



**CITIZENS UNION OF THE CITY OF NEW YORK**  
**Testimony to the New York State Assembly Committee on Election Law**  
**Re: Operations of the Compliance Unit at the NYS Board of Elections**  
**December 12, 2014**

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Good morning, Chairman Cusick and members of the Assembly Committee on Election Law. My name is Peggy Farber, and I am the legislative counsel of Citizens Union, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. We serve as a civic watchdog, combating corruption and fighting for political reform.

Citizens Union applauds the Committee for holding this hearing now, near the start of the new compliance unit's existence because time is of the essence. New York's voter turnout this year was a shameful 28.8 percent – the fourth lowest in the nation. Voter engagement is at the heart of Citizens Union's mission so we take this news very seriously. There can be no doubt that the appearance of political corruption drives down voter participation. For that reason, we cannot let another election cycle occur without a sea change in the performance of the State Board of Elections (the "Board") in enforcing campaign laws and rules.

Time is of the essence for another reason: First steps matter. Much depends on how the compliance unit gets off the ground. What you want is a *culture of compliance*. This is not easy to create, and it cannot be created passively. The compliance unit has a tremendous opportunity and responsibility. It has to actively let political actors know from the start that it is watching carefully. Creating a culture of compliance is hard work and requires getting it right at the beginning.

**Summary of Citizens Union's Recommendations**

Under the reform provisions added this year, the compliance unit has primary responsibility for overseeing financial filings required by state election law.<sup>1</sup> The unit should not limit itself to helping parties file and report properly, though this is a vitally important role for the unit. Catching and correcting errors before enforcement becomes necessary is a critical part of building a culture of compliance. But there is much more the unit can and must do.

As described in more detail below, Citizen Union recommends the following:

- the compliance unit should exercise its oversight authority proactively to ensure filings match reality;
- the unit should replace its outdated technology for the filing, tracking and publication of campaign finance information, and
- the should Board close the "LLC loophole" without delay.

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<sup>1</sup> N.Y. Election Law § 3-104-a(1).

### **Make Sure Filings Match Reality**

The compliance unit cannot rely solely on self-reporting to obtain information about candidate and contributor compliance. Instead, it should develop internal controls that help it identify groups and transactions that are not appearing at all.

In May 2013 Citizens Union documented a glaring gap between the reporting and reality of political activity by political clubs across New York State.<sup>2</sup>

Using data from the Board of Election's filings, Citizens Union identified 224 political clubs that had financial transactions with candidates in the years 2009 to 2013 and likely should have – but did not – register and file financial reports with the Board. Because the clubs have not disclosed information, Citizens Union could not determine the full extent of their activity or whether the relationships between the clubs and elected officials resulted in coordination in furtherance of the elected officials' campaigns. Coordination in excess of contribution limits would be an over-contribution requiring action by the Board. Citizens Union concluded that the law requires registration and reporting by the clubs, and formally asked the Board in June 2013 to determine whether registration and filing are required. The Board has so far not responded.

As we saw in reporting by the New York Times this week, the Moreland Commission to Investigate Public Corruption uncovered substantial gaps in reported and actual campaign spending and contributions by candidates.<sup>3</sup> Analyzing Board filings and bank records, the commission found one official, for example, who had failed to disclose \$147,000 in contributions and \$325,000 in spending. We thinking the compliance unit should be the unit to find these problems. If it does not, who will?

One of the reform provisions added this year is a requirement that the compliance unit obtain political contribution information, including the identity of contributors, from Section 501(c)(4) nonprofit organizations, which are permitted under the federal tax code to engage in political activity. The importance of this new requirement cannot be overstated. 501(c)(4)s are now a dominating force campaign financing. Nationally, contributions by 501(c)(4)s have increased from \$1.3 million in 2006 to \$260 million in 2012,<sup>4</sup> an increase of 20,000%. This exponential growth is fueled largely by the fact that the IRS does not require (c)(4)s to disclose the identities of contributors. But now New York State does. New York's leadership in this arena puts an onus on the compliance unit to make sure it detects all contributions.

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<sup>2</sup> Citizens Union, *Hidden from View: The Undisclosed Campaign Activity of Political Clubs in New York State* (May 2013), available at [http://www.citizensunion.org/site\\_res\\_view\\_template.aspx?id=aa7a31e2-1824-4bef-901b-a4bae069ee36](http://www.citizensunion.org/site_res_view_template.aspx?id=aa7a31e2-1824-4bef-901b-a4bae069ee36).

<sup>3</sup> Thomas Kaplan, William K. Rashbaum, & Susanne Craig, *After Ethics Panel Shutdown, Loopholes Live on in Albany*, New York Times (Dec. 8, 2014), available at <http://www.nytimes.com/2014/12/08/nyregion/after-moreland-commission-shutdown-by-gov-cuomo-loopholes-live-on-in-albany.html?module=Search&mabReward=relbias%3Ar%2C{%22%22%3A%22RI%3A5%22}>.

<sup>4</sup> Center for Responsive Politics, Outside Spending, available at <https://www.opensecrets.org/outsidespending/index.php> (last visited December 11, 2014).

To do its job completely, the compliance unit should do more than work with parties to avoid and correct errors in filing. It should look for omissions – by sectors, committees and individuals. Citizens Union also urges the compliance unit to determine groups such as political clubs and 501(c)(4)s that need to register and file and to notify them of their obligations.

### **Replace Outdated Technology for Filing, Tracking, and Publishing Campaign Information**

Filing systems that are easy to use will encourage compliance. Right now, the Board uses software designed in 1994. It is not web-based and it fails to collect data in a standardized format that can be analyzed and reported efficiently. Filers must first download the 20-year-old software from the Board's website onto their own computers, then create the filing documents and send them back to the Board as email attachments.

The software does not require standardized entries, but, rather, gives filers space to fill in information. There are no drop-down tabs, which would increase standardization, and no capacity for importing internal accounting files from filers such as basic spreadsheets. Apparently, the Board no longer possesses the source code for the software and therefore cannot make changes to improve the functionality of the technology.<sup>5</sup> The outmoded technology makes auditing and reporting campaign finance information far more expensive and time-consuming than it should be.

The Board should replace its system with technology that permits paperless processing, instant access to data, and completely digital communications with campaigns and contributors. Citizens Union recommends that the Board consider the system proposed by the Open Campaign Working Group, a New York-based group with experience in technology, elections and transparency.<sup>6</sup> Also, the New York City Campaign Finance Board has offered to give the Board its C-Smart technology, which appears to be very effective, without charge. We urge the Board to explore this with the CFB.

### **Close the "LLC Loophole"**

Our last recommendation is for the Board, not the compliance unit, but we believe it is a necessary part of a culture compliance. Corporations are not permitted to contribute more than \$5,000 per year to political campaigns. But many corporations have discovered a way to render this limit meaningless. The Board determined in 1996 that limited liability corporations in New York are to be treated as individuals rather than corporations and therefore subject to much higher limits on donations to candidates.<sup>7</sup> LLCs are able to contribute up to an aggregate \$150,000 a year. Corporations in New York create multiple LLCs so that they indirectly contribute multiples of \$150,000 each year. This is a regulatory loophole that can be undone easily. No legislation is required. The Board should issue regulations immediately defining limited liability companies as corporations for the purposes of campaign contribution limits under the election law.

I thank you again for holding this hearing today on the operations of the new compliance unit at the Board of Elections, and welcome any questions you may have.

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<sup>5</sup> The Commission to Investigate Public Corruption, Preliminary Report at 75 (December 2, 2013)

<sup>6</sup> See the Open Campaign Working Group website at <http://www.opencampaignworkinggroup.org/ocwg.html> (lasted visited December 11, 2014).

<sup>7</sup> New York Board of Elections 1996 Opinion 1 (January 30, 1996)