

## NY Donor Law For Tax-Exempt Orgs Ruled Unconstitutional

By Paul Williams

*Law360 (October 1, 2019, 8:57 PM EDT)* -- A New York law requiring tax-exempt organizations to disclose certain donors violates the First Amendment because it chills free speech and imposes too broad a requirement, a federal judge has ruled in partly invalidating the statute.

U.S. District Judge Denise L. Cote struck down two provisions of the state's ethics law Monday, ruling that the statute's donor disclosure requirements for entities organized under Internal Revenue Code Section 501(c)(3) and Section 501(c)(4) would impose too stringent a restriction on free speech.

Judge Cote was persuaded by arguments from the Citizens Union of New York and the American Civil Liberties Union Foundation that the law burdened donors' rights to free association and privacy. Those entities were among a host of nonprofits that challenged the law shortly after it was enacted in 2016.

"There is no substantial relation between the requirement that the identity of donors to Section 501(c)(3)s be publicly disclosed and any important government interest," Judge Cote said in granting summary judgment to the organizations. That portion of her opinion negated the law's requirement for entities to disclose all donors who contributed over \$2,500 to a Section 501(c)(3) if the organization made an in-kind donation to a Section 501(c)(4) entity that engages in lobbying.

The New York attorney general's arguments that the law would improve any anticorruption and violation measures fell flat, the court held, saying the state made "no developed argument connecting those interests to" the law.

A separate provision of the statute that required Section 501(c)(4) organizations to disclose donors who contributed \$1,000 or more if the organization spent more than \$10,000 annually to advocate for potential legislation is equally invalid, Judge Cote said. The court acknowledged that other donor disclosure laws have been upheld, but said the New York law at issue cast too wide a net.

The law "sweeps far more broadly than any disclosure law that has survived judicial scrutiny," Judge Cote said.

Since "any matter of matter of public importance could become the subject of legislation," the court said, the law's requirements stretch beyond those of other donor disclosure laws that pertain to electioneering activities or lobbying directly on behalf of elected officials.

In a statement sent to Law360 on Tuesday, Randy Mastro of Gibson Dunn & Crutcher LLP, who represented Citizens Union and serves as its current chairman, said he was elated that the court found the law in violation of the Constitution.

“This state law targeted not-for-profit 'good government' groups that have had the temerity to raise ethics issues and try to get the government to do better,” Mastro said. “It’s blatantly unconstitutional, and we are therefore grateful to the court for invalidating it.”

Democratic Gov. Andrew Cuomo pushed for the law late in the 2016 legislative session as a response to the U.S. Supreme Court’s *Citizens United v. FEC* decision, which struck down a federal law barring corporations from using general treasury funds to donate to political campaigns.

When he signed the bill into law, Cuomo touted the measure as one that would “reverse the indisputably unfair protections afforded to corporate interests by the *Citizens United*” decision, according to Judge Cote’s ruling.

Neither Cuomo's office nor the state attorney general’s office responded to requests for comment.

When reached by Law360, the ACLU referred to a statement from Donna Lieberman, executive director of the New York Civil Liberties Union, which also challenged the law. On Monday, Lieberman called the court’s ruling “an important victory for First Amendment rights,” saying she was pleased with the outcome of the case.

“Issue advocacy, a core component of many nonprofit organizations, inform people of how public policies affect their communities, and donors have the right to privacy when supporting nonprofits that engage in this work,” Lieberman said.

The Citizens Union of the City of New York and the Citizens Union Foundation Inc. of the City of New York are represented by Randy M. Mastro, Akiva Shapiro and Timothy Sun of Gibson Dunn & Crutcher LLP.

The American Civil Liberties Union Foundation, the New York Civil Liberties Union Foundation and the New York Civil Liberties Union are represented by William F. Cavanaugh, Stephanie Teplin, D. Brandon Trice and Michael D. Schwartz of Patterson Belknap Webb & Tyler LLP.

The Lawyers Alliance for New York and Nonprofit New York are represented by Lawrence S. Lustberg and J. David Pollock of Gibbons PC.

The New York attorney general is represented by Andrew Amer and James M. Thompson of the New York Attorney General's Office.

The case is *Citizens Union of the City of New York et al. v. Attorney General of the State of New York*, case number 1:16-cv-09592, in the U.S. District Court for the Southern District of New York.

--Editing by John Oudens.