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

A.9505/S.7505

Public Protection and General Government Budget

Article VII – Part UU

Amends the executive law and the tax law in relation to disclosure requirements for certain nonprofits

THIS PROVISION IS OPPOSED

The Non-Profit Organizations Committee of the New York City Bar Association (the “Committee” or the “NPOC”) hereby expresses opposition to Part UU of the Governor’s FY21 Public Protection and General Government Article VII Legislation and urges that Part UU be deleted from the bill. Notably, Part UU requires certain charitable organizations to file reports with the NYS Department of Taxation and Finance (“DTF”), including the names and addresses of the organizations’ largest donors, and requires DTF to publish such donor information on its website. Publicly disclosing the identity of donors to charitable organizations is a drastic change in current practice at both the federal and state level, and it would impinge on well-established First Amendment rights and likely discourage charitable giving.

The Committee agrees with the analysis presented in the separate opposition endorsed by a wide cross section of New York nonprofits (attached hereto as Exhibit A). As described in the separate opposition:

- The additional report required by Section 1-a of Part UU is redundant because covered charities already report this information in their public Form 990 filings with the IRS and the NYS Charities Bureau.
- The IRS and the Charities Bureau publish these Form 990s on their respective websites, except for Schedule B thereto (Schedule of Contributors), which they do not publish in order to keep donors’ identities confidential. Sections 1 and 5 of Part UU require DTF to publish these 990s—including Schedule B and the donor-identifying information therein—on DTF’s website. Recent decisions by New York courts highlight the longstanding First Amendment concerns attaching to compelled public disclosure of donor information to charitable organizations.¹ In addition, disclosing the identity of

¹ See *Citizens United v. Schneiderman*, 882 F.3d 374 (2d Cir. 2018); *Citizens Union of N.Y. v. Att’y Gen. of N.Y.*, 408 F. Supp. 3d 478 (S.D.N.Y. 2019).

donors would likely discourage charitable giving and, in some cases, could place donors at risk.

- A federal district court ruled that Executive Law 172-f was unconstitutional and permanently enjoined its enforcement.² Section 2 of Part UU attempts to amend Executive Law 172-f but does not address the section of the law that the court ruled was unconstitutional. Executive Law 172-f thus remains unconstitutional.

The NPOC is a diverse committee of the New York City Bar Association with approximately 50 members. Some NPOC members are law firm attorneys representing nonprofits, some are in house counsel for charitable organizations, and a few are academics. The Committee's members represent multi-million dollar institutions, as well as small charities, operating across the nonprofit sector. Some of these institutions have been serving New York for more than a century; others are in their infancy, taking their first steps to launch their charitable missions.

For the reasons described herein and in the separate opposition attached hereto as Exhibit A, we respectfully urge that Part UU be deleted from this bill.

March 2020

Non-Profit Organizations Committee

Jackie Ewenstein, Co-Chair

Amarah Sedreddine, Co-Chair

Jeremy Steckel, Secretary

² See *Citizens Union of N.Y. v. Att'y Gen. of N.Y.*, 408 F. Supp. 3d 478 (S.D.N.Y. 2019).

EXHIBIT A



THE CHOCOLATE FACTORY



2020 LEGISLATIVE MEMORANDUM

Subject: S.7505/A.9505 – Governor’s FY21 Public Protection & Good Government Article VII Legislation, Part UU

Position: Oppose

Date: March 2, 2020

Our 102 organizations oppose Part UU because sections 1 and 5 would unwisely and unconstitutionally violate the longstanding confidentiality of donors to tax exempt charities, section

1-a would impose a redundant reporting requirement on certain tax exempt charities, and section 2 would tinker with a law that has already been ruled unconstitutional and would remain unconstitutional despite the amendments. We explain each of these problems below.

The State Should Not Require Public Disclosure of Nonprofits' Donors

Sections 1 and 5 of Part UU would abrogate the longstanding confidentiality of donors to tax exempt charities. Section 1 would require all tax exempt nonprofits that solicit charitable funds in New York State and have gross revenue exceeding \$250,000 to file an annual financial report, including the entire IRS 990 filed by such organization, with the State Department of Taxation and Finance ("State Tax Department"). Such organizations already file this information with the Attorney General's Charities Bureau. See Exec. Law § 172-b; 13 NYCRR § 91.5(c)(3). However, **Part UU § 5 would require the State Tax Department to make the entire filing public on its website. This is a startling change from current practice.** While most of the IRS 990 is already publicly available on the websites of the IRS and Charities Bureau, the Internal Revenue Service and Charities Bureau strictly maintain the confidentiality of the identities of the nonprofits' largest donors, which information is reported on IRS 990 Schedule B. See 13 N.Y.C.R.R. § 96.2; 26 U.S.C. § 6104(d)(3)(A).

This wholesale publication of the identities of the largest donors to tax exempt public charities is bad public policy. It would discourage charitable giving by potential donors who prefer to remain anonymous, whether out of modesty, a religious imperative, a wish for privacy, or fear of retaliation or ostracism. It could also place donors at risk if their donations to controversial or unpopular causes become public.

Disclosing donor identities would also infringe on the First Amendment speech, association and privacy rights of both donors and their nonprofit recipients. Notably, when the U.S. Court of Appeals for the Second Circuit recently upheld the right of the Charities Bureau to require the *nonpublic* filing of donor information, it stressed that the court "would be dealing with a more difficult question if these disclosures went beyond the officials in the Attorney General's office charged with enforcing New York's charity regulations. Certainly if that office were to publicize donor lists, it would raise the stakes...." *Citizens United v. Schneiderman*, 882 F.3d 374 (2018). Part UU would do just that, and as a result is likely unconstitutional.

The State Should Not Impose Redundant Reporting Requirements on Nonprofits

Section 1-a of Part UU would require certain 501(c)(3) nonprofit organizations to file an entirely redundant "funding disclosure report" with the State Tax Department if the nonprofit contributes \$10,000 or more to certain 501(c)(4) nonprofit organizations. On the report, the 501(c)(3) would have to list: the name and address of the covered 501(c)(3) donor and of the 501(c)(4) recipient; the names of any persons exerting operational or managerial control over the covered 501(c)(3) donor, the date of the donation, and a detailed description of the donation, including the charitable purpose advanced and any restrictions on the use of the donation.

Charitable nonprofit organizations already report this information on the IRS 990 in Part VI (Governance, Management and Disclosure), Part IX (Statement of Functional Expenses), and Schedule I (Grants and Other Assistance to Organizations, Governments, and Individuals in the United States). As discussed above, these sections of the annual Form 990 are publicly available, including on the websites of the IRS and NYS Charities Bureau. Section 1-a thus generates no new public information while imposing an unnecessary administrative burden on nonprofit organizations.

Enforcement of Exec. Law 172-f Would Violate a Court Order

Section 2 of Part UU purports to amend Executive Law § 172-f, which was ruled unconstitutional and has been permanently enjoined by a federal district court. *See Citizens Union v. Attorney General of the State of N.Y.*, 408 F.Supp.3d 478 (SDNY 2019). Section 2 would require a 501(c)(4) nonprofit organization to disclose donors who make a restricted donation in support of a communication that “refers to and advocates for or against a clearly identified elected official or the position of any elected official or administrative or legislative body relating to the outcome of any vote or substance of any legislation, potential legislation, pending legislation, rule, regulation, hearing, or decision by any legislative, executive or administrative body.” In September 2019, the court ruled that this provision was too broad and vague to trigger a donor disclosure obligation, stating, “Given that any matter of public importance could become the subject of legislation and given the range of positions taken by all elected officials, § 172-f reaches a far broader swath of communications than did the lobbying- and election-related [donor disclosure] statutes that the Supreme Court and Second Circuit have upheld.” *Id.* at 507. The court has issued a final order permanently enjoining enforcement of § 172-f. While section 2 of Part UU makes certain changes to § 172-f, it does not amend the unconstitutionally broad definition of a covered communication. The State should not bother amending this statute, because it remains unconstitutional.

Signatories

The Afrikan Poetry Theatre, Inc.
Alliance for Progress
American Institute for Stuttering Treatment
The American Musical Instrument Society
Asian American Arts Alliance
Asian American Federation
Asian American Legal Defense and Education Fund
Atlantic Legal Foundation
Blake Trust
The Bowery Mission
BronxWorks
Brooklyn Bridge Park Conservancy
Caffe Lena
Care for the Homeless
Catskill Community Center
Chinese-American Planning Council
The Chocolate Factory Theater
Citizens Union
Citymeals-on-Wheels
The Climate Museum
Common Cause New York
Council of People’s Organization
Crime Victims Assistance Center, Inc.
David Hochstein Memorial Music School, Inc.
Drug Policy Alliance
Dutchess County Pride Center
East Egg PM, LLC

EngageAsia
Finger Lakes Boating Museum
FJC
Four Nations Inc'
The Frances Lear Foundation
Garden of Hope
The G4 Alliance
God's Love We Deliver
Grace Institute of New York
Grand Street Settlement, Inc.
The Hart Island Project
Human Services Council
Henry Street Settlement
Jewish Community Relations Council of New York
Kaufman Music Center
The Kisco Foundation
Lawyers Alliance for New York
League of Women Voters' of New York
Leeway School
Lifetime Assistance Inc.
Literacy Assistance Center
Literacy Partners
Local Story
Lupus Research Alliance
Make Music New York, Inc.
Marion Carll Farm Preserve Inc.
Neighborhood Coalition for Shelter
New Dramatists
New York Community Trust
New York Council of Nonprofits
New York Hemp Industries Association
New York Lawyers for the Public Interest
Nonprofit New York
NPower Inc.
NYC Outward Bound Schools
NYenvironcom
The OMNI Ensemble
Otsego 2000, Inc.
Piatigorsky Foundation
Pioneer Library System
Polaris Productions
Project Sunshine
Putnam Arts Council, Mahopac
Quintet of the Americas
The Raoul Wallenberg Committee of the United States
Regina Opera Company
Remember the Triangle Fire Coalition
Repertorio Español

The Retreat
Rhinebeck Writers Retreat
The Ricky J. Parisian Memorial Scholarship Foundation
Rochester Spinal Association
SAGE
Sakhi for South Asian Women
Saratoga PLAN (Preserving Land and Nature)
Schoharie Mohawk Initiative for Science and Technology
SEO
Shake on the Lake, Inc.
Sharon M Combs Executive Coaching
Software Freedom Law Center
Splashes of Hope
STEM From Dance
St. Francis Friends of the Poor
STOKED Mentoring, Inc.
Teens for Food Justice, Inc.
Tompkins County Workers' Center, Inc.
UJA Federation of New York
United Neighborhood Houses
Violence Intervention Program, Inc.
Weekend of Chamber Music
WESPAC Foundation, Inc.
Wingo NYC
WOMANKIND
World Music Institute, Inc.
Youth Represent