UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITIZENS UNION OF THE CITY OF NEW YORK and CITIZENS UNION FOUNDATION, INC. OF THE CITY OF NEW YORK, Plaintiffs, -against- THE GOVERNOR OF THE STATE OF NEW YORK, in his official capacity; THE MEMBERS OF THE JOINT COMMISSION ON PUBLIC ETHICS, in their official capacities; THE EXECUTIVE DIRECTOR OF THE JOINT COMMISSION ON PUBLIC ETHICS, in his official capacity; and THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, in his official capacity, Defendants.	Civil Action No. _____

COMPLAINT

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Attorneys for Plaintiffs Citizens Union of the City of New York and Citizens Union Foundation, Inc. of the City of New York

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Plaintiffs Citizens Union of the City of New York and Citizens Union Foundation, Inc. of the City of New York (collectively, "Plaintiffs"), by and through their undersigned attorneys, allege as follows:

I.
NATURE OF THE ACTION

1. Plaintiffs are affiliated educational and social welfare organizations that promote informed public discourse on matters of public concern in New York State and New York City. They bring this action to vindicate their rights, and the rights of their members and donors, under the First Amendment to the United States Constitution. Specifically, Plaintiffs seek declaratory and injunctive relief from the implementation and enforcement of two newly enacted, unconstitutionally broad provisions of the New York Executive Law, codified at sections 172-e and 172-f (the "Nonprofit Disclosure Provisions"), that will require public disclosure of broad swaths of donors and donations to nonprofit organizations, even when those donors and donations are supporting speech on matters of public concern but are far removed from elections or electioneering.

2. The First Amendment guarantees the bedrock constitutional rights to speak on matters of public concern and to associate for that purpose. It is well-settled that disclosure laws burdening these rights—which receive the protection of the First Amendment at its zenith—must be substantially related to a sufficiently important government interest. Although the government possesses significant interests in requiring certain kinds of disclosures in order to prevent *quid pro quo* corruption and to ensure the integrity of the electoral process, the Nonprofit Disclosure Provisions cannot possibly be justified by these government interests.

3. In particular, the Nonprofit Disclosure Provisions are unconstitutionally overbroad, regulating not only speech for or against candidates for public office but also infringing on core political speech unrelated to corruption or elections. Specifically, the Nonprofit Disclosure Provisions now require, without any nexus to elections or corruption, broad public disclosures of donations and donor identities from (1) certain tax-exempt organizations that contribute money or services to another organization engaging in lobbying, even if the contribution and the lobbying activities are wholly unrelated, and (2) certain tax-exempt organizations that speak out on *any* matter of public concern, *i.e.*, any issue of civil, social, or political importance, at any time. These sweeping provisions go far beyond electoral transparency and accountability; instead, they impermissibly burden the everyday, citizen-to-citizen dialogue at the heart of First Amendment.

4. The challenged act, Chapter 286, was signed into law on August 24, 2016. Part F of the act, codified at N.Y. Executive Law § 172-e, took effect on November 22, 2016. Part G of the act, codified at N.Y. Executive Law § 172-f, took effect on September 23, 2016. Both sections require organizations like Plaintiffs to file reports, after the close of two semi-annual reporting periods, publicly disclosing information about the organizations' donors and certain donations or expenditures.

5. The first semi-annual reporting period will end on December 31, 2016. As written, the first reports under the new laws must be filed with the New York State Department of Law within thirty days of the period's end—by January 30, 2017. Once received by the Department of Law, the reports must then be made available to the public on either the Department of Law's website or the website of the Joint Commission on Public Ethics (the "JCOPE"), depending on

the provision at issue, within the same thirty-day period. As a result, New York nonprofit organizations like Plaintiffs will have their disclosures made public by the end of January 2017.

6. The burdens imposed on Plaintiffs and similar organizations by the Nonprofit Disclosure Provisions are significant. First, the provisions impose direct burdens on the organizations by expanding their recordkeeping and compliance costs. More than simply disclosing existing tax forms like an IRS Schedule B, the law requires the filing of new reports with different criteria. The creation and preparation of these reports require significant investigation and ongoing monitoring efforts by covered organizations, particularly because the law requires certain covered entities to monitor even their *donees'* activities—over which they may have no control—in order to determine whether the covered entities need to file disclosures.

7. Moreover, social welfare organizations covered by section 172-f must track and report all instances of their public speech, as well as that of third parties to whom they contribute, that fall within the broadly defined statute, which in many cases may comprise a substantial amount of their programming.

8. These burdens chill speech by forcing both donors and the organizations to make choices between exercising speech and association rights and subjecting themselves to burdensome obligations and public disclosures. The Nonprofit Disclosure Provisions require donors to choose between making contributions over the dollar threshold—and thus face public disclosure of their names and addresses on a government website, subjecting them to whatever might result—and limiting or forgoing association with organizations they would otherwise support. The disclosure requirements also chill speech by organizations who may wish to contribute to other organizations but who may not want to undertake the burdens of compliance and reporting, or the risk of liability.

9. Plaintiffs are aware of donors who intend to limit their contributions or will decline to donate altogether, out of a desire to avoid public disclosure of their names and addresses. As Plaintiffs near the end of the calendar year, they face immediate harm in the form of a loss of donations as former or potential donors' speech is chilled. This in turn directly chills Plaintiffs' speech by limiting Plaintiffs' ability to create and disseminate communications.

10. Accordingly, the Nonprofit Disclosure Provisions are facially overbroad and will inflict irreparable harm on Plaintiffs and others similarly situated if they are not stayed prior to the end of January 2017. Plaintiffs therefore bring this action and ask the Court to: (1) declare that the Nonprofit Disclosure Provisions are void because they violate the First Amendment, and (2) enjoin the implementation or enforcement of the unconstitutional provisions.

II.
PARTIES, JURISDICTION, AND VENUE

11. Plaintiff Citizens Union of the City of New York ("Citizens Union") is a nonprofit corporation organized under the laws of the State of New York and exempt from taxation under 26 U.S.C. § 501(c)(4). Its principal place of business is located at 299 Broadway, New York, New York, 10007. Citizens Union is a nonpartisan organization of citizens dedicated to securing honest and efficient government for the people of the City of New York. Citizens Union brings New Yorkers together to strengthen our democracy and improve our City. Nonpartisan and independent, it aims to build a political system that is fair and open to all, values each voice, and engages every voter. As New York's democratic reform organization, it informs, empowers, and organizes citizens to strengthen the integrity of the city and state's political institutions. It fights against corruption, works to reform the state's voting and electoral systems, and presses for city and state governments that are transparent, accountable, and effective.

12. Plaintiff Citizens Union Foundation, Inc. of the City of New York ("Citizens Union Foundation") is a nonprofit corporation organized under the laws of the State of New York and exempt from taxation under 26 U.S.C. § 501(c)(3). Its principal place of business is located at 299 Broadway, New York, New York, 10007. Citizens Union Foundation conducts research, engages in public education, and analyzes public policy proposals, seeking increased civic participation as well as open, transparent, and responsive municipal and state government.

13. Defendant the Governor of the State of New York (the "Governor") is the chief executive of the State of New York, charged with the faithful execution of the laws of the State. *See* N.Y. Const. art. IV, §§ 1, 3. The current Governor is Andrew Cuomo. He is sued here in his official capacity only.

14. Defendants the Members of the Joint Commission on Public Ethics (the "JCOPE Members") are fourteen individuals, each appointed to serve on the JCOPE. *See* N.Y. Exec. Law § 94[2]. The JCOPE is an independent agency of the State of New York with jurisdiction over statewide elected officials, members and employees of the legislature, state officers and employees, candidates for statewide elected office and legislature, political party chairmen, lobbyists, and individuals who have formerly held any of these roles. *See* N.Y. Exec. Law § 94[1]. The JCOPE Members act in their statutory roles to ensure compliance with the State's ethics and lobbying laws and regulations, in addition to issuing advisory opinions. *See* N.Y. Exec. Law § 94[9]–[18]. Pursuant to section 172-e[3], the JCOPE Members have the responsibility to publish the financial disclosure reports required by the law on their publicly available website. N.Y. Exec. Law § 172-e[3]. The current JCOPE Members are Marvin E. Jacob; Seymour Knox IV; Eileen Koretz; Gary J. Lavine; J. Gerard McAuliffe, Jr.; David A.

Renzi; Renee R. Roth; Michael K. Rozen; Dawn L. Smalls; and George H. Weissman. They are sued in their official capacities only.

15. Defendant the Executive Director of the Joint Commission on Public Ethics (the "JCOPE Executive Director") is appointed by majority vote of the JCOPE Members; he may be delegated authority to act in the name of the commission between meetings of the JCOPE. *See* N.Y. Exec. Law § 94[9][a]. The current JCOPE Executive Director is Seth H. Agata. He is sued in his official capacity only.

16. Defendant the Attorney General of the State of New York (the "Attorney General") is the head of the New York State Department of Law. *See* N.Y. Const. art. V, § 4, N.Y. Exec. Law § 60. The Department of Law is the state agency responsible for receiving the disclosure reports required by the Nonprofit Disclosure Provisions. In addition, the Attorney General is charged with the administration and enforcement of the Nonprofit Disclosure Provisions. *See* N.Y. Exec. Law §§ 172-e[3], 173-f[3], 175, 177. The current Attorney General is Eric T. Schneiderman. He is sued here in his official capacity only.

17. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

18. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391, because the acts triggering disclosure and the monitoring, preparing, and disclosing of the required reports will occur at Plaintiffs' principal place of business in New York County.

III.
LEGAL AND REGULATORY BACKGROUND

A. The First Amendment Protects Speech And Association And Bars Laws That Burden Political Speech But Are Not Related To Corruption Or Elections

19. The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or

abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. amend. I.

20. The rights of free speech and free association guaranteed by the First Amendment are among the most fundamental pillars of a free democratic society. As the United States Supreme Court has stated, "[t]he vitality of civil and political institutions in our society depends on free discussion. . . . It is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

21. The Supreme Court has consistently held that First Amendment protections are at their zenith when they concern "core political speech"—*i.e.*, speech that is "an expression of a desire for political change and a discussion of the merits of the proposed change." *Meyer v. Grant*, 486 U.S. 414, 421 (1988). "The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." *Id.* (internal quotation marks omitted). This type of speech encompasses everything from "Support Our Troops!" to "Support the National Park System!" to "Promote School Choice!"—all of which express a substantive political position and encourage fellow citizens to do the same.

22. Accordingly, "[b]road prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1963); *see also Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 807 (2011) ("[G]overnment may regulate in the area of First Amendment freedoms only with narrow specificity." (internal quotation marks omitted)).

23. This specificity has particular importance in the unique context of elections. Because electoral speech necessarily involves core political speech, First Amendment protections are at their highest. *See Meyer*, 486 U.S. at 421, 425. However, the Supreme Court has also recognized that the interests in preserving the integrity of the democratic process, preventing *quid pro quo* corruption, and promoting an informed citizenry may justify limited regulations, such as compelled disclosures, of election-related speech. *See Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976).

24. Accordingly, preserving the rights of free speech and free association in the context of campaign finance regulations requires careful consideration of the existence of "government interests sufficiently important to outweigh the possibility of infringement, particularly where the free functioning of our national institutions is involved." *Valeo*, 424 U.S. at 66 (internal quotation marks omitted).

25. Prior to enacting Chapter 286, New York State struck this balance by regulating specific, election-related activity, including contributions to candidates or political committees, *see* N.Y. Exec. Law §§ 14-114, 14-117, and specific election or ballot-related "independent expenditures," *see* N.Y. Exec. Law § 14-107 (amended 2016). Under these laws, independent expenditures—communications made by third parties that are not influenced by or coordinated with a candidate or political party—are defined to include any communications that contain "words such as 'vote,' 'oppose,' 'support,' 'elect,' 'defeat,' or 'reject,' which call for the election or defeat of the clearly identified candidate," or that advocate for or refer to "clearly identified" candidates or ballot proposals within specified time periods before an election. *See* N.Y. Election Law § 14-107[1][a] (amended 2016). Persons making independent expenditures were required to register with the state board of elections and to disclose certain information, including the identity of the

person making the expenditure as well as the name, address, occupation, and employer of any person contributing $1,000 or more for the independent expenditure. *Id.* § 14-107[4]. These requirements remain in place under the current law.

26. In January 2010, the Supreme Court held, in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), that statutes requiring disclosures related to the funding of corporate independent expenditures for "electioneering communications"—defined as "'any broadcast, cable, or satellite communication' that 'refers to a clearly identified candidate for Federal office' and is made within 30 days of a primary or 60 days of a general election," *id.* at 321 (quoting 2 U.S.C. § 434(f)(3)(A))—are justified by the government's informational interest in "providing the electorate with information about the sources of election-related spending." *Citizens United*, 558 U.S. at 367 (internal quotation marks omitted). At the same time, the Supreme Court struck down as unconstitutional statutory prohibitions on a corporation's use of general treasury funds to make independent expenditures for such electioneering communications.

27. Since *Citizens United*, Citizens Union has tirelessly advocated for increased campaign finance regulation within the confines set out by the Supreme Court, with the goal of promoting transparent and accountable democratic processes, including by testifying in May 2013 before the Elections Committee of the New York Senate on the benefits of a public matching system for campaign finance. Citizens Union has also advocated for reducing contribution limits, strengthening enforcement of existing campaign finance laws, restricting "soft money" contributions, and requiring greater disclosure and reporting in elections.

28. On January 4, 2012, Governor Cuomo announced strong support for campaign finance reform in his State of the State speech. In response, Citizens Union issued a statement by

Executive Director Dick Dadey, expressing support for the Governor's position and advocating for the adoption of a matching public campaign finance system and meaningful redistricting reform. This statement was just one of several over the years by Citizens Union concerning the need to reform the state's campaign finance system by reducing the undue influence of large-sized money contributions in political campaigns.

B. The Legislature Passes Nonprofit Disclosure Provisions—The Same Day They Were Introduced, Without Public Comment—That Regulate Core First Amendment Speech That Has No Nexus To Corruption Or Elections

29. On June 17, 2016, two bills—A10742 and S8160—were introduced into the New York State Assembly and New York State Senate by Assemblyman Carl Heastie and Senator John Flanagan, respectively. According to statements by both the Governor and the Assembly, the bills purport to respond to the Supreme Court's *Citizens United* decision.

30. Both bills were introduced, voted upon, and passed on the same day under a "Message of Necessity." Under the New York constitution, a bill must remain on a senator's desk for three days before it can be voted on, unless the Governor certifies, and the Senate accepts, a Message of Necessity. *See* N.Y. Const. art. III, § 14.

31. On August 24, 2016, the Governor signed the bill, now designated Chapter 286 of the Laws of 2016. A true, complete, and accurate copy of Chapter 286 is attached as Exhibit A, and is incorporated herein as if fully set forth.

32. Governor Cuomo, in initiating the legislation, stated that its purpose is to "curb the power of independent expenditure campaigns unleashed by the 2010 Supreme Court case *Citizens United vs. Federal Election Commission*." Press Release, Gov. Cuomo Advances Nation's Strongest Protections to Combat Citizens United (June 8, 2016). The legislation, the Governor said, would "limit the 'quid pro quo' danger posed by colossal corporate donations and ensure that independent expenditure groups remain autonomous from the entities they support." *Id.*

33. In late May and early June, Governor Cuomo met with Dadey and several other civic leaders at the governor's New York City office to discuss the possible legislation. During these meetings, Governor Cuomo did not discuss or raise these provisions as needed parts of the legislative fix to *Citizens United*.

34. After the legislature passed the bills, Citizens Union and four other civic groups wrote a letter dated August 23, 2016 to Governor Cuomo, urging him to veto the bills. The letter highlighted the groups' concerns with the flawed disclosure provisions and the lack of discussion prior to their proposal, stating:

> We believe that these flaws are the direct result of a secretive process, a process all too common in Albany. Promised as a legislative fix to the disastrous Supreme Court decision in the Citizens Union case, it goes beyond the issue in that case and could easily bring a result that causes more harm than good to the public interest.

Letter to Governor Andrew Cuomo, dated August 26, 2016.

35. In a speech announcing the legislation, the Governor said:

> [T]he power to influence and the power to be heard in elections was tilted beyond all recognition when the Supreme Court upheld Citizens United. This decision ignited the equivalent of a campaign nuclear arms race and created a shadow industry in New York—maligning the integrity of the electoral process and drowning out the voice of the people. . . . As Governor of New York, I am taking action to curb the powers of independent entities and ensure these committees cannot circumvent the law and cheat the system. We are also strengthening disclosure requirements so we know exactly where and from whom this dark money flows. Our message is clear: In New York, democracy is not for sale."

Press Release, Gov. Cuomo Advances Nation's Strongest Protections to Combat Citizens United (June 8, 2016).

36. Similarly, in its statement in support of the eventual bill, the Assembly stated:

> First, in response to the Supreme Court's Citizens United decision, this bill would institute the strictest anti-coordination law in the nation, and specifically prohibit coordination in New York State election law for the first time. . . . This will allow New York's electoral politics to achieve a clear and meaningful demarcation

> between candidates and unlimited expenditures and will provide a much-needed reform to New York's campaign finance system.
>
> Second, the bill would increase penalties for egregious lobbying violations, while also providing for enhanced due process for persons under investigation for ethics and lobbying violations. The bill would also require political consultants that provide services to sitting elected officials or candidates for elected office and who also have clients with business before the state or a locality to register with the state and to disclose their clients. This reform prevents organizations from corrupting the political process and utilizing funds that are not intended for political purposes[.] Disclosure of political relationships and funding behaviors widely recognized to be influential, but which operate in the shadows, is essential to restoring the public's faith and trust in our political process.

Statement in Support of Assembly Bill 10742.

37. Thus, Chapter 286 purports to protect against "*quid pro quo* dangers," the coordination of campaign spending with candidates for public office, and political corruption; both the Governor's and Assembly's statements in support of Chapter 286 repeatedly refer to "elections," "the electoral process," and "electoral politics." Notably, neither the Governor's discussion of his motivation for introducing the bill, nor the statements of the legislature in passing it, specifically refer to the Nonprofit Disclosure Provisions or the reasons behind them. While other parts of Chapter 286 attempt to target *quid pro quo* corruption and coordination in elections, Parts F and G do not. Instead, they regulate substantial speech on matters of public concern.

38. Specifically, the Nonprofit Disclosure Provisions by their express terms regulate speech on matters of public concern by corporations exempt from taxation under 26 U.S.C. § 501(c)(3) and § 501(c)(4) ("501(c)(3)s" and "501(c)(4)s," respectively) and their donors under overbroad standards with no relationship to preventing *quid pro quo* corruption or preserving electoral integrity. The Nonprofit Disclosure Provisions thus significantly curtail protected speech by 501(c)(4)s like Citizens Union and the promotion of informed public discourse by 501(c)(3)s like Citizens Union Foundation.

1. Section 172-e imposes broad reporting requirements on 501(c)(3)s

39. Section 172-e mandates the public disclosure of *all* donors and donations to a 501(c)(3) in excess of $2,500 whenever that organization makes an "in-kind donation" of over $2,500 to certain 501(c)(4)s engaged in lobbying activity. N.Y. Exec. Law § 172-e[1][a], [d], [2]. An "in-kind donation" is defined as "donations of staff, staff time, personnel, offices, office supplies, financial support of any kind or any other resources." N.Y. Exec. Law § 172-e[1][b].

40. Section 172-e requires disclosure reports to be filed with the Department of Law within thirty days of the close of a reporting period. The disclosures 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.

N.Y. Exec. Law § 172-e[2].

41. To trigger the disclosure requirement, 501(c)(3)s must make their "in-kind donations" to 501(c)(4)s that are "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." N.Y. Exec. Law § 172-e[1][d]. Those provisions of the Legislative Law, in turn, require source-of-funding reports for (1) any "person or organization who retains, employs or designates any person or organization to carry on lobbying activities" on their behalf, N.Y. Leg. Law § 1-c[b]], that expends over $15,000 for lobbying in a calendar year or during a given 12-month period and that devotes three percent

of those total expenditures to lobbying in New York, *see* N.Y. Leg. Law § 1-j, and (2) any lobbyist that does the same, *see* N.Y. Leg. Law § 1-h.

42. Accordingly, under Section 172-e, a 501(c)(3) like Citizens Union Foundation is required to maintain the appropriate records and file disclosure reports regardless of whether its in-kind donations are actually earmarked or used for lobbying. Citizens Union Foundation's obligations—requiring reporting of every donor contributing more than $2,500—are triggered as soon as it makes *any* in-kind contribution over $2,500 to a 501(c)(4) that merely employs a lobbyist and meets the expenditure thresholds, even if neither the 501(c)(3)'s donation nor the contributions of any of its donors have anything to do with lobbying or if they are earmarked for other purposes.

43. The Department of Law must make the disclosure reports public within thirty days of the close of the reporting period by forwarding the reports to the JCOPE for publication on its website. N.Y. Exec. Law § 172-e[3].

44. The statute also provides 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." *Id.* The covered entity may appeal the attorney general's determination to a "judicial hearing officer who is independent and not affiliated with or employed by the department of law." *Id.* The statute thus confers purely discretionary authority on the Attorney General to waive public disclosure, based on no determinate quantum of proof and subject to appeal under an undefined standard of review.

45. If a 501(c)(3) like Citizens Union Foundation does not comply with these reporting requirements, it faces fines of $1,000 per violation, plus a $100 fine for each day such violation continues. The Attorney General may also revoke, suspend, or deny Citizens Union Foundation's registration. *See* N.Y. Exec. Law § 177.

2. Section 172-f imposes broad reporting requirements on 501(c)(4)s

46. Section 172-f requires 501(c)(4)s to disclose publicly donations over $1,000—including the donor's identity and the amount of the donation—whenever the organization makes "expenditures for covered communications" totaling over $10,000 in a calendar year. N.Y. Exec. Law § 172-f[1][a], [2]-[3].

47. A "covered communication" is expansively defined as

> [A] communication . . . conveyed to five hundred or more members of a general public audience . . . 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.

N.Y. Exec. Law § 172-f[1][b]. "Expenditures for covered communications" are defined as

> [A]ny expenditure made, liability incurred, or contribution provided for covered communication; or . . . 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 covered communications by the recipient or a third party.

N.Y. Exec. Law § 172-f[1][c].

48. If a 501(c)(4) reaches the disclosure thresholds, it must file a disclosure report with the Department of Law within thirty days of the close of each reporting period that includes:

> (i) the name and address of the covered entity that made the expenditure for covered communications;
>
> (ii) the name or names of any individuals who exert operational or managerial control over the covered entity. . . .;

> (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.

N.Y. Exec. Law § 172-f[2][a]-[b].

49. Once received, the Department of Law is then required to make the disclosure reports public by posting them on its website within the same thirty-day period. *Id.* § 172-f[3]. As under section 172-e[3], there is an exception from publication for disclosures that, at the discretionary determination of the attorney general, "may cause harm, threats, harassment, or reprisals." N.Y. Exec. Law § 172-f[3]. 501(c)(4)s under section 172-f may appeal this determination to a "judicial hearing officer who is independent and not affiliated with or employed by the department of law." *Id.*

50. If a 501(c)(4) like Citizens Union does not comply with section 172-f, it is subject to the same penalties as 501(c)(3)s under section 172-e—namely, fines and revocation or suspension of its registration. *See* N.Y. Exec. Law § 177.

IV.
RELEVANT FACTS

A. Citizens Union, Citizens Union Foundation, And Numerous Other Charitable And Social Welfare Organizations In New York State Speak On Matters Of Public Concern

51. In 2013, there were 90,966 501(c)(3)s in New York.[1]

52. Speech by 501(c)(3)s—such as Citizens Union Foundation—can cover an extremely broad range of matters of public concern. Under federal law, these organizations may pursue a

[1] *See* National Center for Charitable Statistics, *Number of Nonprofit Organizations in New York, 2003–2013*, *available at* http://nccsweb.urban.org/PubApps/profile1.php?state=NY.

variety of ends: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. Further, although 501(c)(3)s may not participate in any political campaign on behalf of or in opposition to a candidate for public office, they may lawfully participate in limited lobbying or influencing legislation, so long as those activities are not a substantial part of their total activities.

53. As of 2013, there were 3,204 501(c)(4)s in New York.[2]

54. Like 501(c)(3)s, 501(c)(4)s—such as Citizens Union—speak out on a variety of matters of public concern. Unlike 501(c)(3)s, 501(c)(4)s may attempt to influence legislation relevant to their programs and may participate in political campaigns, so long as their primary activity is the promotion of social welfare related to the organizations' purposes.

55. As a result of these educational, charitable, or social welfare purposes, both 501(c)(3)s and 501(c)(4)s regularly speak on matters of public concern. Many of the public benefit purposes pursued by these two categories of organizations are related, making coordination between 501(c)(3)s and 501(c)(4)s likely insofar as the organizations pursue overlapping interests.

56. Citizens Union and Citizens Union Foundation both promote the same goals of good governance and fair democratic participation but in ways particular to their specific corporate goals; joint and coordinated action between the two entities is not only legally permissible but efficient and desirable as a matter of charitable and social welfare work. The scope of the speech

[2] *See* National Center for Charitable Statistics, *Number of Non-501(c)(3) Exempt Organizations in New York, 2013*, *available at* http://nccsweb.urban.org/PubApps/profileDrillDown.php?state=NY&rpt=CO.

on matters of public concern undertaken by these entities alone demonstrates how much speech is captured by sections 172-e and 172-f.

1. Citizens Union speaks out on good government in New York

57. Citizens Union was founded in 1897 as an independent political party, unaligned with either the Democratic or Republican parties, representing citizens from diverse social and economic backgrounds in the City of New York.

58. In 1908, Citizens Union transformed itself from a political party into a nonpartisan "good government" organization to avoid the problem of party patronage and to promote efficiency and transparency in the government of the City of New York.

59. Since that time, Citizens Union has focused on promoting citizen awareness of municipal and state government and accountability. For example, since 1910, Citizens Union has published a "Voters Directory," designed to inform and guide the electorate on candidates for elected office. In 1996, Citizens Union advocated for the establishment of the Independent Budget Office in New York City, and Citizens Union regularly publishes policy reports on issues like discretionary spending in the state budget.

60. In its 119-year history, Citizens Union has also regularly advocated for legislative reforms to increase voter power in elections, including the reversal of slate voting in 1915, proportional representation in the New York City Council in 1936, permanent personal voter registration in 1957, the Young Adult Voter Registration Act in 2004, and a successful constitutional amendment in 2014 that reforms legislative and congressional redistricting by ensuring that no district shall be drawn to favor or disfavor incumbents, challengers, or political parties.

61. In the past decade alone, Citizens Union has repeatedly advocated for campaign finance reform, including direct regulation on campaign expenditures and increased disclosure laws. The

reforms pressed by Citizens Union include sweeping legislation addressing campaign finance, lobbying, and ethics in 2005, pressing city leadership to enact a law increasing disclosure and strengthening enforcement of lobbying laws in 2006, increased restrictions on "pay to play" contributors in 2007, historic ethics reforms in 2011, and state lawmakers' ethics reforms increasing sources of outside income and restrictions on the use of campaign funds.

62. In accordance with its advocacy goals, Citizens Union regularly authorizes certain employees, including its Executive Director, Dick Dadey, to act as lobbyists to both the state and city government on behalf of Citizens Union. *See* N.Y. Leg. Law § 1-e[a][3]. Citizens Union's most recent biennial lobbying registration was filed January 9, 2015. The registration statements state that Citizens Union expects to exceed the $5,000 statutory threshold for lobbying expenditures requiring such registrations.

63. As required by statute, Citizens Union regularly files semi-annual lobbying expenditure reports with the JCOPE. *See* N.Y. Leg. Law § 1-j. Its most recent report was for the reporting period ending June 30, 2016. Thus, donations of $2,500 or more to Citizens Union by any 501(c)(3) would trigger the provisions of section 172-e requiring the 501(c)(3) to file disclosure reports.

64. Speech on issues related to Citizens Union's social welfare purposes is unquestionably core political speech protected by the First Amendment—and would also likely fall into the expansive definition of "covered communications" within section 172-f. Accordingly, Citizens Union's long history of participating and advocating on behalf of governmental accountability and reform would now subject it to section 172-f's expansive disclosure requirements without any nexus to preventing *quid pro quo* corruption or preserving the integrity of the electoral process.

65. Citizens Union's political statements have prompted harassment and threats of retaliation against Citizens Union and its members in the past.

66. On several occasions, elected officials have threatened retaliation against Citizens Union in response to its actions, decisions, or positions on questions of policy.

67. Additionally, several members have been questioned about their support for Citizens Union by elected officials who oppose positions taken by the organization. This questioning has been deployed to pressure these members into refraining from continued involvement with Citizens Union.

2. Citizens Union Foundation conducts research and provides education on public issues

68. Similarly, Citizens Union Foundation, founded in 1948, has repeatedly engaged in public information programming regarding policy issues as a nonprofit research, education, and advocacy organization.

69. Citizens Union Foundation monitors and regularly publishes information on the governance of New York City. It also conducts research and publishes information on the impact of proposed policies and legislation at both the state and local levels. For example, in 1989, Citizens Union Foundation began monitoring the New York City Council and began to publish "Searchlight on the City Council," a comprehensive guide to the city's legislative body and its activities.

70. In 1999, Citizens Union Foundation launched GothamGazette.com, a daily website of news and policy issues of concern in New York City. In the seventeen years since its inception, GothamGazette.com has won numerous accolades and awards, including two Online Journalism Awards for General Excellence in 2003 and 2009, the Innovator Award from the Pew Center for Civic Journalism, and two Knight Foundation News Challenge Grants in 2007 and 2009.

71. In 2011, Citizens Union Foundation published a comprehensive report on how gerrymandering had contributed to the lack of electoral competition for state legislative seats. The report showed how to reform legislative and congressional redistricting through the creation of an independent commission and the establishment of fair, evenhanded standards that lessened the likelihood of gerrymandering. Its research and policy analysis helped lead to the adoption of a constitutional amendment reforming the redistricting process in the state legislature; the amendment eventually won voter approval in 2014.

72. The issues important to Citizens Union Foundation are therefore unquestionably matters of public concern, as to which Citizens Union Foundation has the First Amendment right to speak. Donors give to Citizens Union Foundation knowing the subjects it focuses on and expect it not only to take affirmative action in those areas but also to support other organizations with similar goals.

73. Section 172-e now imposes on Citizens Union Foundation and similar organizations an obligation to investigate whether any potential donee organization has undertaken lobbying activity, and to what extent, to determine whether they fall within New York Legislative Law §§ 1-h or 1-j, in order to determine their own reporting obligations under the new statute. If Citizens Union Foundation is ultimately required to report, its donors—some of whom choose to give exclusively to Citizens Union Foundation in order to avoid supporting overtly political work and for other reasons—would be subject to public disclosure.

74. Citizens Union Foundation's public work has prompted harassment and threats of retaliation against Citizens Union Foundation and its donors in the past.

75. On several occasions, elected officials have threatened retaliation against Citizens Union Foundation in response to its research and advocacy.

76. Additionally, several donors have been questioned about their support for Citizens Union Foundation by elected officials who oppose positions taken by the organization. This questioning has been deployed to pressure these members into refraining from continued contributions to Citizens Union Foundation.

B. Nonprofit Organizations Like Citizens Union And Citizens Union Foundation Depend On Donors To Function, Including Donors Who Choose To Give Anonymously To Support Speech On Matters Of Public Concern

77. Millions of New Yorkers provide the charitable donations each year that is the lifeblood of nonprofits like Citizens Union and Citizens Union Foundation. In 2013, there were 2,771,490 New York state tax returns itemizing charitable deductions, claiming a total of $17,729,465,000 in charitable contributions.[3]

78. Citizens Union has hundreds of members who contribute financially to its mission. From 2013 to 2016, Citizens Union averaged 481 financial contributions each year from unique individuals and entities.

79. Citizens Union's financial statements demonstrate the critical role these contributions play in the organization's ability to speak. Citizens Union obtains substantially all of its income in a year from membership support, contributions, and fundraising, including its annual dinner and spring event. The remaining sliver of revenue derives from interest and investment income.

80. In 2014, for example, membership support, contributions, and fundraising provided $408,383—more than 99.4% of Citizens Union's unrestricted revenue for the year.

81. In 2013, these sources totaled $417,200—more than 99.2% of its unrestricted revenue for that year.

[3] Urban Institute, *Profiles of Individual Charitable Contributions by State*, *available at* http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000608-Profiles-of-Individual-Charitable-Contributions-by-State-2013.pdf (Feb. 2016).

82. In 2014, Citizens Union had total expenses exceeding $412,000, including $268,764 spent on its programs.

83. In 2013, Citizens Union had total expenses exceeding $415,000, including $233,146 for programming.

84. Like Citizens Union, Citizens Union Foundation has hundreds of donors who contribute financially to its mission. From 2013 to 2016, the Foundation averaged 467 financial contributions each year from unique individuals and entities.

85. Citizens Union Foundation obtains a significant portion of its income in a year from contributions and fundraising, including its annual dinner and spring event. The bulk of the remainder derives from grants obtained by Citizens Union Foundation, totaling approximately 11% of revenue in 2014 and 13% in 2013; the final portion derives from advertising, interest, and investment income.

86. In 2014, contributions and fundraising provided $876,558—more than 85% of Citizens Union Foundation's unrestricted revenue for the year.

87. In 2013, these sources totaled $1,086,602—more than 84% of its unrestricted revenue for the year.

88. In 2014, Citizens Union Foundation had total expenses exceeding $1.1 million, including $372,968 for its Gotham Gazette program and $404,498 for its other programs.

89. In 2013, Citizens Union Foundation had total expenses of $1.2 million, including $390,734 for its Gotham Gazette program and $397,699 for its other programs.

90. As the margins between the total contributions and expenses of the organizations indicate, donations to Citizens Union and Citizens Union Foundation are absolutely critical to the organizations' continued activities and financial viability.

91. In addition to the chilling effect these new laws may have on individual donors' decisions to contribute and associate with Citizens Union and Citizens Union Foundation—thus implicating First Amendment rights—the amount of contributions that nonprofit organizations like Citizens Union and Citizens Union Foundation receive is directly correlated to their ability to speak on matters of public concern. Any significant change in donor revenue has an immediate and direct effect on the ability of the organizations to publish information and reports, to conduct research, to provide educational programs to the public, and to conduct the other activities for which they are organized.

92. Accordingly, laws that chill speech by donors also necessarily reduce speech by nonprofit organizations like Plaintiffs, who rely on those contributions to speak themselves.

C. On Their Face, Sections 172-e And 172-f Substantially Burden The Rights Of Organizations Like Plaintiffs And Of Their Donors

93. By compelling the public disclosure of nonprofit donors and donations, sections 172-e and 172-f seriously burden the constitutional rights to free speech and association, and are overbroad.

1. Section 172-e substantially burdens the free speech and free association rights of 501(c)(3)s and their donors

94. In order to avoid harsh penalties, including fines and revocation of its registration, under Section 172-e, Citizens Union Foundation and similarly situated 501(c)(3)s must disclose publicly *all* donations over $2,500 whenever they make an in-kind donation of more than $2,500 to certain 501(c)(4)s engaged in lobbying activity. Not only does this requirement directly chill speech by 501(c)(3)s, but it imposes significant compliance costs on covered organizations.

95. One relatively small contribution will trigger the disclosure of multitudes of other donations and donors, whether or not those donations were used for lobbying or to fund any election-related speech. Moreover, the initial in-kind donation to the 501(c)(4) need not be

earmarked for lobbying; in fact, it could be earmarked for an entirely different purpose. *Any* in-kind donation over $2,500 will trigger the disclosure requirements, including a 501(c)(3)'s contribution earmarked for a joint report on the quality of local schools, a survey collecting neighborhood views on a proposed development, or a language class, as long as the recipient 501(c)(4) expended sufficient funds under New York Legislative Law §§ 1-h or 1-j on even unrelated lobbying activity. And because section 172-e covers in-kind donations, 501(c)(3)s that, for instance, run legal clinics that represent a qualifying 501(c)(4) in pro bono litigation, or that help a qualifying 501(c)(4) comply with its tax reporting obligations could be forced to disclose donors and donations completely unrelated to lobbying.

96. Critically, these extensive reporting requirements can be triggered by contributions to 501(c)(4)s that are not themselves lobbyists but that merely hire lobbyists, even for programs unrelated to the source or purpose of the in-kind donation, or after the in-kind donation is made. *See* N.Y. Exec. Law § 172-e[1][d] (defining a "recipient entity" of the 501(c)(3) contribution as a 501(c)(4) that is required to file a source-of-funding report as a "client" of lobbyists under New York Legislative Law § 1-j). Citizens Union Foundation could therefore make an in-kind contribution to a 501(c)(4), where there is no indication that the contribution or the recipient has anything to do with lobbying. If the recipient organization then decides to use those funds or even other funds for lobbying at any point within the reporting period, that decision is beyond Citizens Union Foundation's control but still triggers its obligation to disclose. There is no discernible justification for why the government would require donor disclosures from Citizens Union Foundation or similarly situated organizations.

97. The government's statements of interests in passing Chapter 286 do not match up with the effect of the Nonprofit Disclosure Provisions, which require publicly disclosing donors and

donations that do not fund any lobbying activity or election-related speech. Section 172-e simply has nothing to do with protecting against *quid pro quo* corruption or promoting transparency in campaign finance. These disclosure requirements thus reach much farther than the disclosure requirements upheld in *Citizens United*, which were targeted at "electioneering communications" that were related to electoral politics.

98. Whatever attenuated nexus, if any, section 172-e may have to the government's stated purposes is greatly outweighed by the significant burdens imposed by the law. As with section 172-f, the disclosure requirements here will chill donors' and potential donors' free speech and associational rights. 501(c)(3)s like Citizens Union Foundation must now choose between contributing less, even in the form of in-kind contributions, or not at all, to 501(c)(4)s or face substantial compliance costs and broad public disclosure of their donors, if the donee organization decides on its own to pursue lawful lobbying activities. Donors will contribute less, or not at all, to 501(c)(3)s like Citizens Union Foundation to stay under the disclosure threshold. Declining donations will result in 501(c)(3)s scaling back their otherwise protected activities, including speech on matters of public concern, and smaller 501(c)(3)s may be forced to cease operations if donations fall sufficiently or compliance costs become too burdensome.

99. Compliance costs under section 172-e would be onerous. Nonprofits like Citizens Union Foundation now face the burden of having to determine whether the recipient organization is one that must file a source-of-funding report under New York Legislative Law §§ 1-h and 1-j. In order to make a donation decision, Citizens Union Foundation must therefore ascertain whether the recipient organization has spent the requisite amount on lobbying and, if so, whether at least three percent of those expenditures were devoted to lobbying in New York. *See* N.Y. Leg. Law §§ 1-h[c][4], 1-j[c][4]. Thus, even if Citizens Union Foundation or a similarly situated 501(c)(3)

does not make an in-kind donation earmarked for lobbying, it will have to delve into the finances and workings of any recipient entity to which it makes a contribution in order to discern whether it must make the section 172-e disclosures.

100. Because a 501(c)(3) has no control over whether a recipient organization may eventually engage in lobbying activity or be required to file source-of-funding disclosures under New York Legislative Law, section 172-e essentially requires Citizens Union Foundation, and all 501(c)(3)s that make any in-kind donation to any 501(c)(4), to maintain donor records it need not otherwise maintain, just in case it may be required to report under section 172-e—depending entirely on what the 501(c)(4) ultimately does.

101. Citizens Union Foundation has a number of donors who contribute more than $2,500 but less than $5,000 on an annual basis. These donors are therefore not recorded on Citizens Union Foundation's Schedule B forms submitted to the Internal Revenue Service.

102. Creating the new, more extensive disclosures imposes significant compliance costs on the organization preparing them.

103. Complying with the statutory requirements would add an estimated 800 staff hours per year to the Plaintiffs' current operational requirements.

104. In addition to the basic compliance burden detailed above, organizations that fear reprisals are forced, under section 172-e[3], to bear the burden of challenging the default presumption of public disclosure.

105. Accordingly, should an organization like Citizens Union Foundation—which has been subjected to harassment and threats of reprisals in the past—wish to seek a discretionary exemption, it bears the additional costs and administrative burdens of compiling evidence and advocating for that exemption.

106. The administrative burden of seeking such an exemption is increased by the undefined threshold for obtaining it. The statute states only that the Attorney General "may" exempt an organization from public disclosure if the disclosure "may" cause harm or reprisals. This language provides no standards by which an organization could assess or prepare its presentation; the result is an unfettered grant of discretion to the Attorney General, which deviates from the constitutional standard entitling a party to protection if they demonstrate a "reasonable probability" of harm.

107. Section 172-e thus chills the First Amendment rights of Citizens Union Foundation, its donors, and similarly situated 501(c)(3)s and their donors. The government's interest in preventing *quid pro quo* arrangements between politicians and donors and in protecting the integrity of the electoral process is wholly unrelated to a substantial number of section 172-e's applications.

2. Section 172-f substantially burdens the free speech and free association rights of 501(c)(4)s and their donors

108. While ostensibly directed at dark money donors who seek to surreptitiously influence elections through undisclosed and unlimited independent expenditures, given the expansive language employed, section 172-f instead imposes significant burdens on Citizens Union and multitudes of similarly situated 501(c)(4)s.

109. Section 172-f's definition of "covered communication" encompasses essentially *any* speech pertaining to public affairs, whether or not it relates to a candidate for public office, an election, a campaign, a specific elected official, or any proposed or pending legislation, rulemaking, or executive action.

110. Instead, it broadly includes not only advocacy "for or against a clearly identified elected official" but also "the *position* of any elected official or administrative or legislative body"

relating not just to pending legislation but any "*potential* legislation" or any "decision by any legislative, executive or administrative body." N.Y. Exec. Law § 172-f[1][b]. This is an unbounded definition that literally includes all conceivable matters of public policy—with no connection whatsoever to the government's concerns about *quid pro quo* relationships, electoral transparency, or the corruption of candidates or public officials. It covers not only speech that advocates for a particular policy during a time of public interest but even speech about public issues made after the time of active public engagement has passed. Speech about any potential or past subject of government action, made at any time and in any context, falls within the plain text of the statute.

111. As detailed above, Citizens Union regularly speaks publicly to advocate for government accountability, fair and effective democratic practice, and good governance—quintessential political speech that clearly encompasses a number of subjects of potential legislation and decisions of government bodies, including the JCOPE. Section 172-f would also go so far as to cover other 501(c)(4)s' general expressions of support for veterans, non-GMO food, neighborhood recycling services, or funding for medical research, which would fall into the definition of advocacy for a certain position on a subject of potential legislation. *See* N.Y. Exec. Law 172-f[1][iii].

112. Because Citizens Union's speech on these issues will reach the minimum number of people (500) and Citizens Union expends more than $10,000 in a year funding them—or contributes that amount to another entity that then makes those communications, or some third party that ultimately made them—under section 172-f Citizens Union must publicly disclose the names of its donors who donated more than $1,000. Other 501(c)(4)s who spend similar, or

greater amounts to speak, and who reach wide audiences are subject to the same increased reporting requirements.

113. As with section 172-e, the government's stated purposes for the law do not support requiring Citizens Union and similarly situated organizations to publicly disclose their donors and donations because they have engaged in protected speech unrelated to political candidates or electioneering. Nor is there any discernible interest in requiring those same disclosures for a 501(c)(4) that does not even *make* those communications but only contributes the threshold amount to another entity that makes those communications.

114. Requiring these disclosures does not meaningfully advance the government's interest in preventing *quid pro quo* arrangements with public officials, promoting transparency in campaign finance, or rooting out corruption. Unlike those upheld in *Citizens United*, the disclosures here are not linked with an informational interest in "election-related" financing that may justify disclosures pertaining to electioneering communications.

115. The burdens the law imposes are substantial and force Citizens Union and similarly situated 501(c)(4)s to choose between engaging in constitutionally protected speech and avoiding burdensome regulation. Further, Citizens Union and other 501(c)(4)s must now decide whether to contribute less, or not at all, to other entities that engage in "covered communications." Some smaller 501(c)(4)s, or those whose very purpose is to engage in a substantial amount of "covered communications" and thus do not even have the option of modifying their activities, may simply be forced to cease operations if donations fall sufficiently or compliance costs become too burdensome.

116. Similarly, to avoid public disclosure, donors will contribute less, or not at all, to Citizens Union or other 501(c)(4)s whose causes they otherwise believe in. Declining donations will

cause Citizens Union or other 501(c)(4)s to scale back their activities or modify their otherwise protected speech to avoid the disclosure requirements. Thus, the free speech rights of donors and nonprofits alike will be inhibited.

117. Under section 172-f, any 501(c)(4)—such as Citizens Union—that contributes to another entity that makes covered communications would also need to coordinate with that other entity to ensure full compliance with the law.

118. In addition, Citizens Union has a number of donors who contribute more than $1,000 but less than $5,000 on an annual basis. These donors are therefore not recorded on Citizens Union's Schedule B forms submitted to the Internal Revenue Service.

119. Accordingly, Citizens Union must prepare new, more extensive disclosures containing this donor information, which will involve significant administrative burdens to comply with the recordkeeping for and preparation of these new disclosures, as described above.

120. Because the exemption from public disclosure in section 172-f[3] suffers from the same undefined standard as the one contained in section 172-e[3], burdens similar to those described above related to assessing and preparing an application for an exemption are now imposed on 501(c)(4)s who may be subject to harassment or threats of reprisals—as Citizens Union and its donors have been in the past.

121. Section 172-f thus stifles Citizens Union's First Amendment rights, as well as the First Amendment rights of its donors, and similarly situated 501(c)(4)s and their donors. The government's interest in preventing *quid pro quo* corruption and in protecting the integrity of democratic elections is unrelated to a substantial number of section 172-f's applications.

V.
CLAIMS AND JURY DEMAND

COUNT I
Section 172-e's Reporting Requirements Are Overbroad under the First and Fourteenth Amendments

122. Plaintiff Citizens Union Foundation incorporates the allegations contained in paragraphs 1–121.

123. Plaintiff Citizens Union Foundation asserts its own First Amendment rights as well as the First Amendment rights of its donors to free speech and free association. *See NAACP v. Alabama*, 357 U.S. 449, 459 (1958).

124. The reporting requirements of section 172-e violate the guarantees of free speech and free association contained in the First Amendment, because they fail exacting scrutiny and are facially overbroad, burdening substantially more protected speech than any plainly legitimate sweep.

125. Defendants have acted under color of law.

126. Accordingly, Plaintiff Citizens Union Foundation is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, as well as attorneys' fees under 42 U.S.C. § 1988, and such other and further relief as this Court may deem just and proper.

COUNT II
Section 172-f's Reporting Requirements Are Overbroad under the First and Fourteenth Amendments

127. Plaintiff Citizens Union incorporates the allegations contained in paragraphs 1–121.

128. Plaintiff Citizens Union asserts its own First Amendment rights as well as the First Amendment rights of its donors to free speech and free association. *See NAACP v. Alabama*, 357 U.S. 449, 459 (1958).

129. The reporting requirements of section 172-f violate the guarantees of free speech and free association contained in the First Amendment, because they fail exacting scrutiny and are facially overbroad, burdening substantially more protected speech than any plainly legitimate sweep.

130. Defendants have acted under color of law.

131. Accordingly, Plaintiff Citizens Union is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, as well as attorneys' fees under 42 U.S.C. § 1988, and such other and further relief as this Court may deem just and proper.

JURY DEMAND

132. Plaintiffs demand a trial by jury pursuant to Federal Rule of Civil Procedure 38 and the Seventh Amendment to the United States Constitution.

VI.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in Plaintiffs' favor and against Defendants, consisting of:

(a) A declaratory judgment that sections 172-e and 172-f of the New York Executive Law are void and of no force and effect;

(b) A preliminary and permanent injunction enjoining any enforcement or implementation of sections 172-e and 172-f in any respect;

(c) An award of attorneys' fees under 42 U.S.C. § 1988;

(d) An award of Plaintiffs' costs herein; and

(e) Such other and further relief as this Court deems fit and proper.

Dated: New York, New York
December 12, 2016

GIBSON, DUNN & CRUTCHER LLP

By: /s/ *Randy M. Mastro*
Randy M. Mastro
Akiva Shapiro
Gabriel K. Gillett

200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Attorneys for Plaintiffs Citizens Union of the City of New York and Citizens Union Foundation, Inc. of the City of New York