S T A T E O F N E W Y O R K

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I N A S S E M B L Y

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Silver) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to political communication, independent expenditure reporting, enforcement proceeding and penalties for violations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 14-100 of the election law is amended by adding three new subdivisions 12, 13 and 14 to read as follows:

12. "CLEARLY IDENTIFIED CANDIDATE" MEANS THAT:

(A) THE NAME OF THE CANDIDATE INVOLVED APPEARS;

(B) A PHOTOGRAPH OR DRAWING OF THE CANDIDATE APPEARS; OR

(C) THE IDENTITY OF THE CANDIDATE IS APPARENT BY UNAMBIGUOUS REFERENCE.

13. "GENERAL PUBLIC AUDIENCE" MEANS AN AUDIENCE COMPOSED OF MEMBERS OF THE PUBLIC, INCLUDING A TARGETED SUBGROUP OF MEMBERS OF THE PUBLIC; PROVIDED, HOWEVER, IT DOES NOT MEAN AN AUDIENCE SOLELY COMPRISED OF MEMBERS, RETIREES AND STAFF OF A LABOR ORGANIZATION OR THEIR IMMEDIATE FAMILY MEMBERS OR AN AUDIENCE SOLELY COMPRISED OF EMPLOYEES OF A CORPORATION, UNINCORPORATED BUSINESS ENTITY OR MEMBERS OF A BUSINESS, TRADE OR PROFESSIONAL ASSOCIATION OR ORGANIZATION.

14. "LABOR ORGANIZATION" MEANS ANY ORGANIZATION OF ANY KIND WHICH EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF REPRESENTING EMPLOYEES EMPLOYED WITHIN THE STATE OF NEW YORK IN DEALING WITH EMPLOYERS OR EMPLOYER ORGANIZATIONS OR WITH A STATE GOVERNMENT, OR ANY POLITICAL OR CIVIL SUBDIVISION OR OTHER AGENCY THEREOF, CONCERNING TERMS AND CONDITIONS OF EMPLOYMENT, GRIEVANCES, LABOR DISPUTES, OR OTHER MATTERS INCIDENTAL TO THE EMPLOYMENT RELATIONSHIP. FOR THE PURPOSES OF THIS ARTICLE, EACH LOCAL, PARENT NATIONAL OR PARENT INTERNATIONAL ORGANIZATION OF A STATEWIDE LABOR ORGANIZATION, AND EACH STATEWIDE FEDERATION RECEIVING DUES FROM SUBSIDIARY LABOR ORGANIZATIONS, SHALL BE CONSIDERED A SEPARATE LABOR ORGANIZATION.

S 2. Section 14-106 of the election law, as amended by chapter 8 of the laws of 1978, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 14-106. Political [advertisements and literature] COMMUNICATION. 1. The statements required to be filed under the provisions of this article next succeeding a primary, general or special election shall be accompanied by a [facsimile or] copy of all BROADCAST, CABLE OR SATELLITE SCHEDULES AND SCRIPTS, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced [and a schedule of all radio or television time, and scripts used therein], AND REPRODUCTIONS OF STATEMENTS OR INFORMATION CONVEYED TO FIVE HUNDRED OR MORE MEMBERS OF A GENERAL PUBLIC AUDIENCE BY COMPUTER OR OTHER ELECTRONIC DEVICE, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be. Such [facsimiles,] copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing thereof.

2. NO PERSON, POLITICAL PARTY OR COMMITTEE SHALL, DURING THE COURSE OF ANY CAMPAIGN FOR NOMINATION OR ELECTION TO PUBLIC OFFICE OR PARTY POSITION, PREPARE OR DISTRIBUTE ANY POLITICAL COMMUNICATION THAT FALSELY IDENTIFIES THE SOURCE OF SUCH COMMUNICATION.

S 3. The election law is amended by adding a new section 14-107 to read as follows:

S 14-107. INDEPENDENT EXPENDITURE REPORTING. 1. FOR PURPOSES OF THIS ARTICLE:

(A) "INDEPENDENT EXPENDITURE" MEANS AN EXPENDITURE MADE BY A PERSON FOR AN AUDIO OR VIDEO COMMUNICATION TO A GENERAL PUBLIC AUDIENCE VIA BROADCAST, CABLE OR SATELLITE OR A WRITTEN COMMUNICATION TO A GENERAL PUBLIC AUDIENCE VIA ADVERTISEMENTS, PAMPHLETS, CIRCULARS, FLYERS, BROCHURES, LETTERHEADS OR OTHER PRINTED MATTER AND STATEMENTS OR INFORMATION CONVEYED TO FIVE HUNDRED OR MORE MEMBERS OF A GENERAL PUBLIC AUDIENCE BY COMPUTER OR OTHER ELECTRONIC DEVICES WHICH: (I) EXPRESSLY ADVOCATES THE ELECTION OR DEFEAT OF A CLEARLY IDENTIFIED CANDIDATE OR THE SUCCESS OR DEFEAT OF A BALLOT PROPOSAL AND (II) SUCH CANDIDATE, THE CANDIDATE'S POLITICAL COMMITTEE OR ITS AGENTS, OR A POLITICAL COMMITTEE FORMED TO PROMOTE THE SUCCESS OR DEFEAT OF A BALLOT PROPOSAL OR ITS AGENTS, DID NOT AUTHORIZE, REQUEST, SUGGEST, FOSTER OR COOPERATE IN ANY SUCH COMMUNICATION.

(B) INDEPENDENT EXPENDITURES DO NOT INCLUDE:

(I) A WRITTEN NEWS STORY, COMMENTARY, OR EDITORIAL OR A NEWS STORY, COMMENTARY, OR EDITORIAL DISTRIBUTED THROUGH THE FACILITIES OF ANY BROADCASTING STATION, CABLE OR SATELLITE UNLESS SUCH PUBLICATION OR FACILITIES ARE OWNED OR CONTROLLED BY ANY POLITICAL PARTY, POLITICAL COMMITTEE OR CANDIDATE; OR

(II) A COMMUNICATION THAT CONSTITUTES A CANDIDATE DEBATE OR FORUM; OR

(III) A COMMUNICATION WHICH CONSTITUTES AN EXPENDITURE MADE BY AN ENTITY REQUIRED TO REPORT SUCH EXPENDITURE WITH A BOARD OF ELECTIONS PURSUANT TO SECTIONS 14-102 AND 14-104 OF THIS ARTICLE.

(C) FOR PURPOSES OF THIS SECTION, THE TERM "PERSON" SHALL MEAN PERSON, GROUP OF PERSONS, CORPORATION, UNINCORPORATED BUSINESS ENTITY, LABOR ORGANIZATION OR BUSINESS, TRADE OR PROFESSIONAL ASSOCIATION OR ORGANIZATION.

2. WHENEVER ANY PERSON MAKES AN INDEPENDENT EXPENDITURE THAT COSTS MORE THAN ONE THOUSAND DOLLARS IN THE AGGREGATE, SUCH COMMUNICATION SHALL CLEARLY STATE THE NAME OF THE PERSON WHO PAID FOR, OR OTHERWISE PUBLISHED OR DISTRIBUTED, THE COMMUNICATION AND STATE, WITH RESPECT TO COMMUNICATIONS REGARDING CANDIDATES, THAT THE COMMUNICATION IS NOT

AUTHORIZED BY ANY CANDIDATE, ANY CANDIDATE'S POLITICAL COMMITTEE OR ANY OF ITS AGENTS.

3. (A) ANY PERSON WHICH MAKES INDEPENDENT EXPENDITURES THAT COST MORE THAN ONE THOUSAND DOLLARS IN THE AGGREGATE SHALL REPORT SUCH INDEPENDENT EXPENDITURES TO THE STATE BOARD OF ELECTIONS ON STATEMENTS AS PROVIDED FOR IN SECTION 14-108 OF THIS ARTICLE.

(B) ANY INDEPENDENT EXPENDITURE MADE AFTER THE CLOSE OF THE PERIOD TO BE COVERED IN THE LAST STATEMENT FILED BEFORE ANY PRIMARY, GENERAL OR SPECIAL ELECTION, BUT BEFORE SUCH ELECTION, SHALL BE REPORTED WITHIN TWENTY-FOUR HOURS IN THE SAME MANNER AS PROVIDED FOR IN SUBDIVISION TWO OF SECTION 14-108 OF THIS ARTICLE.

4. EACH SUCH STATEMENT SHALL INCLUDE:

(A) THE NAME AND ADDRESS OF THE PERSON MAKING THE STATEMENT;

(B) THE NAME AND ADDRESS OF THE PERSON MAKING THE INDEPENDENT EXPENDITURE;

(C) THE NAME AND ADDRESS OF ANY PERSON OR ENTITY PROVIDING A GIFT, LOAN, ADVANCE OR DEPOSIT OF ONE HUNDRED DOLLARS OR MORE FOR THE INDEPENDENT EXPENDITURE, OR THE PROVISION OF SERVICES FOR THE SAME, AND THE DATE IT WAS GIVEN; PROVIDED, HOWEVER, THE NAME AND ADDRESS OF A MEMBER OF A LABOR ORGANIZATION IS NOT REQUIRED FOR A GIFT, LOAN, ADVANCE OR DEPOSIT OF ONE HUNDRED DOLLARS OR MORE TO A LABOR ORGANIZATION; AND PROVIDED FURTHER THAT THE NAME AND ADDRESS OF AN EMPLOYEE OF A CORPORATION, UNINCORPORATED BUSINESS ENTITY OR A MEMBER OF A BUSINESS, TRADE OR PROFESSIONAL ASSOCIATION OR ORGANIZATION IS NOT REQUIRED FOR A GIFT, LOAN, ADVANCE OR DEPOSIT OF ONE HUNDRED DOLLARS OR MORE TO SUCH CORPORATION, UNINCORPORATED BUSINESS ENTITY OR BUSINESS, TRADE OR PROFESSIONAL ASSOCIATION OR ORGANIZATION RESPECTIVELY;

(D) THE DOLLAR AMOUNT PAID FOR EACH INDEPENDENT EXPENDITURE, THE NAME AND ADDRESS OF THE PERSON OR ENTITY RECEIVING THE PAYMENT, THE DATE THE PAYMENT WAS MADE AND A DESCRIPTION OF THE INDEPENDENT EXPENDITURE; AND

(E) THE ELECTION TO WHICH THE INDEPENDENT EXPENDITURE PERTAINS AND THE NAME OF THE CLEARLY IDENTIFIED CANDIDATE OR THE BALLOT PROPOSAL REFERENCED.

5. A COPY OF ALL MATERIALS THAT PERTAIN TO THE INDEPENDENT EXPENDITURE, INCLUDING BUT NOT LIMITED TO BROADCAST, CABLE OR SATELLITE SCHEDULE AND SCRIPTS, ADVERTISEMENTS, PAMPHLETS, CIRCULARS, FLYERS, BROCHURES, LETTERHEADS AND OTHER PRINTED MATTER AND STATEMENTS OR INFORMATION CONVEYED TO FIVE HUNDRED OR MORE MEMBERS OF A GENERAL PUBLIC AUDIENCE BY COMPUTER OR OTHER ELECTRONIC DEVICES SHALL BE FILED WITH THE STATE BOARD OF ELECTIONS WITH THE STATEMENTS REQUIRED BY SECTION 14-108 OF THIS ARTICLE.

6. WRITTEN EVIDENCE OF THE INDEBTEDNESS RELATED TO A LOAN THAT IS MADE FOR AN INDEPENDENT EXPENDITURE SHALL BE PROVIDED TO THE STATE BOARD OF ELECTIONS.

7. EVERY STATEMENT REQUIRED TO BE FILED PURSUANT TO THIS SECTION SHALL BE FILED ELECTRONICALLY TO THE STATE BOARD OF ELECTIONS.

8. THE STATE BOARD OF ELECTIONS SHALL PROMULGATE REGULATIONS WITH RESPECT TO THE STATEMENTS REQUIRED TO BE FILED BY THIS SECTION AND SHALL PROVIDE FORMS SUITABLE FOR SUCH STATEMENTS.

S 4. Section 14-126 of the election law, as amended by chapter 8 of the laws of 1978, subdivision 1 as amended by chapter 128 of the laws of 1994 and subdivisions 2, 3 and 4 as redesignated by chapter 9 of the laws of 1978, is amended to read as follows:

S 14-126. Violations; penalties. 1. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not in excess of five hundred dollars, to be recoverable

in a special proceeding or civil action to be brought by the state board of elections or other board of elections.

2. ANY PERSON, POLITICAL PARTY OR COMMITTEE WHO FALSELY IDENTIFIES ANY POLITICAL COMMUNICATION AS PROHIBITED BY SUBDIVISION TWO OF SECTION 14-106 OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY EQUAL TO ONE THOUSAND DOLLARS OR THE COST OF THE COMMUNICATION, WHICHEVER IS GREATER, IN A SPECIAL PROCEEDING OR CIVIL ACTION BROUGHT BY THE STATE BOARD OF ELECTIONS PURSUANT TO SECTION 16-120 OF THIS CHAPTER.

3. ANY PERSON WHO FALSELY IDENTIFIES OR FAILS TO IDENTIFY ANY INDEPENDENT EXPENDITURE AS REQUIRED BY SUBDIVISION TWO OF SECTION 14-107 OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY EQUAL TO ONE THOUSAND DOLLARS OR THE COST OF THE COMMUNICATION, WHICHEVER IS GREATER, IN A SPECIAL PROCEEDING OR CIVIL ACTION BROUGHT BY THE STATE BOARD OF ELECTIONS PURSUANT TO SECTION 16-120 OF THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "PERSON" SHALL MEAN A PERSON, GROUP OF PERSONS, CORPORATION, UNINCORPORATED BUSINESS ENTITY, LABOR ORGANIZATION OR BUSINESS, TRADE OR PROFESSIONAL ASSOCIATION OR ORGANIZATION.

4. Any person who knowingly and willfully fails to file a statement required to be filed by this article within ten days after the date provided for filing such statement or any person who knowingly and willfully violates any other provision of this article shall be guilty of a misdemeanor.

[3.] 5. Any person who knowingly and willfully contributes, accepts or aids or participates in the acceptance of a contribution in an amount exceeding an applicable maximum specified in this article shall be guilty of a misdemeanor.

[4.] 6. Any person who shall, acting on behalf of a candidate or political committee, knowingly and willfully solicit, organize or coordinate the formation of activities of one or more unauthorized committees, make expenditures in connection with the nomination for election or election of any candidate, or solicit any person to make any such expenditures, for the purpose of evading the contribution limitations of this article, shall be guilty of a class E felony.

S 5. The election law is amended by adding a new section 16-120 to read as follows:

S 16-120. PROCEEDINGS AS TO POLITICAL COMMUNICATIONS AND INDEPENDENT EXPENDITURES. THE SUPREME COURT OR A JUSTICE THEREOF, IN A PROCEEDING INSTITUTED BY THE STATE BOARD OF ELECTIONS, MAY IMPOSE A CIVIL PENALTY, AS PROVIDED IN SUBDIVISIONS TWO AND THREE OF SECTION 14-126 OF THIS CHAPTER, UPON PROOF THAT A VIOLATION OF ONE OR MORE OF SUCH SUBDIVISIONS HAS OCCURRED.

S 6. This act shall take effect immediately.