



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street  
New York, NY 10004  
212.607.3300  
212.607.3318  
www.nyclu.org

**Sent by email**

December 3, 2013

Robert Cohen  
Special Counsel and Director of Ethics and Lobbying Compliance  
New York State Commission on Public Integrity  
540 Broadway  
Albany, New York 12207

**Re: Request for exemption from the disclosure requirements in the revised source-of-funding regulations adopted by the Joint Commission on Public Ethics<sup>1</sup>**

Dear Mr. Cohen:

On October 23, 2013, the Joint Commission on Public Ethics (JCOPE) adopted amendments to recently promulgated regulations that require an organization that engages in lobbying activities to disclose the names, addresses, employers and contribution information regarding any contributor who provides at least \$5,000 to such an organization.<sup>2</sup> We write on behalf of the New York Civil Liberties Union (NYCLU) seeking an exemption from the regulations' public disclosure provisions related to source(s) of funding.

The revised regulations provide that the Commission "shall grant an exemption to disclose all Sources of Contributions to a Client Filer if (i) the Client Filer has exempt status under I.R.C. §501(c)(4); and (ii) the Client Filer shows that its primary activities involve areas of public concern that create a *substantial likelihood* that disclosure of its Source(s) will cause harm, threats, harassment or reprisals to the Source(s) or individuals or property affiliated with the Source(s)."<sup>3</sup> (Emphasis added.)

In requesting this exemption from the source-of-funding disclosure provisions, we state our objection to the amended standard by which the Commission will determine eligibility for such an exemption. The Supreme Court has long held that the appropriate standard for exempting organizations from the requirement to publicly disclose information regarding their financial

<sup>1</sup> 43 N.Y. Reg. 18-19 (Oct. 23, 2013) (JPE-43-13-00021-EP) (Amendment of Part 938 of Title 19 NYCRR).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 938.4 (b)

donors is a showing that there is a “reasonable probability” such disclosure would cause harm, threats or reprisal to those donors or to their property.<sup>4</sup> It is this standard that was adopted by the commissioners of JCOPE in a regulation adopted on April 10, 2013.<sup>5</sup> The newly amended regulation, however, adopts a heightened standard – “substantial likelihood” of harm or harassment – as the basis for granting such an exemption. We believe this is in error both as a matter of constitutional law and public policy; and the NYCLU reserves the right to appeal a ruling by JCOPE that is made pursuant to this standard.

Having stated this objection, we set out below a legal analysis and factual record that demonstrates the public disclosure of information as required by the source-of-funding regulations would, in fact, create a substantial likelihood of harm to the NYCLU and to its members and donors.

The NYCLU’s mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, the right to privacy, and equality and due process of law for all New Yorkers. The NYCLU is organized under the I.R.C. as a §501(c) (4) organization. Members of the NYCLU staff are registered lobbyists pursuant to New York’s Lobby Act,<sup>6</sup> and the NYCLU reports as a lobbying “client.”<sup>7</sup> The organization has approximately 40,000 members statewide, with offices in Buffalo, Rochester, Syracuse, Albany, Hempstead (Nassau County), and Central Islip (Suffolk County).

The contest over the exercise of civil rights and liberties often pits the interests of an individual or a minority group against a far more powerful majority, which not infrequently is aligned with government entities that wield the power and authority of the state. It is in the very nature of this contest that strong opinions and feelings are aroused. To advocate on behalf of individuals’ rights and liberties is to engage in what is often a highly public controversy.

It is expressive advocacy of this nature that legislators sought to exempt from the public disclosure regulations promulgated pursuant to the Public Integrity Reform Act of 2011 (PIRA).<sup>8</sup> The sponsor’s memorandum accompanying that legislation explicitly states that “civil rights and civil liberties” organizations, among others, “are expected to qualify for such an exemption in the Joint Commission’s regulations.”<sup>9</sup> The commentary on the bill, as provided by the sponsoring legislators, elaborates on this point: “[O]rganizations whose primary activities focus on the question of abortion rights, family planning discrimination or persecution based upon race, ethnicity, gender, sexual orientation or religion, immigrant rights, and the rights of certain criminal defendants are expected to be covered by such an exemption.”<sup>10</sup>

---

<sup>4</sup> *Buckley v. Valeo*, 424 U.S.1, 88 (1976).

<sup>5</sup> 35 N.Y.Reg. 17-19 (April 10, 2013) (JPE-37-12-0010-E).

<sup>6</sup> N.Y. Leg. Law 1-a, *et seq.*

<sup>7</sup> *See* N.Y. Leg. Law § 1-j(4).

<sup>8</sup> Chapter 399, Laws of 2011

<sup>9</sup> Legislative introduction, A.8301 (2011). (See Sponsor’s memorandum, Part B, Section 1: “Disclosure by Lobbyists . . .”)

<sup>10</sup> *Ibid.*

The substantive issues of law and policy identified in the sponsors' commentary on the proposed Public Integrity Reform Act read as if they had been excerpted from the NYCLU's mission statement. The NYCLU's advocacy agenda, in support of this mission, is well documented in the organization's annual reports.

Even a cursory review of news reports will confirm that the aforementioned issues often generate fierce, and violent, controversy. Such controversy is driven by deeply held opinions and intense emotions, which often lead to overt acts of hostility and aggression towards the NYCLU and its staff.

This is in the very nature of the advocacy in which the NYCLU engages. Following are a number of examples:

- In 1999, the NYCLU filed a lawsuit on behalf of a group affiliated with the Ku Klux Klan, an organization widely known for its hostility directed at certain minority groups. The suit challenged a state law banning more than two individuals wearing masks from congregating in public. The NYCLU argued that the ordinance violated First Amendment rights of expression and association. Individuals and groups opposed to the plaintiff's ideology began protesting against the NYCLU for its decision to litigate the case.

Protests against the NYCLU escalated as the case progressed. NYCLU staff affiliated with the case became the targets of threats, harassment, and, on one occasion, an attempted home invasion. For example, an organization found the home address of a staff member on the case, and posted it to the group's website. This individual began receiving threatening phone calls at home. Unknown individuals rang the staff member's door buzzer at all hours of the night. Several members of the group entered this individual's apartment building and tried to break into the staff member's apartment. A neighbor called the police who chased the men out of the building.

In December 2002, the group held a protest at the staff member's home and the building was obliged to hire security guards for the duration of the case to protect residents from any further problems. These activities made it necessary to hire private security guards to protect NYCLU staff for the duration of the case. During this period, the staff member, fearful for the safety of family members, would not enter or exit the apartment building with family members.

- The same group that targeted NYCLU staff during the litigation related to the ban on wearing of masks also publicly announced efforts to target a high-level NYCLU official during the same period. However, the NYCLU official had an unlisted home telephone number and the group failed to locate the official's home address. The official nonetheless felt compelled to remove their name from any visible listings in their apartment building directory and mail boxes.

Every year, this NYCLU official receives a half dozen or more email messages or letters that are of a threatening nature. For a number of years, in the Christmas season, this official and the NYCLU staff receive dozens of greeting cards and letters reviling the

organization and, in some cases, offering prayers for the demise of the organization, which is typically characterized as God-less or satanic. This official was likewise the recipient of hostile and belligerent communications as a result of the organization's support for the establishment of a new mosque near the former site of the World Trade Center.

- On a daily basis, the NYCLU's seven regional offices across the State are engaged in advocacy on behalf of minority groups, and represent people expressing unpopular positions within their communities. The NYCLU employees who staff these offices, as well as local NYCLU members, have actively engaged in efforts to promote the rights of religious minority groups, including Muslim communities in the wake of the September 11<sup>th</sup> attacks; the rights of communities of color in predominantly white portions of upstate and central New York; and the freedoms of expression and association of gay and transgender teenagers.

The directors of the NYCLU's chapter and regional offices and their local NYCLU members have been subject to harassment and threats as a direct result of these efforts. For example, in June 2009, an NYCLU client in Sherburne, N.Y., was threatened with a cross burning on his lawn after he publicly suggested the possibility of hosting a night for gay teenagers at his youth center, an event which the NYCLU was supporting his right to hold.

In 2007, the NYCLU's Central New York Chapter Director and an NYCLU member were opposing a proposed town ordinance that would ban all lawn signs. After several months of attending town meetings and testifying against the proposed lawn sign ban, the NYCLU member had his car tires deflated, and had the phrases "F--- u ACLU" and "die fag" painted on his car while it was parked in the driveway at his home. The member also received a ransom-style letter with a death threat. After this incident, the chapter director and the NYCLU member had to be escorted by law enforcement in order to attend the town hall meeting where the lawn sign ban was ultimately voted on. These are just a few of many other times when NYCLU members have been threatened with violence in connection with their public affiliation with the NYCLU.

- S (who prefers not to have his name identified in this document) answers telephone calls made to the main number at the NYCLU's New York City office. He responds to general inquiries and he takes information from individuals regarding alleged civil liberties violations. He receives many calls from individuals angry with the advocacy of the NYCLU or other ACLU affiliates around the country. S has been employed with the NYCLU for thirty-one years, during which time he has received approximately six death threats or threats of physical assault while at work. In one instance, a caller stated that he would come to the NYCLU's offices and "go postal." On another occasion a caller said he would come to the building, wait for S to emerge, and attack him. On several occasions, S has received suspicious packages at the front desk, which required building security agents to remove the packages for inspection with an X-ray device.

In order to protect himself, S uses a pseudonym when conversing with those who call the NYCLU to report a civil liberties violation or to complain about a position taken by the

NYCLU. In order to protect his identity, he does not allow reporters who attend news conferences at the NYCLU offices to photograph him at his desk. And for this reason his actual name does not appear on the NYCLU's web site. He takes these precautions out of concern that members of the public could use this information to carry out the threat of an attack against him.

- The director of the NYCLU's Western Regional office has received death threats on three occasions, in response to the organization's advocacy work in the Buffalo area. The first of these threats was made in 2000 by an individual who told the executive director in a phone call, "If I catch you, I'll kill you."

The second death threat – to bomb the NYCLU's office in Buffalo – was made in the period shortly after September 11, 2001. Police had directed an individual to remove from his van a sign that read, "Allah sucks." The individual complied; later he called the NYCLU, claiming his First Amendment rights had been violated. The NYCLU's director explained that there was no longer a controversy because the man had complied with the police order. He responded with a voice-mail message threatening to bomb the NYCLU's offices.

The third death threat against this employee also involved detonation of a bomb at the NYCLU offices. In 2003 the anti-abortion group Army of God threatened to bomb the NYCLU's Western Regional office and a women's health clinic. Both offices were located in Buffalo. A few years earlier Barnett Slepian, a physician who provided abortion services in Buffalo, had been murdered outside his home.<sup>11</sup> In 2003, Dr. Slepian's killer was on trial for the crime. Members of the Army of God came to Buffalo to show their support for the murderer, and to condemn the supporters of abortion rights – among whom the NYCLU and women's health clinic were prominent.

- In 2013, the NYCLU published notification regarding certification of a prospective class of plaintiffs in litigation charging that legal services to indigent defendants often failed to meet constitutional standards. In response, one individual sent a letter to the NYCLU that was addressed, "Dear Bloodsuckers." The author of the letter exclaimed, "F--- you—you bastards are just trying to tear down society, and acting pious all the time." The letter demanded, "Who pays for this bulls--t?"
- In 2007, a man dressed in a black robe would regularly appear at the NYCLU's offices in lower Manhattan – which is also the location of the national office of the ACLU. The man marched outside the building, waving signs denouncing the NYCLU and ACLU as "dogs" and "Jews." He also maintained a website with claims that the NYCLU and ACLU were parties to a broad Jewish conspiracy. On this website he posted photographs of several ACLU and NYCLU staff and clients.<sup>12</sup>

---

<sup>11</sup> [http://www.prochoice.org/about\\_abortion/violence/james\\_kopp.html](http://www.prochoice.org/about_abortion/violence/james_kopp.html). David Staba, "Abortion Foe who killed doctor is sentenced to 25 years to life" NYTimes (May 10, 2003), <http://www.nytimes.com/2003/05/10/nyregion/abortion-foe-who-killed-doctor-is-sentenced-to-25-years-to-life.html?ref=barnettaslepian&gwh=4011064C66A9222C06DB5C58E6C7D613>.

<sup>12</sup> Brother Nathanael's website is available at <http://www.brothernathanael.com/index.php>. A picture of him at the NYCLU and ACLU office in New York is available at <http://www.flickr.com/photos/nickcalyx/800628902/>. A

- In January of 2011, the director of the NYCLU's chapter office in Rochester, New York, received a series of emails from an individual who had contacted the office to complain about the local court system. The hostility expressed in these emails intensified over time; as it did, the NYCLU seemed to become part of the problem. The last in this series of emails included this comment: "this government is the enemy and people better start realizing that sooner than later. They better drive around in bullet proof cars. [...] Best of luck in life. I'm buying a weapon I can find fast. I suggest you do the same."

These examples of harassment and intimidation are not extraordinary, or even unusual, events in the course of the NYCLU's work. They represent, unfortunately, the volatile nature of public discourse when issues of civil rights and civil liberties are in dispute.

As the New York State affiliate of the American Civil Liberties Union, the NYCLU is often implicated in controversies and conflict related to the exercise, or suppression, of civil liberties that arise anywhere in the United States. (See, attached, Supplemental Statement of Facts.)

The phenomenon of retaliatory animus toward the NYCLU is inherent to the advocacy the organization pursues. And as the Supreme Court has observed, a government requirement that an organization (such as the NYCLU) disclose the identity and personal information of financial supporters can compromise that mission by "seriously infring[ing] on privacy of association and belief guaranteed by the First Amendment."<sup>13</sup>

The federal court for the Southern District of New York has held that a statutory reporting scheme requiring "political committees" to make public reports of information related to receipts and expenditures, including the names and addresses of contributors, imposed "excessive restraints on the exercise of First Amendment rights. . . ."<sup>14</sup> The ruling includes what is, in effect, a judicial finding that the required source of funding disclosures will cause direct harm to the staff and members of the NYCLU and, more broadly, to the First Amendment rights of others who advocate on behalf of New Yorkers' civil rights and civil liberties.

Defendants admit that at least five of the NYCLU's approximately 40,000 members have been subjected to community hostility after their association with plaintiff had become known. This, admittedly, was sufficient to deter these persons from associating with plaintiff. Based on the above facts . . . [p]laintiff has demonstrated, as required by the Supreme Court in *Buckley v. Valeo*, 424 U.S. at 74, that there is a "reasonable probability that the compelled disclosure of a (group's) contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties."<sup>15</sup>

---

collage that includes a picture of NYCLU legal director Art Eisenberg and an interview in which Brother Nathanael discusses his protest of the NYCLU and ACLU is available at <http://www.realjewnews.com/?p=18>. A collage with a picture of ACLU/NYCLU client Edie Windsor and ACLU legal director Steven Shapiro is available at <http://www.realjewnews.com/?p=835>.

<sup>13</sup> *Buckley v. Valeo*, 424 U.S. 1, 64 (1976).

<sup>14</sup> *NYCLU v. Acito*, 459 F.Supp 75 (1978)

<sup>15</sup> *Id.* at 88 (footnote omitted).

In reviewing this request for an exemption from the disclosure provisions of the source of funding regulation, the NYCLU urges the members of the Commission on Public Ethics to consider the underlying rationale that informs the New York State Legislature's and the Supreme Court's adoption of rules and standards that protect organizations engaged in promoting civil rights and civil liberties from disclosing information about donors and supporters.

It is well settled in Supreme Court jurisprudence that the right to petition the government to take a position on proposed legislation is among the freedoms protected by the First Amendment.<sup>16</sup> In a representative democracy "the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives."<sup>17</sup>

And to require that the NYCLU (and similarly situated organizations) disclose personal information of donors and supporters is to subject those individuals to risk of harm, threats, harassment and reprisal. This is an unwarranted risk, and an unnecessary one. It is a risk that we ask the Commission to eliminate as regards the NYCLU by providing the organization an exemption from the public disclosure requirements.

We believe that, at this juncture and on the basis of this submission, including the attached supplemental statement of facts, the NYCLU should be granted the exemption that we seek here. I declare that the information contained in this application is true, correct, and complete to the best of our knowledge and belief. However, if the Commission regards this submission as inadequate for any reason, we would be prepared to supplement further our legal and factual presentation.

Thank you for your consideration of this matter.

Yours sincerely,



Donna Lieberman  
Executive Director

Robert Perry  
Legislative Director

Arthur Eisenberg  
Legal Director

---

<sup>16</sup> See, e.g., *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (U.S. 1961).

<sup>17</sup> *Id.* at 137.

## Supplemental statement of facts in support of the NYCLU's request for an exemption from the source-of-funding disclosure requirements

December 3, 2013

The facts presented in the foregoing letter, to which this supplement is attached, describe incidents involving NYCLU staff members and the organization's non-staff members and supporters who have been the target of threats and harassment as a direct consequence of their affiliation with the NYCLU and its advocacy on behalf of civil rights and civil liberties.

With this supplemental statement of facts, the NYCLU provides further evidence of the threats and harassment that are often directed at the organization's employees, clients and supporters. We do so in the interest of providing the members of the Commission with a deeper understanding as to the heightened risk of harm that would be created if the NYCLU were required to make public the personal information of the organization's supporters.

It has been recognized that controversial organizations seeking exemptions from disclosure obligations under *Buckley v. Valeo*,<sup>18</sup> and under court rulings that develop the legal standards articulated in *Buckley*,<sup>19</sup> are permitted to rely upon their own organizational experiences as well as those of comparable organizations. We follow those precedents here.

The NYCLU is the New York affiliate of the American Civil Liberties Union. There is an ACLU affiliate in every state, and in Puerto Rico. The ACLU affiliates pursue a common mission – upholding individual rights and liberties. For that reason the staff of the ACLU's state affiliates report similar experiences regarding threats and reprisal that follow from this type of advocacy. In this sense all ACLU affiliates are similarly situated.

It is also the case that state affiliates often become the representation of the national ACLU, particularly when the national organization is involved in controversy. For example, should the ACLU's national office bring widely publicized litigation on behalf of an individual in California or Florida, personnel with the state affiliates throughout the country become the representatives, and spokespersons, for the ACLU. That is, local staff members become the face of a national controversy. To the general public, the local affiliate is the ACLU. And to the extent the ACLU is associated with a controversial or provocative issue, people will often direct their support, or rage, at the local affiliate.

We ask that JCOPE consider this institutional dynamic in its review of the facts set out below.

- The reproductive rights programs of the ACLU and the NYCLU undertake litigation, legislative advocacy and public education with the objective of increasing access to reproductive health care, including abortion care. This advocacy, particularly as regards abortion rights, has made staff members the target of threats by anti-abortion activists. For example, a former director of the ACLU, as well as a former ACLU staff attorney and legal fellow, are listed in the "Nuremburg Files" website, which vilifies reproductive-

---

<sup>18</sup> 424 U.S. 1, 74 (1974)

<sup>19</sup> See, e.g., *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 99-102 (1982).

rights advocates as well as health care professionals involved in reproductive services.<sup>20</sup> The web site displays the names and locations of various doctors who perform abortions throughout the United States. Dr. Barnett Slepian, a Buffalo physician, appears on the site's list of "aborted or nearly aborted abortionists." In 1988, Dr. Slepian was murdered by an anti-abortion zealot. In 2007, the Ninth Circuit Court of Appeals ordered "Wanted" posters removed from the website because they constituted a "true threat" to the physicians identified in the posters.<sup>21</sup>

- A high-ranking official of the ACLU's affiliate in Iowa, received a threatening letter in June of 2013, the day after he was quoted in a newspaper article commenting on an ACLU report that addressed racial disparities in marijuana arrests. The letter stated,

"Dear Shithead [ ]:

I read with disgust your article ... accusing the police of targeting the Darkies. That is nothing but a pack of lies. You're just trying to stir up trouble like your two-bit ACLU is well known for. Well, I have an ultimatum for you. Get your nasty ass out of Iowa by July 1st or end up like that Darkie in Sanford, Florida, that is dead as last weeks rock and roll hit."

After a fictitious signature, the letter closed with: "By the way, thought of a new meaning for your groups [sic] initials which is much more fitting: Atheists Create Ludicrous Untruths."

- In October 2008, local law-enforcement officials in Weld County, Colorado, seized the business records of a local tax-preparation company. The records had been seized in an effort to identify undocumented immigrants using fraudulent social security numbers. The ACLU of Colorado ultimately represented clients of the business who filed a lawsuit challenging the seizure of their records.<sup>22</sup> Prior to the filing of the lawsuit, ACLU lawyers spoke out in opposition to the Weld County police actions. The ACLU staff, and people involved in the litigation, received a number of threatening and harassing communications as a result of their public comments about the police action. For example, on November 15, 2008, the plaintiff received a phone message, "Watch your step lady!" Another phone message a few days later stated, "You're a criminal. Go back to Mexico with your people. [...] I hope like heck that they run your butt back over the border. I don't care if you're an American citizen or not, you need to go back where they're coming from." The ACLU received similar messages as well, including this email on January 14, 2009, "Hey Retards! [...] You people need to move away, somewhere very far away, like deep into Mexico . . . Kiss off, a-holes!" The judge in this case ruled from the bench that the risk of retaliation and harassment directed at the clients of the tax preparation business was so great that they could proceed in the litigation as anonymous "John Doe" plaintiffs.

---

<sup>20</sup> Nuremburg Files, <http://www.christiangallery.com/atrocity/aborts.html>.

<sup>21</sup> *Planned Parenthood v. Amer. Coalition of Life*, 290 F.3d 1058 (9th Cir. 2002).

<sup>22</sup> *In Re Search of Amalia's Translation and Tax Service*, summary and filings available at <http://aclu-co.org/case/re-search-amalias-translation-and-tax-service>.

- In response to advocacy promoting LGBT rights, the ACLU of Oklahoma was sent a hostile music video that intercut pictures of activists with images of a fire.<sup>23</sup> The video was delivered with a message: “In watching the link to [the] song/video, understand that though the courts may give you a false sense of victory, soon you will receive the treatment that is being applied in France. A prayer has gone out against you. It is only a matter of time. You are unnatural. When you play with fire, you will get burned. You are forcing your disgusting, vile, corrupt, and immoral lifestyle upon people who soundly reject it, and for that you will ultimately suffer consequences. So be prepared to defend yourselves for the actions you take. You can never say that you were never warned!”

As recently as last week, the ACLU of Oklahoma continues to receive threats to the safety of their staff. On Friday, October 18, 2013, the ACLU of Oklahoma received a bomb threat in the form of a voicemail. The caller asked:

Are y’all part of the same ACLU that sued the [unintelligible] school district in Ohio because they had a picture of Jesus?...That’s a bunch of goddamn bullsh---. You know what? Maybe I should go up there and bomb your goddamn place, you mother f---ers. Pissing people off. Mother f---ers.

- In July 2010, a man named Byron Williams loaded his car with guns and body armor. He then headed for San Francisco with the intention of killing employees at the offices of the ACLU of Northern California and at the offices of the Tides Foundation, a philanthropic organization that supports environmental preservation and other social justice issues.<sup>24</sup> Before Williams reached San Francisco, police pulled him over for driving erratically, and he engaged in a brief gun battle with the officers. After his arrest, authorities reported he told them that his goal had been to “start a revolution.”<sup>25</sup>

---

<sup>23</sup> The video is available at [http://www.youtube.com/watch?v=BEQNianUW\\_E](http://www.youtube.com/watch?v=BEQNianUW_E).

<sup>24</sup> Henry K. Lee, “Alleged gunman says he wanted a ‘revolution,’” SFGate.com (July 21, 2010), <http://www.sfgate.com/crime/article/Alleged-gunman-says-he-wanted-a-revolution-3180744.php>

<sup>25</sup> Ibid.