached testimony we have provided to other governmental entities that have examined disclosure of spending and donors by non-profit organizations. Recommendations to those bodies may also be applicable to these rules. For example, we support the provision in the regulations to enable donors to seek an exemption from disclosure if there are concerns about threats, intimidation or reprisals. In our testimony to JCOPE, we made specific recommendations on this issue so there will not be a chilling effect on contributions but also ensuring the exemption is not abused to prevent transparency.

Thank you for the opportunity to provide feedback on this proposed regulation, and for your commitment to shedding light on money entering our politics through veiled political vehicles. I welcome any questions you may have.