UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC., NEW YORK CIVIL LIBERTIES UNION FOUNDATION, and NEW YORK CIVIL LIBERTIES UNION, Plaintiffs, v. SETH H. AGATA, in his official capacity as Executive Director of the Joint Commission on Public Ethics, THE MEMBERS OF THE JOINT COMMISSION ON PUBLIC ETHICS, in their official capacities, and ERIC SCHNEIDERMAN, in his official capacity as New York Attorney General, Defendants.	Case No. 16 Civ. _____ **COMPLAINT**

Plaintiffs the American Civil Liberties Union Foundation, Inc. ("ACLU Foundation"), the New York Civil Liberties Union Foundation ("NYCLU Foundation"), and the New York Civil Liberties Union ("NYCLU"), by and through their undersigned counsel, Patterson Belknap Webb & Tyler LLP, bring this suit against Defendants Seth H. Agata, in his official capacity as the Executive Director of the New York State Joint Commission on Public Ethics ("JCOPE"), the Members of the New York State Joint Commission on Public Ethics, in their official capacities (the "JCOPE Members," and together with Agata, the "JCOPE Defendants"), and Eric Schneiderman, in his official capacity as the Attorney General of New York (the "Attorney General"), and allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment and injunctive relief pursuant to 42 U.S.C. § 1983. Plaintiffs seek a declaration that New York Executive Law sections 172-e and

172-f are unconstitutional under the First and Fourteenth Amendments to the United States Constitution, and an injunction prohibiting enforcement of these provisions by the Attorney General and the JCOPE Defendants. Both statutory provisions require Plaintiffs and similarly situated tax-exempt organizations to disclose information about certain donors, communications, and expenditures that are unrelated to any legitimate state interest.

2. Section 172-e requires any non-profit entity exempt from tax and described in section 501(c)(3) of the Internal Revenue Code (a "501(c)(3)") to file a "funding disclosure report" with the Attorney General if the organization makes "in-kind donations" of more than $2,500 in a six-month period to any non-profit entity exempt from tax and described in section 501(c)(4) of the Internal Revenue Code (a "501(c)(4)") that files a "source of funding" report under New York Legislative Law sections 1-h and 1-j. The 501(c)(3)'s funding disclosure report must disclose the names of all donors who contributed in excess of $2,500 during the relevant six-month reporting period. Disclosures will be posted on a public website maintained by JCOPE.

3. Section 172-e compels speech, regulates expressive conduct, and infringes upon the rights to free speech and association of 501(c)(3) entities and their donors. These burdens are imposed on 501(c)(3)s and their donors without regard to whether the donor's contribution to a 501(c)(3), or the contribution of a 501(c)(3) to a 501(c)(4), is related to lobbying. The reporting obligation is not limited to contributions made within a certain time period of any election or for the purpose of lobbying or election-related communications. As such, section 172-e is not "narrowly tailored" to any legitimate government interest in providing information to the public about the identities of those who engage in lobbying or electioneering activities, and requires invasive and burdensome disclosures regarding pure political and policy-

related speech. Further, the provision infringes on the right to anonymous speech of 501(c)(3)s and 501(c)(3) donors. And finally, its definition of "in-kind" donations is impermissibly vague. Section 172-e is unconstitutional on its face.

4. Section 172-f, the second challenged provision, requires 501(c)(4)s that expend $10,000 or more in a calendar year on "covered communications" to file a disclosure report with the Attorney General describing the communications and identifying donors who gave more than $1,000. "Covered communications" include communications published or broadcast to 500 or more people that refer to or advocate for or against an elected official; the policy position of an elected official; any existing, pending, or proposed legislation; or any regulation, rule, or decision of any legislative, executive, or administrative body. The disclosure report is published on a website maintained by the Attorney General.

5. Section 172-f, by its terms, extends to pure issue-based political advocacy that does not qualify as lobbying or election-related speech. It therefore reaches expression that is entitled to full protection under the First Amendment. This provision imposes a content-based requirement that is not "narrowly tailored" to a compelling state interest. It unconstitutionally compromises the First Amendment right to anonymous speech. And its definitions of "covered communications" and "expenditures" for such covered communications are unconstitutionally vague and overbroad.

6. Both provisions are also unconstitutional as applied to the ACLU Foundation, the NYCLU Foundation, and the NYCLU, whose donors risk a serious threat of harassment or retaliation if their names are publicly associated with the organizations and the sometimes unpopular causes they support.

7. The disclosures under sections 172-e and 172-f must be made within thirty days of the close of the first semi-annual reporting period, which ends on December 31, 2016. Plaintiffs will accordingly face potential irreparable harm in the absence of a preliminary injunction issued prior to January 30, 2017.

PARTIES AND RELEVANT NON-PARTIES

8. Plaintiff ACLU Foundation is a non-partisan, non-profit 501(c)(3) organized under the laws of the State of New York, with its principal place of business in New York, New York. It sues on behalf of itself and its supporters who wish to remain anonymous.

9. The ACLU Foundation is an affiliate of non-party American Civil Liberties Union ("ACLU"), a non-partisan, non-profit 501(c)(4) organized under the Nonprofit Corporation law of the District of Columbia that engages in public education and lobbying about the constitutional principles of liberty and equality. The ACLU Foundation and the ACLU are both dedicated to the advancement and protection of the civil rights and civil liberties guaranteed in the U.S. Constitution, the Bill of Rights, and our nation's civil rights laws. The ACLU has offices in every state, Washington, D.C., and Puerto Rico, and has more than 750,000 members and supporters nationwide.

10. The NYCLU Foundation is a non-partisan, non-profit 501(c)(3) organized under the laws of the State of Delaware, with its principal place of business in New York, New York. It sues on behalf of itself and its supporters who wish to remain anonymous.

11. The NYCLU is a non-partisan, non-profit 501(c)(4) organized under the New York Not-for-Profit Corporation Law, with its principal place of business in New York, New York. Together, the NYCLU Foundation and NYCLU operate as the ACLU affiliate in New York State and have as their mission the advancement and protection of civil liberties and

civil rights. The NYCLU has more than 50,000 members statewide and eight offices across the state. It sues on behalf of itself and its supporters who wish to remain anonymous.

12. Defendant Seth H. Agata is the Executive Director of JCOPE. The current JCOPE Members are Michael K. Rozen, Marvin E. Jacob, Seymour Knox, IV, Hon. Eileen Koretz, Gary J. Levine, J. Gerard McAuliffe, Jr., David A. Renzi, Hon. Renee R. Roth, Dawn L. Smalls, and George H. Weissman. JCOPE is responsible for making publicly available on its website disclosures filed pursuant to New York Executive Law section 172-e. The JCOPE Defendants are sued in their official capacities, and as relevant to the allegations in this Complaint act under color of law.

13. Defendant Eric Schneiderman is the elected Attorney General of the State of New York. As Attorney General, his powers and duties include the enforcement of the New York Executive Law Article 7-A, related to the solicitation and collection of funds for charitable purposes. *See* N.Y. Exec. Law §§ 175, 177. The Attorney General is sued in his official capacity, and as relevant to the allegations in this Complaint acts under color of law.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 because it arises under the First and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.

15. This Court also has jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

16. This Court has the authority to award costs and attorneys' fees under 42 U.S.C. § 1988.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district, and the Attorney

General maintains his principal offices in this District and is subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

A. *The 2016 Ethics Reform Law*

18. This suit concerns two provisions of a 2016 bill signed into law by Governor Andrew Cuomo on August 24, 2016 (the "2016 Ethics Reform Law").

19. On June 8, 2016, Governor Cuomo gave a speech at Fordham Law School in which he touted proposed legislation that would "curb the power of independent expenditure campaigns unleashed by the 2010 Supreme Court case *Citizens United vs. Federal Election Commission*[, 558 U.S. 310 (2010)]." *See Governor Cuomo Advances Nation's Strongest Protections to Combat Citizens United*, June 8, 2016, http://www.governor.ny.gov/news/governor-cuomo-advances-nations-strongest-protections-combat-citizens-united. On information and belief, Bill # 39 ("the Bill"), which eventually became the 2016 Ethics Reform Law, was drafted by the Governor's office to address the concerns outlined in Governor Cuomo's June 8, 2016 speech.

20. The Bill that was subsequently introduced included a provision affecting independent expenditures, but it also contained ten additional provisions—including the two provisions at issue in this action—that had not been previously disclosed to the legislature or to the public at large. These provisions were first revealed to the legislature in the middle of the night, just a few hours before the Bill was passed.

21. On the final day of the spring legislative session, begun on June 17, 2016 and ending in the early morning hours of June 18, 2016, the Bill was introduced in both houses of the Legislature as Senate Bill S.8160 and Assembly Bill A.10742.

22. The Bill was submitted with a "message of necessity" from Governor Cuomo, which allowed the Legislature to circumvent the requirement under the New York Constitution that bills be submitted at least three days before final passage, *see* N.Y. Const. Art. III § 14, and enabled the Bill to be passed without allowing the public or even the legislators themselves any meaningful opportunity to review it.

23. Senate Bill S.8160 was passed in the New York State Senate after less than fifteen minutes of discussion at around 3:00 am on June 18, 2016. *See* New York State Senate Session, June 17, 2016, *available at* http://www.youtube.com/watch?v=YJM4Rqz2KrA.

24. Several Senators expressed concerns about the rushed manner in which the bill was circulated and put to a vote. For example, Senator Liz Krueger stated: "I have a summary, but I'm not sure any of us could actually tell you what exactly is in this bill. It became available I believe at 1:45 am. It's now ten to three in the morning. Many of us have been up for 24 hours at least." *Id.* at 5:05:20.

25. Assembly Bill A.10742 was passed in the New York Assembly at 5:09 am after less than 10 minutes of discussion. *See* New York State Senate Session, June 17, 2016, *available at* http://nyassembly.gov/av/session/.

26. Because the Bill was submitted and approved in this fashion, it was never subject to public review prior to its enactment by the Legislature.

27. This action challenges Part F of the 2016 Ethics Reform Law, codified at N.Y. Exec. Law § 172-e, and Part G, codified at N.Y. Exec. Law § 172-f, which impose certain reporting obligations on 501(c)(3)s and 501(c)(4)s.

28. Section 172-e became effective on November 22, 2016, ninety days after enactment. *See* S.8160, Part F, § 2. Section 172-f became effective on September 23, 2016, thirty days after enactment. *See* S.8160, Part G, § 2.

29. Section 172-e adds a new provision to the Executive Law entitled "Disclosure of certain donations by charitable non-profit entities." *See* N.Y. Exec. Law § 172-e. This provision states: "Any covered entity that makes an in-kind donation in excess of two thousand five hundred dollars to a recipient entity during a relevant reporting period shall file a funding disclosure report with the department of law." § 172-e(2)(a).

30. Section 172-e further provides that a "funding disclosure report" must include:

> (i) the name and address of the covered entity that made the in-kind donation;
>
> (ii) the name and address of the recipient entity that received or benefitted from the in-kind donation;
>
> (iii) the names of any persons who exert operational or managerial control over the covered entity. The disclosures required by this paragraph shall include the name of at least one natural person;
>
> (iv) the date the in-kind donation was made by the covered entity;
>
> (v) any donation in excess of two thousand five hundred dollars to the covered entity during the relevant reporting period including the identity of the donor of any such donation; and
>
> (vi) the date of any such donation to a covered entity.

§ 172-e(2)(a)(i)-(vi).

31. Section 172-e states that "[t]he covered entity shall file a funding disclosure report with the department of law within thirty days of the close of a reporting period.

§ 172-e(2)(b). Section 172-e defines a "reporting period" as "the six month period within a calendar year starting January first and ending June thirtieth or the six month period within a calendar year starting July first and ending December thirty-first." § 172-e(1)(e).

32. Section 172-e defines a "covered entity" as "any corporation or entity that is qualified as an exempt organization or entity by the United States Department of the Treasury under I.R.C. 501(c)(3) that is required to report to the department of law pursuant to this section." § 172-e(1)(a).

33. Section 172-e defines an "in-kind donation" as "donations of staff, staff time, personnel, offices, office supplies, financial support of any kind or any other resources." § 172-e(1)(b).

34. Section 172-e defines a "donation" as "any contribution, including a gift, loan, in-kind donation, advance or deposit of money or anything of value." § 172-e(1)(c).

35. Section 172-e defines a "recipient entity" as "any corporation or entity that is qualified as an exempt organization or entity by the United States Department of the Treasury under I.R.C. 501(c)(4) that is required to file a source of funding report with the joint commission on public ethics pursuant to sections one-h and one-j of the legislative law." § 172-e(1)(d).

36. Section 172-e also contains a provision entitled "Public disclosure of funding disclosure reports." § 172-e(3). This provision states:

> The department of law shall promulgate any regulations necessary to implement these requirements and shall forward the disclosure reports to the joint commission on public ethics for the purpose of publishing such reports on the commission's website, within thirty days of the close of each reporting period; *provided however* that the attorney general, or his or her designee, may determine that disclosure of donations to the covered entity shall not be made public if, based upon a review of the relevant facts presented by

> the covered entity, such disclosure may cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation. The covered entity may appeal the attorney general's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the department of law, pursuant to regulations promulgated by the department of law. The covered entity's sources of donations that are the subject of such appeal shall not be made public pending final judgment on appeal.

§ 172-e(3). As of the date of this Complaint, the Attorney General has not promulgated any regulations to implement the provision in section 172-e(3), notwithstanding that reports are due by January 30, 2017. Thus, there is no process for organizations to avoid the reporting requirements even where they likely would lead to harassment of and reprisals to donors.

37. Section 172-f is entitled "Disclosure of certain activities by non-charitable non-profit entities." It provides: "Any covered entity that makes expenditures for covered communications in an aggregate amount or fair market value exceeding ten thousand dollars in a calendar year shall file a financial disclosure report with the department of law." § 172-f(2)(a).

38. Section 172-f defines a "covered entity" as: "any corporation or entity that is qualified as an exempt organization or entity by the United States Department of the Treasury under I.R.C. 501(c)(4)." § 172-f(1)(a).

39. Section 172-f defines a "covered communication" as:

> a communication that does not require a report pursuant to article one-A of the legislative law or article fourteen of the election law, by a covered entity conveyed to five hundred or more members of a general public audience in the form of: (i) an audio or video communication via broadcast, cable or satellite; (ii) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or (iii) other published statement which: 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.

§ 172-f(1)(b).

40. Section 172-f further provides that a "financial disclosure report" must include:

> (i) the name and address of the covered entity that made the expenditure for covered communications;
>
> (ii) the name or names of any individual who exert operational or managerial control over the covered entity. The disclosures required by this paragraph shall include the name of at least one natural person;
>
> (iii) a description of the covered communication;
>
> (iv) the dollar amount paid for each covered communication, the name and address of the person or entity receiving the payment, and the date the payment was made; and
>
> (v) the name and address of any individual, corporation, association, or group that made a donation of one thousand dollars or more to the covered entity and the date of such donation.

§ 172-f(2)(a)(i)-(v).

41. Section 172-f also contains a public disclosure provision, which states:

> The department of law shall make the financial disclosure reports available to the public on the department of law website within thirty days of the close of each reporting period, *provided however* that the attorney general, or his or her designee, may determine that disclosure of donations shall not be made public if, based upon a review of the relevant facts presented by the covered entity, such disclosure may cause harm, threats, harassment, or reprisals to the source of the donation or to individuals or property affiliated with the source of the donation. The covered entity may appeal the attorney general's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the department of law, pursuant to regulations promulgated by the department of law. The covered entity shall not be required to disclose the sources of donations that are the subject of such appeal pending final judgment on appeal.

§ 172-f(3). As of the date of this Complaint, the Attorney General has not promulgated any regulations to implement the provision in section 172-f(3), notwithstanding that reports are due by January 30, 2017. Thus, there is no process for organizations to avoid the reporting requirements even where they likely would lead to harassment of and reprisals to donors.

42. If a 501(c)(3) or 501(c)(4) fails to file a disclosure report pursuant to sections 172-e or 172-f, the Attorney General may impose a fine of up to $1,000 per violation, as well as $100 for every day that the violation continues. The Attorney General is also authorized to revoke or suspend the registration of a charitable organization that violates any provision of Article 7-A of the Executive Law, thus depriving it of the authority to solicit charitable contributions in New York. *See* N.Y. Exec. Law § 177.

B. *The ACLU Foundation, the NYCLU Foundation, and the NYCLU*

43. As a 501(c)(3), the ACLU Foundation is organized and operated for charitable, educational, and other tax-exempt purposes. Under federal law and regulations, the ACLU Foundation is prohibited from engaging, directly or indirectly, in political campaign activities. While it may engage in lobbying, its lobbying activity must be "insubstantial" in relation to its tax-exempt, charitable activities. For 2015, the ACLU Foundation's lobbying expenditures amounted to just over 1% of its total expenditures nationwide.

44. The NYCLU Foundation, a 501(c)(3), is likewise organized and operated for charitable, educational, and other tax-exempt purposes, and is prohibited from engaging in political campaign activities. While it may engage in lobbying, its lobbying activity must be "insubstantial" in relation to its tax-exempt, charitable activities. For 2015, the NYCLU Foundation's lobbying expenditures amounted to less than 1% of its total expenditures statewide.

45. Donations to the ACLU Foundation and NYCLU Foundation are tax-exempt. The vast majority of donations are for general support, meaning they are made without

any restriction by the donor on their use. Every year, a small number of donations are restricted by the donors to particular issues, such as LGBT rights or criminal law reform. In some cases, donations are earmarked for lobbying purposes. In the period from July 1 to December 31, 2016, the ACLU Foundation has received approximately 700 donations that were in excess of $2,500; none were earmarked for lobbying activities. For the same period, the NYCLU Foundation estimates that over 100 individuals provided contributions in excess of $2,500.

46. As a 501(c)(4), the NYCLU is organized and operated for its tax-exempt purpose of promoting the social welfare. As a matter of its internal by-laws and policies, the NYCLU does not engage in advocacy for or against candidates for political office. The NYCLU may engage in lobbying consistent with its tax-exempt status as a 501(c)(4), and, to that end, employs several individuals who are registered as lobbyists in New York. As a result, the NYCLU files a bi-annual "source of funding" report with JCOPE pursuant to New York Legislative Law sections 1-h and 1-j. Donations to the NYCLU are not tax-exempt.

47. Because of their tax-exempt status, Plaintiffs are subject to comprehensive reporting requirements enforced by the Internal Revenue Service ("I.R.S."). They must file with the I.R.S. an annual Form 990 (Return of Organization Exempt from Tax) which, among other things, discloses to the I.R.S. the identity of donors. As a 501(c)(4), the NYCLU's Form 990 includes donors of $5,000 or more. As 501(c)(3)s, the ACLU Foundation and NYCLU Foundation's Form 990s include donors of 2% or more of each organization's grants and contribution revenue. For the ACLU Foundation's most recent tax filing, this meant that it disclosed donors who gave more than $1.6 million; the NYCLU Foundation disclosed donors who gave more than $380,000. This donor information is kept confidential by the I.R.S. and is not available to the public. The ACLU Foundation, NYCLU Foundation, and NYCLU are also

regulated by the State of New York through various state laws, including the New York Not-for-Profit Corporation Law and the Executive Law, administered by the Attorney General through its subdivision the New York Charities Bureau.

48. The ACLU Foundation from time to time makes grants and provides other support to its affiliates, including the NYCLU, to further their common mission of advancing and protecting civil rights and liberties. These grants and other forms of support by the ACLU Foundation to the NYCLU are not generally earmarked for lobbying activities. However, to ensure compliance with federal law, the ACLU Foundation allocates a portion of the value of any donations that are made for lobbying toward its annual lobbying limit.

49. The ACLU Foundation's contributions to the NYCLU include (i) access to a national technological platform that supports the NYCLU's (and the NYCLU Foundation's) email communications, (ii) the use of a ready-to-launch website template to ensure consistent branding across the national organization and state affiliates, as well as state of the art technology, (iii) access to meeting facilities, and (iv) from time to time, direct cash grants. In addition, the ACLU Foundation rents space to the NYCLU (and to the NYCLU Foundation) in the corporate headquarters it owns in New York City for cost but below fair market value.

50. For the period from July 1, 2016 to the present, the value of these contributions exceeds $2,500. In order to ensure that it would not be forced to publicly disclose its donors' names pursuant to the newly-enacted section 172-e of the Executive Law, the ACLU, a 501(c)(4), recently made an offsetting payment to the ACLU Foundation in an amount greater than the value of the contributions made by the ACLU Foundation to the NYCLU. In this way, all contributions to the NYCLU that could potentially fall under the definition of "in-kind

donations" in New York Executive Law section 172-e were made by the ACLU, not the ACLU Foundation.

51. This offsetting payment is a short-term fix intended to avoid the ACLU Foundation being forced to disclose its donors in compliance with section 172-e by January 30, 2017. But this comes at a cost to the ACLU and the ACLU Foundation. First, because donations to a 501(c)(4) are not tax-deductible, it is more challenging for the ACLU to raise money than the ACLU Foundation. Consequently, using ACLU funds to pay for ACLU Foundation activities, rather than for those activities carried out exclusively by the ACLU, is disadvantageous to both organizations. Second, because of the difficulty of determining what qualifies as an "in-kind donation," the ACLU Foundation was conservative in its calculations, and the amount of the offsetting payment was likely higher than necessary. Third, because the ACLU Foundation's contributions to the NYCLU are of an ongoing nature, this type of payment will be required every six months in order to protect the ACLU Foundation's donors so long as section 172-e remains in effect.

52. The definition of an "in-kind donation" in section 172-e is broad enough that it may include the provision of pro bono legal services. The ACLU Foundation and NYCLU Foundation employ attorneys admitted to practice law in the state of New York, and both organizations provide legal representation in cases that further their mission to protect civil rights and civil liberties. Neither organization charges its clients any fees for this legal representation. The ACLU Foundation and NYCLU Foundation choose their clients based on the importance of the case, the need of the client, and the litigation's potential to advance civil rights and civil liberties. The ACLU Foundation and NYCLU Foundation have, in the past, selected their clients without regard to their tax-exempt status or to whether they file source of

funding reports with JCOPE, and upon information and belief they have represented 501(c)(4) organizations as clients or have supported 501(c)(4) organizations in an *amicus* capacity. Because the value of pro bono representation will often exceed $2,500 in a six-month period, if the ACLU Foundation or NYCLU Foundation were asked to represent a 501(c)(4) that filed source of funding reports with JCOPE, they could well be forced to decline the representation or else be required to disclose the names of their own donors to comply with section 172-e. Similarly, if a 501(c)(4) client of the ACLU Foundation or NYCLU Foundation that was not required to file a source of funding report at the time of engagement became required to do so during the pendency of the litigation, the ACLU Foundation or NYCLU Foundation could become a reporting entity required to disclose the names of its donors.

53. The NYCLU engages in a wide variety of speech on matters of public concern related to its mission of promoting civil rights and civil liberties. While some of these communications meet the statutory definition of lobbying because they urge recipients to communicate directly with a legislator or public official, many constitute pure issue advocacy or public education and do not involve any direct communication with public officials or a request for others to communicate directly with public officials.

54. The NYCLU distributes "e-Alerts" by email. These e-Alerts, which are distributed on average 1-2 times per month, cover a range of topics. Some are purely educational, discussing a recent development in law or policy or alerting the recipients to an emerging issue. For example, before the recent election, the NYCLU distributed an e-Alert pointing recipients to resources available on its website about voter intimidation. Others call for action with respect to potential or pending legislation or other governmental action, and direct the reader to a form to contact their legislator or the relevant entity. In December 2016, for

instance, the NYCLU published an e-Alert urging Governor Cuomo to sign legislation aimed at ensuring that the indigent have access to public defenders. As of December 2016, the NYCLU had approximately 150,000 recipients on its e-Alert mailing list, thousands of whom are not members of the organization.

55. In addition, the NYCLU maintains a presence on various social media websites, including Facebook and Twitter. Like e-Alerts, the NYCLU's Facebook and Twitter posts reflect a variety of topics, and range from purely educational commentary to calls for action on specific legislation. As of December 2016, the NYCLU had approximately 27,000 followers on Facebook and 20,000 on Twitter.

56. The NYCLU also regularly publishes op-eds and columns in newspapers and blogs, which are often published or reprinted on its website, www.nyclu.org. Some of these publications urge particular action by an elected official or government body. For instance, in an op-ed published in The Rochester Democrat and Chronicle, the NYCLU requested that the City of Rochester reverse certain aspects of its policy regarding police body cameras. Often, however, the NYCLU's op-eds merely highlight or advocate with respect to a political or policy issue. In a piece in the Huffington Post in September 2016, the NYCLU drew attention to a class action lawsuit against the Onondaga County Justice Center alleging that the Center's practice of using solitary confinement to punish children is unconstitutionally cruel. Another piece, published in The New York Daily News, criticized the New York City Civilian Complaint Review Board's refusal to release substantiated complaints against the officer who killed Eric Garner.

57. The NYCLU's expenditures on communications to the public as described above will total over $10,000 for the 2016 calendar year. These expenditures include the costs of

maintaining the NYCLU's website and, when communications staff work jointly to advance the collective missions of the NYCLU and the NYCLU Foundation, the portion of their salaries that are allocated to the NYCLU.

C. *The ACLU Foundation and NYCLU Foundation May Be Required to File Disclosure Reports Pursuant to Section 172-e*

58. As 501(c)(3)s, the ACLU Foundation and NYCLU Foundation are "covered entities" under New York Executive Law section 172-e.

59. Because the NYCLU is a 501(c)(4) and is required to file a "source of funding" report under the New York Lobbying Act, the NYCLU is a "recipient entity" under section 172-e.

60. The ACLU Foundation's contributions to the NYCLU, including but not limited to provision of a technological platform for email communications and a website template, provision of meeting space, direct grants, and provision of office space at cost but below fair market value, may constitute "in-kind" donations under section 172-e. The value of these donations in a six-month period exceeds $2,500.

61. Accordingly, the ACLU Foundation would be subject to the reporting requirement under section 172-e, requiring it to file "funding disclosure reports" every six months, unless its 501(c)(4) affiliate, the ACLU, makes a contribution to the ACLU Foundation that fully offsets the amounts of in-kind donations, as defined in the statute.

62. The ACLU Foundation and the NYCLU Foundation regularly represent clients in legal proceedings free of charge. Some of these clients may include a 501(c)(4) entity that qualifies as a "recipient entity" under section 172-e. The value of legal services in a typical case exceeds $2,500 in a six-month period. Therefore, the ACLU Foundation and NYCLU

Foundation's legal representation may independently subject them to reporting requirements under section 172-e.

D. ***The NYCLU is Required to File a Disclosure Report Pursuant to Section 172-f***

63. As a 501(c)(4), the NYCLU is a "covered entity" under section 172-f.

64. The NYCLU publishes and distributes information that meets the statutory definition of "covered communication," including the communications described in paragraphs 53 through 56 above.

65. During 2016, the NYCLU's expenditures on such communications exceeded $10,000.

66. Accordingly, the NYCLU is subject to the reporting requirement under section 172-f.

E. ***Disclosure of the Identities of Donors to the ACLU Foundation, the NYCLU Foundation, and the NYCLU Will Result in Threats and Harassment***

67. There is a long history of threats and harassment directed against the ACLU Foundation, the ACLU, their affiliates, including NYCLU and NYCLU Foundation, and individuals whose association with the organizations is made public, because they frequently take positions on behalf of controversial clients, issues, and causes and, often, on behalf of minority groups.

68. For example, in the 1970s, at least five members of the NYCLU became subject to community hostility after their names and addresses were made public pursuant to a statutory reporting scheme. A federal court ruled that as a consequence these individuals were deterred from associating with the NYCLU. *NYCLU v. Acito*, 459 F. Supp. 75 (S.D.N.Y. 1978).

69. More recently, in 2007, a man dressed in a black robe regularly appeared at the offices of the NYCLU and the ACLU in lower Manhattan. The man marched outside the

building waving signs that denounced the organizations' staff members as "dogs" and "Jews." He also maintained a website that charged that the organizations were parties to a Jewish conspiracy. The website contained photographs of several ACLU and NYCLU staff and clients.

70. In July 2010, a man named Byron Williams loaded his car with guns, strapped on body armor, and headed for San Francisco with the intention of killing employees at the offices of the ACLU of Northern California and the Tides Foundation, a philanthropic organization that supports environmental preservation and other social justice issues. Police pulled Williams over before he reached the city when they noticed him driving erratically, and a brief gunfight ensued. After his arrest, authorities reported that he told them his goal had been to "start a revolution."

71. In June 2013, a high-ranking official with the ACLU's Iowa affiliate received a threatening letter the day after commenting in a newspaper on an ACLU report that addressed racial disparities in marijuana arrests. The letter stated, "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 [sic] rock and roll hit."

72. In response to its advocacy efforts on behalf of LGBT rights, the ACLU's Oklahoma affiliate was sent a hostile music video that intercut pictures of activities with images of fire. The video was delivered with a message that read in part, "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 you were never warned!"

73. As recently as April 2015, the ACLU's and NYCLU's New York offices were the subject of a bomb threat that required a police investigation. The message that accompanied the threat referred to the terrorist attacks on New York City on September 11, 2001. Following the attacks, the NYCLU was vilified by some for its advocacy on behalf of civil liberties in the face of government anti-terrorism initiatives, and in particular for objecting to discriminatory conduct directed at Muslims and Sikhs.

74. Just two weeks before the filing of this complaint, the ACLU received a direct message on Facebook saying "I hope everyone of you fucks dies and burns. You are what is wrong in America. Try to make me take down my cross on my towns [sic] tree and you will not get the result you hope for."

75. There is therefore a reasonable and justifiable concern that public disclosure of the identities of Plaintiffs' respective donors may subject them to harm, threats, harassment, or reprisals by members of the public.

76. The risk that donors' identities will be disclosed without their consent will deter individuals from making donations to Plaintiffs. Moreover, because the disclosure requirements apply even to those who do not earmark their donations for lobbying or election-related speech, the chilling effect of the disclosure requirements are exacerbated. Accordingly, the compelled disclosure rules of 172-e and 172-f infringe upon the rights of association and speech of Plaintiffs' members and supporters.

COUNT I

(New York Executive Law § 172-e is Unconstitutional Under the First and Fourteenth Amendments)

77. Plaintiffs reallege and incorporate by reference paragraphs 1 through 76 of this Complaint.

78. New York Executive Law § 172-e violates the First and Fourteenth Amendments to the United States Constitution because it seeks to regulate, through mandatory public disclosure, expressive conduct and associational activities of 501(c)(3)s and their donors in a manner that fails to advance any substantial governmental interest in a narrowly tailored fashion and because its provisions are impermissibly vague and overbroad.

COUNT II

(New York Executive Law § 172-f is Unconstitutional Under the First and Fourteenth Amendments)

79. Plaintiffs reallege and incorporate by reference paragraphs 1 through 78 of this Complaint.

80. New York Executive Law § 172-f violates the First and Fourteenth Amendments because it seeks to regulate issue-oriented expression that does not constitute lobbying under New York law or under constitutional standards and imposes content-based requirements that are not "narrowly tailored" to the advancement of any "compelling interests." The provision violates rights of anonymous speech and association, and it is unconstitutionally vague and overbroad.

WHEREFORE, Plaintiffs the ACLU Foundation, the NYCLU Foundation, and the NYCLU respectfully request that this Court grant the following relief:

A. A declaration that New York Executive Law section 172-e is unconstitutional on its face;

B. A declaration that New York Executive Law section 172-f is unconstitutional on its face;

C. A permanent injunction enjoining the Attorney General and the JCOPE Defendants from enforcing New York Executive Law section 172-e;

D. A permanent injunction enjoining the Attorney General and JCOPE Defendants from making public on JCOPE's website the names of donors to the ACLU Foundation and the NYCLU Foundation;

E. A permanent injunction enjoining the Attorney General from enforcing New York Executive Law section 172-f;

F. A permanent injunction enjoining the Attorney General from making public on its website the names and addresses of donors to the NYCLU;

G. An award of the costs and disbursements of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

H. Such other and further relief as the Court may deem just and proper.

Dated: December 21, 2016

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