



Citizens Union Proposal for a Local Law to Require Reporting and Activity Disclosures for and Contribution Limits on NYC¹ Elected Official-Affiliated Organizations

July 6, 2016

In recent years, some of New York City's elected officials have formed and established nonprofit organizations to help support the officials' policy agenda and, in doing so, their political aims. These organizations are different in scope and function from the many charitable nonprofit organizations that city agencies have formed over the past two decades to support discrete special projects or augment a city service or activity, such as those associated with education, health, parks, public safety, culture or other important city purposes.

While we acknowledge that elected officials may legitimately establish organizations to support their agendas, such organizations may also serve the officials' political interests. They also could serve as an end-run around the city's heralded campaign finance program. Such a possible evasion contributes to a return of a pay-to-play culture in city government where powerful interests with business before the city may feel an obligation to make contributions in order to have special access to the elected official or favorable attention or action on a city government-related matter. Given the possibility that these nonprofits could be used for such purposes, elected officials and the nonprofits they form or are directly affiliated with should be subject to increased scrutiny and reporting of their activity and, where appropriate, contribution limitations.

CU proposes that the City of New York regulate only those 501(c)(4) and 501(c)(3) organizations created specifically by elected officials to promote that official and that official's agenda and in doing are closely intertwined with the elected officials' political aims.

Under current law, individual, union and corporate donors may contribute to these organizations without limit and without disclosure. These organizations may also be funded substantially by contributors doing business or seeking to do business with the city or otherwise attempting to gain access to, or curry favor with, the official. These official-affiliated organizations can be designed to function as a component of that official's political operation, much like candidate campaign committees or transition and inauguration committees but, unlike these committees, contributions to the organization are not disclosed or in any way limited. Indeed, contributors to official-affiliated organizations can give many times the amount they would be allowed to give to the official's campaign, transition, or inauguration committees.

¹ Interest has emerged for creating an analogous proposal at the state level, after securing passage at the city level.

One example of such an organization is the Campaign for One New York (CONY), formed by Mayor Bill de Blasio at the beginning of his term to support his major initiative – universal pre-K. CONY later morphed into helping advance his other policy objectives through public relations, media coverage, and lobbying. The mayor recently announced that CONY is closing, following substantial negative publicity and disclosure of a federal investigation involving the organization. Yet, nothing in the law prevents the mayor, future mayors, or other elected officials from creating organizations that are closely connected to the official and yet are able to receive undisclosed contributions without limit from individuals or entities seeking to benefit from making those contributions, notably those who are already conducting business with the city or have pending matters before the city. Though different in scope and function, Brooklyn Borough President Eric Adams’ affiliated nonprofit, One Brooklyn, could conceivably be determined to fall within this designation.

In addition to providing an alternative channel for what are sizeable, essentially politically-motivated contributions from donors who may have already given to the elected official’s candidate campaign committees, many of these official-affiliated organizations’ members, directors, or staff are political operatives, lobbyists, or communication consultants who have ongoing ties to the official. These organizations may also employ the very same political and communication consultants who were once employed by the elected official’s campaign and in some cases continue to serve the former candidate and now-elected official; and may also be engaged by other clients seeking assistance to advocate for that official and influence government decisions.

Citizens Union proposes that New York City enact a local law to treat these organizations – that are intertwined with a particular elected official or his/her campaign and/or political operation and formed to support his or her agenda – similarly to political committees under the city’s campaign finance laws and rules.

These official-affiliated organizations would continue to exist as nothing in the law prevents them from being formed by an elected official or operating closely with the office holder, but they would be subject to detailed disclosure requirements, limitations on contributions similar to those applicable under the city’s campaign finance system, and the jurisdiction of the city’s Campaign Finance Board. Such a law would prevent NYC elected officials from organizing, controlling, influencing, or directing organizations and using them to advance their political interests without meaningful oversight. Doing nothing will undermine the corruption-limiting intent of our city’s campaign finance program.

This proposal would bring much-needed transparency to official-affiliated organizations regarding their operations and donors. Placing limits on the contributions that could be made to these organizations would reduce the ability of those doing business with the city or who have pending business before the city to make excessively large contributions that are the fuel to a revived pay-to-play culture that such organizations have the ability to create. This proposed law would help alleviate the taint of corruption that has now settled over this new kind of activity and would potentially disable this reactivated culture of influence-peddling and questionable practices, and prevent future acts of wrong-doing.

Under the proposed local law, an organization that is formed by and/or affiliated with a city elected official would have to register with the NYC Campaign Finance Board (CFB) as an official-affiliated organization for the purpose of accepting donations and loans, and for making expenditures, as is the case for Transition and Inauguration Entities. If such an organization is challenged for not registering with the CFB or otherwise failing to comply with the law, the burden of proof would be on the organization to show that the organization does not meet the statute's criteria, rather than the individual or entity filing the challenge.

- A. The organization would be subject to disclosure requirements if the organization met the following criteria:
- i. The organization is affiliated with an elected official such that it does not operate independently of that official or that official's political operation or campaign.

It would be deemed that the official had a role in forming the organization if a certain number or percentage of the organization's incorporators, directors or managers have close ties with the official (e.g., as a current or former employee, campaign staffer, or major participant in the official's election campaign). Further indicators are that the organization's finances, structure or activities (e.g., use of common political consultants, common office space or resources, coordination of advocacy activity, or sponsorship of public programs or events that include prominently featuring the elected official's support or participation such that it rises to a level of promotion that it is seen as intertwined with the official or the official's previous or current political campaign or political operation).

These organizations would have to disclose the identities of those directing and managing the organization, as well as contributions and expenditures over a particular amount.

- B. The organization would be subject to contribution limitations if it met the following additional criteria:
- i. Receives contributions from individuals or entities doing business or seeking to do business with the city; or
 - ii. Received a substantial percentage of its contributions in the past year (or other period) from donors who also contributed to the official's campaign within the past four years.

The contribution limitations would be similar to those established under the city's campaign finance program.

In addition, the elected official and/or his/her agent would be barred from soliciting contributions to the organization from individuals or entities doing business with the city.

Just as New York City is able to require disclosure of a candidate's campaigns contributions and expenses and place limits on contributions to candidate campaigns and political committees, we believe that legally allowable disclosure requirements for all organizations would be appropriate and that limits could also be imposed on contributions to official-affiliated organizations from those doing business with the city.

Using the aforementioned criteria, these organizations must be proven to be so intertwined with the official's political operation or activity that there is a strong public interest in preventing both actual corruption and the appearance of corruption that these nonprofits may foster. Such corruption could come into existence if elected officials are allowed to actively and closely participate in the organizations fundraising and the groups are allowed to receiving large contributions with no limits on their size from individuals or entities who are seeking government action on a matter of self-interest.

Penalties for violating the provisions of this law would be similar to those imposed by the Campaign Finance Board and would be enforceable against both the official and the organization.

While many of the details need to be developed, we believe a law structured in this way would provide transparency of, and curb abuses by, these official-affiliated organizations so as to extinguish a new pay-to-play culture that may be emerging, which contributes to the creation of corruption.

Citizens Union looks forward to working with other concerned organizations and elected officials to achieve this result and ensure that the broad public interest is paramount in all elected officials' activities and actions. We believe that this proposal will ensure that New York City government decisions will be based on the merits, and that contributions to elected official-formed nonprofit organizations will not unduly influence the thinking, positions, or decisions of those elected officials.