

MODEL STATE REGULATIONS TO REQUIRE DISCLOSURE OF ELECTIONEERING ACTIVITIES BY NONPROFIT ORGANIZATIONS

The following model regulations can be implemented by state officials with responsibility for oversight of nonprofit organizations to require disclosure of electioneering activities by these organizations. This model is based upon regulations enacted in New York State by Attorney General Eric Schneiderman and is specifically tailored to states that currently require nonprofit organizations to register with a state charity bureau or other entity. Under these rules, nonprofit groups, including 501(c)(4) social welfare organizations that are registered with the state, are required to report the percentage of their expenditures that go to federal, state and local electioneering. Groups that spend at least \$10,000 to influence state and local elections in the state are also required to file itemized schedules of expenses and contributions.

MODEL STATE REGULATIONS

Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants

(a) Definitions.

For purposes of this section:

(1) “Annual Financial Report” means reports filed with the *State Charities Bureau* pursuant to *State statutes*.

(2) “Covered organization” means any organization that is: (i) registered or required to be registered with the *Attorney General/Secretary of State/Department of Consumer Protection* pursuant to *State statutes*; and (ii) not prohibited by Internal Revenue Code section 501(c) from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.

(3) “Election” means any general, special, or primary election for federal, state or local office, or at which any proposition, referendum or other question is submitted to the voters in any state or any locality in the United States.

(4) “*State Election*” means only those general, special, or primary elections conducted by a state or local government entity for state or local office, or any election at which any state or local constitutional amendment, proposition, referendum or other question is submitted to the voters.

(5) “Election related expenditure” means (i) any expenditure made, liability incurred, or contribution provided for express election advocacy or election targeted issue advocacy; or (ii) any other transfer of funds, assets, services or any other thing of value to any individual, group, association, corporation whether organized for profit or not-for-profit, labor union, political committee, political action committee, or any other entity for the purpose of supporting or engaging in express election advocacy or election targeted issue advocacy by the recipient or a third party.

(6) “Express election advocacy” means any communication made at any time that:

(i) contains words such as “vote,” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to voters at any election; or

(ii) refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, propositions, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, propositions, referenda or other questions submitted to the voters in any election.

(7) “Election targeted issue advocacy”

(i) means any communication other than express election advocacy made within forty-five days before any primary election or ninety days before any general election that: (A) refers to one or more clearly identified candidates in that election; (B) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or (C) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election;

(ii) does not mean a communication that is: (A) directed, sent or distributed by the covered organization to individuals who affirmatively consent to be members of the covered organization, contribute funds to the covered organization, or, pursuant to the covered organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the covered organization's assets or the merger or dissolution of the covered organization; or (B) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.

(8) “Communication” means:

(i) paid advertisements broadcast over radio, television, cable, or satellite; (ii) paid placement of content on the Internet or other electronic communication networks; (iii) paid advertisements published in a periodical or on a billboard; (iv) paid telephone communications to one thousand or more households; (v) mailings sent or distributed through the United States Postal Service or similar private mail carriers to five thousand or more recipients; or (vi) printed materials exceeding five thousand copies.

(9) “Covered donation” means any contribution, gift, loan, advance, or deposit of money or any thing of value made to a covered organization unless such donation is deposited into an account the funds of which are not used for making *State* election related expenditures.

(b) Disclosure of Election Related Expenditures.

(1) The annual financial report filed by any covered organization shall include the amount and the percentage of total expenses during the reporting period that are election related expenditures.

(2) The annual financial report filed by any covered organization that has made *State* election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each *State* election related expenditure exceeding fifty dollars in value, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include for each *State* election related expenditure: (i) the amount or fair market value of any funds, services or assets provided, and any liabilities incurred; (ii) the date that such funds, services or assets were provided, and that any liabilities were incurred; (iii) the name and address of the recipients of the expenditure; and (iv) a clear description of the expenditure and its purpose, including but not limited to support for or opposition to a candidate, political party, referendum or other question put before the voters in an election.

(c) Disclosures of Donations Related to *State* Elections.

(1) The annual financial report filed by a covered organization that has made *State* election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each covered donation it has received during the reporting period, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include: (i) the name and address of each donor who made covered donations in an aggregate amount of one thousand dollars or more during the reporting period; (ii) the employer of each such individual donor, if known to the covered organization; and (iii) the date and amount of each such covered donation.

(2) If a covered organization keeps one or more segregated bank accounts containing funds used solely for *State* election related expenditures, and makes all of its *State* election related expenditures from such accounts, then the annual financial report need only include information specified in the preceding subparagraph concerning donations deposited into such accounts.

(d) Exceptions for Disclosures to Multiple Agencies. The annual financial report filed by a covered organization is not required to include the information specified by subparagraph two of paragraph b of this section, or paragraph c of this section, if: (i) any law or rule requires that such information be disclosed to any other government agency that makes such information available to the public, and (ii) the covered organization is in compliance with the requirements of such law or rule at the time it files the annual financial report.

(e) Schedule to be Provided by the *Attorney General/Secretary of State/Department of Consumer Protection*. Upon adoption of this regulation, the *Attorney General/Secretary of State/Department of Consumer Protection* shall make available a schedule (“Electioneering Disclosure Schedule”) to the Annual Filing for Charitable Organizations and if necessary amend existing forms to allow covered organizations to make the disclosures required by this section.

(f) Guidance to be Provided by the *Attorney General/Secretary of State/Department of Consumer Protection*. Upon adoption of this regulation, the *Attorney General* shall make available to the public guidance concerning compliance with this rule.

(g) Public Disclosure. The *Attorney General/Secretary of State/Department of Consumer Protection* shall make information contained in the completed Electioneering Disclosure Schedule available to the public on the website of the *Attorney General/Secretary of State/Department of Consumer Protection*, except for:

(1) information related to any covered donation received prior to the effective date of this rule; and

(2) information the *Attorney General/Secretary of State/Department of Consumer Protection* deems exempt from disclosure pursuant to paragraph (h) of this section.

(h) Exemption from Public Disclosure.

(1) Notwithstanding paragraph (g) of this section, the *Attorney General/Secretary of State/Department of Consumer Protection* may, upon application by a donor or covered organization to be made in a form and manner prescribed by the *Attorney General/Secretary of State/Department of Consumer Protection*, grant an exemption and refrain from disclosing any information to the public related to any covered donation if the applicant shows that the covered organization’s primary activities involve areas of public concern that create a reasonable probability that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.

(2) An application for such exemption shall be submitted no later than forty-five days prior to the due date for the applicable annual filing. The *Attorney General/Secretary of State/Department of Consumer Protection* will inform the applicant and may inform other persons or organizations to which the exemption would apply, in writing, whether the application for exemption has been granted or denied. Any denial issued by the *Attorney General/Secretary of State/Department of Consumer Protection* shall include a statement of findings and conclusions, and the reasons or basis for the denial.

(3) The submission of an application does not relieve the covered organization of its obligation to timely file annual financial reports, including an Electioneering Disclosure Schedule disclosing all donors for which the covered organization has not sought exemption.

(4) To the extent permitted by federal and state law, the *Attorney General/Secretary of State/Department of Consumer Protection* will exempt from public disclosure all materials submitted in support of an application for an exemption; provided that the *Attorney General/Secretary of State/Department of Consumer Protection* may disclose such materials to a court in response to any judicial subpoena or court order. The *Attorney General/Secretary of State/Department of Consumer Protection* may publicly disclose that a covered organization has submitted one or more applications for an exemption, or that one or more of a covered organization's requests for an exemption has been granted or denied.

(i) Filing Deadlines and Extensions. Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under *State statutes*.

(j) Severability. If any provision in this section or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.