



Commissioners  
Board of Elections in the City of New York  
32 Broadway 7<sup>th</sup> Fl.  
New York, NY 10004-1609

November 14, 2012

Dear Commissioners:

Citizens Union calls on the Board of Elections in the City of New York (Board), as empowered under State Election Law 3-104(2), on its own initiative or in accepting this letter as a complaint, to investigate the alleged violations of Election Law by Assemblymember Carmen Arroyo and relevant staff and poll workers during the September 13<sup>th</sup> primary election.

Following the primary election in assembly district 84 in the Bronx, allegations against incumbent Assemblymember Carmen Arroyo of violations of Election Law have emerged both in court filings and in media reports. Among the allegations are:

- The Assemblymember and her staff were electioneering in pollsites, in particular at the Borinquen Court apartment complex on East 138th Street in the South Bronx and at a polling place at the Judge Gilberto Ramirez houses on East 138th Street, which included telling voters how to vote. Photographs and affidavits were submitted to a court panel in the Appellate Division, First Department regarding this allegation.<sup>1</sup> (*Alleged violation of Election Law 17-128, 17-130(4), 17-130(7), 17-130(9), 17-154. See appendix for listing of laws.*)
- Poll workers at the Borinquen Court apartment complex on East 138th Street refused to prohibit the Assemblymember and staff from speaking to voters inside the poll site because she was their boss and paid their salaries, as submitted to the Appellate

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<sup>1</sup> "Candidate Defeated in Primary for Assembly Seeks New Vote," The New York Times, October 25, 2012. Available at: <http://cityroom.blogs.nytimes.com/2012/10/23/candidate-defeated-in-primary-for-assembly-seeks-new-vote/>.

Also see "Assemblymember Carmen Arroyo Accused of Election Fraud," DNA Info, September 27, 2012. Available at: <http://www.dnainfo.com/new-york/20120927/mott-haven/assemblywoman-carmen-arroyo-accused-of-election-fraud>

And "Election Fraud Case Moves Ahead. South Bronx Assembly Candidate Fights On", IndyMedia.org, October 23, 2012. Available at: <http://nyc.indymedia.org/or/2012/10/120839.html>

Division, First Department.<sup>2</sup> (*Alleged violation of Election Law 17-106, 17-128, 17-130(22)*). See appendix for listing of laws.)

- The Assemblymember's campaign placed a car outside the entrance to Judge Gilberto Ramirez houses on East 138th Street, which promoted the campaign visually with posters of the candidate affixed to the outside of the car and orally through announcements to support the campaign. Photographs were submitted to a court panel in the Appellate Division, First Department regarding this allegation.<sup>3</sup> (*Alleged violation of Election Law 17-130(4), 17-130(7), 17-152, 17-154*). See appendix for listing of laws.)
- A sample ballot was marked for Carmen Arroyo and placed on the wall at the poll site at the Judge Gilberto Ramirez houses on East 138th Street. An affidavit was submitted to a court panel in the Appellate Division, First Department regarding this allegation.<sup>4</sup> (*Alleged violation of Election Law 17-126, 17-130(4), 17-130(10), 17-130(12), 17-152, 17-154*). See appendix for listing of laws.)

Citizens Union believes that Election Law 3-104(2) requires the Board to "expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made..." because the documents submitted before the Appellate Division, First Department show "there is substantial reason to believe a violation of this chapter or any code or regulation promulgated thereunder has occurred."

We call on the Board to conduct an investigation reviewing whether the actions of Assemblymember Arroyo and/or staff and poll workers violated particular sections of Article 17 - Violations of the Elective Franchise - which are appended to this letter, or other provisions of Election Law or codes or regulations promulgated thereunder.

Citizens Union brings this request for an investigation to the Board of Elections in the City of New York because the violations are alleged to have taken place in New York City, which is its jurisdiction. If the Commissioners believe, however, that this matter is best handled by State Board, Citizens Union would support the State Board, pursuant to Election Law 3-107, "appoint[ing] a special investigator to take charge of the investigation... and to appoint such additional special investigators and employees as it may deem necessary, and fix their compensation, within the limits of appropriation available therefor, and assign them to any election district or districts for the purpose of enforcing the provisions of the election law." The appointment of a special investigator may be the preferred approach given the significance of the requested investigation against a sitting Assemblymember, and because of perceived or actual conflicts of interest on the part of Commissioners and/or staff who are appointed by party chairs in the borough served by Assemblymember Arroyo.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

Should whichever entity conducting the investigation find “reasonable cause to believe that a violation warranting criminal prosecution has taken place” Citizens Union requests that per Election Law 3-104(3) the Board, “refer the matter to the district attorney of the appropriate county and [shall] make available to such district attorney all relevant papers, documents, testimony and findings relevant to its investigation.”

We have copied the State Board of Elections, the Commissioners of the Joint Commission on Public Ethics (JCOPE), and the Bronx District Attorney on this letter so they are aware of this request for an investigation. This letter, pursuant to Executive Law subsection 13(a) of section 94 of Article 6 of the Executive Law, serves as a filed statement to JCOPE to pursue a parallel investigation of Assemblymember Carmen Arroyo and relevant staff for violations of the Public Officers Law, in particular subsections (f), (h) of section 74 of Article 4.

We appreciate the Board’s attention to this matter and look forward to a public vetting of its decision-making on whether to commence an investigation at its weekly Commissioners meetings. In full disclosure, Citizens Union “preferred” Assemblymember Arroyo’s opponent, Maximino Rivera, in the Democratic primary election in this district as part of our candidate evaluation process, in which we provide recommendations to our membership. We did not support his campaign in any capacity nor do we have a view on the lawsuit he pursued to bring about another Democratic primary election in this district.

Regards,

Dick Dadey  
Executive Director

Alex Camarda  
Director of Public Policy & Advocacy

CC:  
Commissioners, State Board of Elections  
Commissioners, Joint Commission on Public Ethics (JCOPE)  
Robert Johnson, Bronx District Attorney

## **Appendix - Suggested Provisions of Article 17 For Review by Board Investigation**

### **Article 17 - Violations of the Elective Franchise**

**§ 17-106. Misconduct of election officers.** Any election officer who willfully refuses to accord to any duly accredited watcher or to any voter or candidate any right given him by this chapter, or who willfully violates any provision of the election law relative to the registration of electors or to the taking, recording, counting, canvassing, tallying or certifying of votes, or who willfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, or connives in any electoral fraud, or knowingly permits any such fraud to be practiced, is guilty of a felony.

**§ 17-126. Misconduct of election officers.** Any election officer who:

1. Reveals to another person the name of any candidate for whom a voter has voted;
2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or,
3. Places a mark upon a ballot, or does any other act by which one ballot can be distinguished from another or can be identified; or,

**§ 17-128. Violations of election law by public officer or employee.** A public officer or employee who knowingly and willfully omits, refuses or neglects to perform any act required of him by this chapter or who knowingly and willfully refuses to permit the doing of any act authorized by this chapter or who knowingly and willfully hinders or delays or attempts to hinder or delay the performance of such an act is, if not otherwise provided by law, guilty of a felony.

**§ 17-130. Misdemeanor in relation to elections.** Any person who:

4. Electioneers on election day or on days of registration within one hundred feet, as defined herein, from a polling place. Said prohibition shall not apply to a building or room that has been maintained for political purposes at least six months prior to said election or registration days, except that no political displays, placards or posters shall be exhibited therefrom. For the purposes of this section, the one hundred feet distance shall be deemed to include a one hundred foot radial measured from the entrances, designated by the inspectors of elections, to a building where the election or registration is being held.

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a voting booth when the same is occupied by a voter, with the intent to watch such a voter while engaged in the preparation of his ballot, except as authorized by this chapter; or,

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or makes or keeps any memorandum of anything occurring within the booth, or directly or indirectly, reveals to another the name of any candidate voted for by such voter; or,

10. Shows his ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same; or,

12. Places any mark upon, or does any other act in connection with a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or,

22. Induces or attempts to induce any poll clerk, election inspector, election coordinator, or officer, clerk or employee of the board of elections discharging any duty or performing any act required or made necessary by the election law, to do any act in violation of his duty or in violation of the election law; or,

**§ 17-152. Conspiracy to promote or prevent election.** Any two or more persons who conspire to promote or prevent the election of any person to a public office by unlawful means and which conspiracy is acted upon by one or more of the parties thereto, shall be guilty of a misdemeanor.

**§ 17-154. Pernicious political activities.** It shall be unlawful for any person to:

1. Intimidate, threaten or coerce, or to attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or for the purpose of causing such other person to vote for, or not to vote for, any candidate for the office of governor, lieutenant-governor, attorney-general, comptroller, judge of any court, member of the senate, or member of the assembly at any election held solely or in part for the purpose of selecting a governor, lieutenant-governor, attorney-general, comptroller, any judge or any member of the senate or any member of the assembly;