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**REPORT ON LEGISLATION BY THE  
COMMITTEE ON NON-PROFIT ORGANIZATIONS**

**STATEMENT IN OPPOSITION TO THE PROPOSED NEW DEFINITION OF  
“INDEPENDENT EXPENDITURE” IN NEW PART Q OF THE  
2015-2016 PUBLIC PROTECTION AND GENERAL GOVERNMENT BUDGET**

The Committee on Non-Profit Organizations of the New York City Bar Association (the “Committee”) opposes, because of its overbreadth, a provision in Part Q of the New York State Public Protection and General Government Budget under consideration this year (the “Budget Bill Provision”) that would amend the definition of “independent expenditure” in the state’s campaign finance law to include any written communication that, within 60 days before a general or special election or 30 days before a primary election, refers to a clearly identified candidate. Any organization making such a statement to 500 or more members of the public would be required to register as a political committee with the New York State Board of Elections and to participate in a rigorous reporting regime.

The Committee agrees with the position opposing the Budget Bill Provision taken in a memorandum prepared by several New York nonprofit organizations, which is attached to this statement. As a diverse 42-member committee of lawyers that represent nonprofit organizations, both large and small, the Committee is concerned that, under the proposed definition, nonprofit organizations would be required to register as political committees merely because in a nonpartisan, innocuous way they mentioned an incumbent elected official’s name in a publication. There are countless scenarios where a nonprofit organization might mention an incumbent in a newsletter, annual report, news roundup, or other publication, without engaging in electioneering, which is the activity the proposed provision seeks to regulate.

New York State has over 90,000 nonprofit organizations. Many of them are small organizations operating on small budgets, without access to lawyers to alert them to the new requirement. Moreover, most nonprofit lawyers are not familiar with campaign finance law because their organizations do not engage in political activity. The Committee is especially concerned because the proposed definition would sweep in nonprofits that are already prohibited under the Internal Revenue Code from engaging in political activity of any kind. These organizations, which are tax-exempt under section 501(c)(3) of the Internal Revenue Code, place their tax-exempt status at risk if they engage in political activity. There is no need for a state law regulating their political activity – they are already barred from it.

The Committee urges New York State lawmakers to oppose amending the election law to broaden the definition of “independent expenditure” as proposed by the Governor.

March 2015

**2015 LEGISLATIVE MEMORANDUM**

**Subject:** Governor's 30-Day Amendments to the Budget, Public Protection and General Government Article VII Bill, Part Q, § 7.

**Position:** Oppose

**From:** Family Planning Advocates of New York State  
Human Services Council  
Lawyers Alliance for New York  
New York Civil Liberties Union  
Nonprofit Coordinating Committee of New York  
Planned Parenthood of New York City  
Planned Parenthood of New York City Action Fund  
Supportive Housing Network of New York  
United Neighborhood Houses of New York  
UJA-Federation of New York

**Date:** March 5, 2015

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The independent expenditure communication provision of the Governor's 30-Day Amendments to the Budget Bill would significantly expand the types of disclosures that trigger an obligation to report to the Board of Elections. We are concerned about the section of the bill that would require nonprofit organizations that have no involvement in election activities to register as a political committee, and to submit reports – including donors' personal information – to the Board of Elections. This provision would apply to nonprofit organizations that are prohibited by federal law from engaging in election advocacy. This section threatens to restrict nonpartisan nonprofits from engaging in both routine communications with their members and grassroots advocacy, among other activities. We take no position on other provisions in the bill.

Notably, a similar provision was considered as part of the Election Law reforms considered in 2014, but was ultimately rejected by the Governor and Legislature. We and other nonprofit organizations strongly advocated against this part of the independent expenditure communication definition at that time, and we are again forced to do so for the reasons discussed herein.

The sole effect of the proposed amendment is to regulate constitutionally protected nonpartisan speech. The Election Law already regulates expenditures on communications that either "contain[ ] words such as 'vote,' 'oppose,' 'support,' 'elect,' 'defeat,' or 'reject,' which call for the election or defeat of the clearly identified candidate," or that otherwise "refer[ ] to and advocate[ ] for or against a clearly identified candidate or ballot proposal on or after January first of the year of the election." Elec. Law § 14-107(a)(1). The proposed amendment would, for the first time, regulate speech that does not advocate for or against a

candidate, merely because the speech occurs a month or two prior to an election, and includes or references someone who is running for office.

Nonprofits routinely send out newsletters, news roundups, and other communications mentioning the names of elected officials in connection with a news event or appearance at a community gathering. *The bill could require a nonpartisan nonprofit to report as political spending a newsletter mentioning a State Senator's appearance at the organization's street fair or acknowledging support from an Assembly Member.* Organizations that make such communications would have register as a political committee – a completely inapt misnomer for an organization that does not engage in any political activity – and report donors and other sensitive information.

The bill would even apply to nonpartisan 501(c)(3) nonprofits, although federal tax law already bars them from supporting or opposing a candidate. Organizations that violate the federal prohibition are subject to revocation of their tax-exempt status. Requiring reporting by these organizations would burden them and chill their communications without achieving any public purpose. It would also create a trap for the unwary, because 501(c)(3)'s that do not engage in election-related activity, and therefore have never been required to report to the Board of Elections, would have no reason to familiarize themselves with the Board's reporting requirements. For these reasons, the New York City Campaign Finance Board exempts 501(c)(3)'s from its regulations regarding disclosure of independent expenditures.<sup>i</sup>

Nonprofits play a vital role in providing and promoting services that benefit the public. They foster civic engagement, helping community members have a voice in public policy and legislative activity. Nonprofits also educate elected officials about the realities of their clients' lives and the need for strong public support of the essential services their organizations provide. These activities encourage greater public participation and should be protected rather than burdened.

At the same time, the nonprofit sector is underfunded and understaffed. Time spent drafting a mandatory filing for a government agency could be better spent serving the community. Many small nonprofits lack in-house counsel and find complicated reporting schemes baffling. The result: some nonprofits do far less legislative and policy work than they may be legally allowed to do, simply to avoid excessive paperwork.

Again, while we have no position on other provisions in the Governor's proposal, we are compelled to oppose the independent expenditure communication provision since it would impose unwarranted burdens on nonprofit organizations that will unnecessarily stifle their participation in policy and non-policy issues.

Please contact Laura Abel, Senior Policy Counsel, Lawyers Alliance for New York, with any questions: 212.219.1800 x283, [label@lawyersalliance.org](mailto:label@lawyersalliance.org).

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<sup>i</sup> NYC Campaign Finance Board Rule 13-01 (definition of "electioneering").