

October 2, 2017

Nonprofit Newsletter Fall 2017 - Certain New York Donor Disclosure Requirements Remain Unenforced - for Now

In the fall of 2016, certain charitable donor disclosure requirements came into effect under New York law.

One such requirement provides that any 501(c)(3) charitable organization that makes in-kind donations of more than \$2,500 during a six-month period to certain 501(c)(4) nonprofit organizations engaged in lobbying must file a disclosure report, including the identity of any donor who donated more than \$2,500 to the 501(c)(3) organization within the applicable six-month period. The disclosure requirement applies regardless of whether the donor was aware that the 501(c)(3) organization donated sufficient amounts to a 501(c)(4) organization to be subject to the requirement and regardless of the donor's intention that his or her donation be used to support the lobbying activities of the 501(c)(4) organization.

The law also mandates that if a 501(c)(4) organization spends in excess of \$10,000 in a calendar year on any public policy communications, the 501(c)(4) organization must file a disclosure report that will include the identity of any donor who donated more than \$1,000 to the 501(c)(4) organization.

After the law was enacted, various groups, including the American Civil Liberties Union Foundation and the New York Civil Liberties Union Foundation, filed lawsuits seeking injunctions in the Southern District of New York. The lawsuits argue the law violates the First Amendment rights of nonprofit organizations and donors, alleging the disclosure requirements are too broad and infringe on donor free speech by subjecting donors to burdensome obligations and public disclosures.

Subsequent to the suits' being filed, the district court judge hearing the cases ordered a stipulation in which the New York attorney general agreed not to take any action to enforce the subject disclosure provisions while the actions are pending.

The lawsuits remain pending, and therefore the donor disclosure requirements are not currently being enforced. If and when they are enforced, some donors will have to decide between making donations over the applicable thresholds, thus subjecting themselves to the public disclosure of their identities, or reducing donations they would have otherwise made to certain organizations.

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