



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

**A.1141-A
S.4817-A**

**M. of A. Paulin
Sen. Krueger**

AN ACT to amend the executive law, in relation to prohibiting the disclosure of certain information required on financial disclosure reports of certain not-for-profit organizations

THIS BILL IS APPROVED

The Non-Profit Organizations Committee of the New York City Bar Association supports the enactment of the proposed legislation, which would amend Executive Law 172 to remove burdensome and redundant filing requirements placed on charitable 501(c)(3) organizations, and protect the privacy of donors to those organizations who do not engage in lobbying or political activities. The Committee endorses the findings and arguments in support of the bill outlined in the appended legislative memo.¹

The Committee further supports the bill for the following reasons:

- The bill rightfully recognizes that requiring charities to file reports with the Department of State is unnecessary and administratively burdensome. While this would be a burden in even the best of times, the charitable sector is already overwhelmed with the additional legal compliance, administrative obligations and loss of revenue arising out of the COVID-19 pandemic.
- Given the backdrop of litigation around the constitutional import afforded the confidentiality of donor information, the bill also clarifies that donor information will be kept confidential and used only for legitimate enforcement purposes, which furthers the state's interest by safeguarding its ability to continue to collect such information.

¹ See also generally, Report in Opposition to Part UU of the Governor's FY21 Public Protection and General Government Article VII Legislation, New York City Bar Association, March 16, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-proposed-donor-disclosure-requirements-for-certain-non-profits-report>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

- The New York Attorney General’s Charities Bureau is an actively involved oversight agency and is already charged with monitoring the activities of charitable organizations and enforcing charitable law. This bill recognizes that, to the extent the enacting statute was oriented to bringing transparency to the flow of political funding, the focus on charitable organizations, which are prohibited from directing funding for political purposes, is entirely misdirected and redundant.

Non-Profit Organizations Committee
Jacqueline D. Ewenstein, Co-Chair
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2021 LEGISLATIVE MEMO

Subject: A.1141 (Paulin)/S.4817 (Krueger)

Position: Strongly Support

Date: February 19, 2021

Our organizations strongly support this bill because it would eliminate a burdensome, unnecessary filing requirement and protect the privacy of our donors.

The Unnecessary, Redundant Filing Obligation

Every year, most 501(c)(3) nonprofit organizations registered with the NY Attorney General's Charities Bureau must file their full federal tax filing with the Charities Bureau. As of January 1, 2021, those organizations have to file *the same documents* again with the Department of State.¹ This is a wholly unnecessary, redundant filing requirement. It is particularly burdensome at a time when nonprofits are trying to streamline operations to save money. This bill would eliminate the duplicate Department of State filing requirement.

The Danger to Donors' Privacy

While most of a 501(c)(3) organization's federal tax filing (known as the IRS 990) is already publicly available on the IRS and Charities Bureau websites, the IRS and Charities Bureau strictly maintain the

¹ N.Y. Exec. Law § 172-b.

confidentiality of the names and addresses of major donors reported on the 990 Schedule B.² This bill would likewise require the NY Department of State to keep this information confidential, as well as making clear that donors' identities should not be disclosed under the Freedom of Information Law (known as FOIL).

Without this bill, the current risk of public disclosure will discourage giving to nonpolitical 501(c)(3) organizations 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. New York is now the only state that requires 501(c)(3) public charities to file unredacted Schedule B's with a state agency and has no law or regulations requiring or allowing that agency to keep them confidential. In contrast, New Jersey and California have strong legal protections for this information.³ This lack of legal protection for Schedule B information also stands in stark contrast to the high levels of protection that New York provides for other types of confidential information filed with the state: it is a crime for the Tax Department to disclose corporate tax filings in the absence of a judicial order, and even federal and state officials cannot access those documents except on a need to know basis.⁴

This failure to provide legal protection for the confidentiality of charities' donor information is likely unconstitutional. In 2017, the Charities Bureau defended against a constitutional challenge to its Schedule B filing requirement by reassuring a federal court of appeals that unredacted Schedule B's are exempt from FOIL disclosure and the Charities Bureau "has a 'consistent practice' of keeping Schedule B's confidential and substantial protocols in place to maintain confidentiality."⁵ The next year, that court's rejection of the constitutional challenge relied heavily on its finding that "applicable law prevents the Attorney General from publicizing lists of donors."⁶

In the Schedule B litigation, the federal court of appeals warned that "[w]e 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."⁷ We are now dealing with precisely that scenario – 501(c)(3) charities will be required to file names and addresses of their major donors with the Department of State, which has no rules or laws in place to protect the confidentiality of that information. For that reason, we ask the legislature to act promptly to pass this bill.

² See 13 N.Y.C.R.R. § 96.2; 26 U.S.C. § 6104(d)(3)(A).

³ NJSA 45:17A-31 ("the names, addresses and telephone numbers of contributors and amounts contributed by them ... shall not be considered a matter of public record and shall not be made available for public inspection, shall not be used for a purpose inconsistent with [New Jersey's charitable registration law], and shall be removed from the record in the custody of the Attorney General at such time that such information is no longer necessary for the enforcement of [that law]"); 11 Code of CA Regs. § 310 ("(b) Donor information exempt from public inspection pursuant to Internal Revenue Code section 6104 (d)(3)(A) shall be maintained as confidential by the Attorney General and shall not be disclosed except as follows: (1) In a court or administrative proceeding brought pursuant to the Attorney General's charitable trust enforcement responsibilities; or (2) In response to a search warrant.").

⁴ N.Y. Tax Law § 202 & Art. 37.

⁵ *Citizens United v. Schneiderman*, Brief of the Attorney General (April 7, 2017), p. 51 n.19.

⁶ *Citizens United v. Schneiderman*, 882 F.3d 374, 384 (2d Cir. 2018).

⁷ *Id.*