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April 25, 2014

New York State Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

**Re: Appeal Pursuant to 19 NYCRR 938.6**

Dear Sir or Madam:

On July 11, 2013, New Yorkers for Constitutional Freedoms (“NYCF”) applied to the Joint Commission on Public Ethics (“the Commission”) for an exemption from the statutory requirement that the identities of large donors be publicly disclosed. (A copy of that application is enclosed.) On October 23, 2013, following the Commission’s implementation of amended regulations relating to donor disclosure exemptions, NYCF submitted a renewed exemption application (enclosed). On April 4, 2014, we received correspondence (a copy of which is enclosed) indicating that our re-application had been denied. This letter is submitted as an appeal of that denial pursuant to 19 NYCRR 938.6. For the following reasons, the Commission’s denial of our exemption application was clearly erroneous and must be reversed.

**I: NYCF’s original exemption application and renewed exemption application each satisfied the standard set forth in the applicable statute.**

New York Legislative Law § 1-h(c)(4) provides as follows:

The [requirement of donor] disclosure shall not apply to...any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. § 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement...

Under 19 NYCRR 938.4(a), the factors to be considered by the Commission in determining whether an exemption must be granted include evidence of harm, threats, harassment, or reprisals directed at the organization or its donors; the level of severity of such incidents; whether or not a pattern of threats or manifestations of public hostility exists; “[e]vidence of harm, threats, harassment or reprisals directed against organizations or individuals holding views similar to those” of the organization; and the potential economic impact of disclosure upon the organization and its donors.

NYCF’s applications met this burden. Our applications indicated that we are a 501(c)(4) organization, and that our primary activities involve areas of public concern. Further, we presented evidence of reprisals

directed at our organization and at organizations and individuals—both locally and nationally—who hold views similar to our own. The Commission’s failure to recognize the substantial likelihood that public disclosure would cause harm to our large donors flies in the face of the evidence.

**II: The Commission imposed exemption requirements that were more stringent than, and were inconsistent with, the requirements set forth in the underlying statute.**

The regulations imposed upon NYCF by the Commission create a higher threshold than is set by state law.

A review of 19 NYCRR §§ 938.4(a) and 938.4(b) indicates that applicants for exemption must provide “clear and convincing evidence” that donor disclosure “will cause a substantial likelihood of harm, threats, harassment or reprisals to the [donor].” The requirement of “clear and convincing evidence” is not present in the Legislative Law. Further, a “clear and convincing evidence” standard makes the threshold for obtaining a donor exemption too high and does not provide sufficient protection for donors whose participation in advocacy activities could subject them to harassment or reprisals. It was unreasonable for the Commission to expect NYCF and other applicants to demonstrate clear and convincing evidence of donor harm when the event that could trigger such harm—donor disclosure—had not yet occurred. NYCF respectfully submits that the regulations should have followed the statutory language, which provides a more appropriate, donor-protective standard. The usage of these flawed regulations was clear error on the part of the Commission.

**III: The Commission used different regulations to evaluate NYCF’s exemption application than it used to evaluate another organization’s application that was submitted during the same application cycle.**

The minutes from the Commission’s June 25, 2013 meeting contain the following sentence: “The Commission granted an exemption from the Source of Funding reporting requirements under PIRA for NARAL Pro-Choice New York, for a period ending July 2016.” No other information regarding NARAL’s application—or the Commission’s decision—is provided.

On July 11, 2013, NYCF applied for a donor disclosure exemption. At the following Commission meeting on July 30, the Commission voted to table our application and all other pending applications for donor disclosure exemptions until the Commission could re-evaluate its regulations and its application process. The Commission did not, however, rescind the earlier exemption that had been granted to NARAL Pro-Choice New York. Later in the year, the Commission adopted new regulations relating to donor disclosure exemptions; in addition, the Commission stated that it would require NYCF to submit a new application. On January 28, 2014, following NYCF’s required re-application, the Commission voted to deny our re-application and the applications submitted by three other applicants. The Commission’s actions regarding these applications were discussed in great detail and spanned five pages in the minutes of its January 28 meeting. To date, NARAL Pro-Choice New York continues to be exempt from donor disclosure.

As we have stated throughout this process, every nonprofit advocacy group that applies to the Commission for a donor disclosure exemption should have its application evaluated using the same procedure and standards. The fact that NYCF was subjected to different standards and a different process than NARAL Pro-Choice New York is unjust and inequitable, and constitutes clear error on the part of the Commission.

**IV: The written denial provided by the Commission is procedurally defective, as it is not supported by the record of the Commission’s public deliberations on NYCF’s application.**

The Commission’s written denial of NYCF’s exemption application reads, in pertinent part, as follows:



In the view of the Commissioners who did not support the exemption request, NYCF's application did not present sufficient evidence demonstrating that NYCF's compliance with the disclosure requirements would create a "substantial likelihood" of harm to its sources of funding (including individuals and property associated with those sources). Rather, the evidence presented was too remote and speculative to establish a substantial likelihood of harm.

The minutes of the Commission's January 28 meeting, however, tell a different story:

Chair Horwitz presented the application for exemption from New Yorkers for Constitutional Freedoms and opened the matter up for discussion. The Chair, then, called, for a motion. No motion was made, and the exemption was not granted.

The minutes from Commission's February 18 meeting include the following:

**Commissioner Casteleiro inquired about the propriety of stating rationales for the [exemption] denials after the fact, when there was limited discussion at the last meeting.** Commissioner Roth suggested the Commission should have an open discussion on the matter, in light of the regulations, and the Commission's public vote. Chair Horwitz stated that the appropriate opportunity to have a discussion was at the last meeting, that there is a record from that public discussion, and that he expects the written denials to be consistent with the record...

Commissioner Jacob stated his view that, based on the public meeting requirements, any discussion of the rationale for the decisions should be held in an open session, and not in private discussions among Commissioners and staff, and that there should be a detailed public analysis of the applications...

(Emphasis added.) During the February 18 meeting, Commissioner Roth expressed the view that the Commission's handling of the exemption applications had been "an embarrassment."

Simply put, the denial letter sent to NYCF by the Commission was not supported by the record of the meeting and vote upon which it purports to have been based. Furthermore, the record of JCOPE's January meeting provides an insufficient basis for any decision whatsoever to have been made regarding our application.

For all of these reasons, NYCF's application for an exemption from the State's donor disclosure requirements was improperly denied. The Commission's denial was clearly erroneous and should be overturned.

Thank you for your consideration.

Respectfully submitted,



Rev. Jason J. McGuire  
Executive Director

Enclosures





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October 23, 2013

New York State Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

**Re: Request for Exemption from Donor Disclosure Requirements**

Dear Sir or Madam:

On July 11, 2013, New Yorkers for Constitutional Freedoms applied to the Joint Commission on Public Ethics (JCOPE) for an exemption from the Public Integrity Reform Act requirement that the identities of large donors be publicly disclosed. Following a re-evaluation of its exemption application process, JCOPE voted to adopt amendments to its Source of Funding regulations on September 24, 2013. The amended regulations went into effect immediately. On October 15, JCOPE staff notified us that if we wished to re-apply for an exemption, our re-application would be due by noon on today's date. We were further advised that our application could be submitted electronically. Accordingly, we would ask that JCOPE kindly accept this correspondence, together with our completed Source of Funding Exemption Instruction Form, as our re-application for exemption from the requirement that the identities of all of our large donors be publicly disclosed. The basis for our renewed application is set forth herein.

Pursuant to the recently amended text of 19 NYCRR 938.4(b), the Commission "shall grant an exemption to disclose all Sources of Contributions to a Client Filer, if (i) the Client Filer has exempt status under I.R.C. §501(c)(4); and (ii) the Client Filer shows that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its Source(s) will cause harm, threats, harassment or reprisals to the Source(s) or individuals or property affiliated with the Source(s)." New Yorkers for Constitutional Freedoms (NYCF) is a nonprofit advocacy organization under Section 501(c)(4) of the Internal Revenue Code. Since 1982, NYCF has lobbied the New York State government regarding matters of concern to the evangelical Christian community. As such, NYCF was actively involved in opposing the legalization of same-sex "marriage," and continues to take a lead role in promoting pro-life policies in New York. NYCF's work involves "areas of public concern that create a substantial likelihood that disclosure of" our large donors "will cause harm, threats, harassment or reprisals" to said large donors (*see* 19 NYCRR 938.4(a)).

The factors to be considered by the Commission in determining whether an exemption must be granted include evidence of harm, threats, harassment, or reprisals directed at the organization or its donors; the level of severity of such incidents; whether or not a pattern of threats or manifestations of public hostility exists; "[e]vidence of harm, threats, harassment or reprisals directed against organizations or individuals holding views similar to those" of the organization; and the potential economic impact of disclosure upon the organization and its donors (*see* 19 NYCRR 938.4(a)). New Yorkers for Constitutional Freedoms is no stranger to threats and harassment. Harassing phone calls and threats are not uncommon for our organization. Specifically, the undersigned has experienced threats and attempted acts of violence against members of his family due to NYCF's political stances. One New York trial judge recognized the sensitive



nature of our work when he allowed the undersigned not to disclose a home address in connection with a NYCF lawsuit that followed the legalization of same-sex "marriage" in New York.

There is clear and convincing evidence, both here in New York and in other states, that organizations and individuals and donors who oppose abortion and same-sex "marriage" have experienced reprisals. One example in the recent past involves California's 2008 marriage amendment, Proposition Eight. Donors who supported Proposition Eight were subjected to reprisals including boycotts of their employers and businesses, street protests, and pressure to resign from their jobs. In one particularly egregious incident, same-sex "marriage" supporters protested outside a family-owned restaurant because a 67-year-old restaurant employee had donated \$100 to support Proposition Eight; the employee took a leave of absence due to concerns regarding the harassment. Furthermore, opponents of Proposition Eight placed maps on the Internet identifying individuals who donated to Proposition Eight and providing those individuals' employers and addresses. These maps were used to harass and retaliate against pro-traditional-marriage donors from around the country, including donors from here in New York. Other forms of retaliation against Proposition Eight supporters have included trespassing, vandalism, theft, vulgarity, harassing phone calls, racial and religious slurs, arson, threats of violence, and assault and battery (*see* <http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8>). Due to the pervasive nature of this behavior, organizations opposing same-sex "marriage" have made efforts to shield the identities of their donors from disclosure. Concerns about reprisals against traditional marriage advocates have taken on a new urgency in light of the domestic terrorist attack that occurred at Family Research Council's Washington, DC office in August 2012; that ideologically-motivated attack resulted in the non-fatal shooting of security guard Leo Johnson and gave rise to a 25-year prison sentence for the attacker (*see* <http://www.politico.com/story/2013/09/frc-shooter-sentenced-to-25-years-97069.html>).

Here in New York, advocates of traditional marriage have experienced a similar pattern of harassment. One such pattern of harassment has been directed at Sen. Rev. Ruben Diaz (D-Bronx), a frequent NYCF ally, due to his outspoken opposition to marriage redefinition. According to Sen. Diaz, several days prior to a scheduled pro-traditional-marriage rally in 2011, an individual tweeted a comment expressing a desire to commit an act of sexual violence upon the Senator's daughter, videotape the act, and display the video to Sen. Diaz (*see* <http://www.rubendiaz.com/viciousfaceoftolerance.html>). Sen. Diaz attributed this tweet and other harassment to "opponents of [his] upcoming May 15th Rally to Protect Marriage in New York State" and indicated that this particular tweet had been reported to law enforcement. On June 1, 2011, the *New York Daily News* reported that Sen. Diaz "said he and his family have received death threats due to his vocal stance on keeping gay marriage unlawful"; Sen. Diaz indicated that those threats were reported as well (*see* <http://www.nydailynews.com/new-york/bronx/same-sex-marriage-foe-state-sen-ruben-diaz-family-hit-death-threats-stance-issue-article-1.130499>).

In regard to the abortion issue, attacks on pro-life individuals are, sadly, not as rare as might be hoped. In 2009, pro-life activist James Pouillon was gunned down while peacefully demonstrating against abortion (*see* <http://www.lifenews.com/2010/09/14/state-5455/>). Other peaceful pro-life demonstrators have had firebombs thrown at them (*see* <http://www.catholicnewsagency.com/news/police-response-to-firebomb-attack-on-pro-life-demonstrator-criticized/>), while other pro-life groups have expressed concern regarding donor harassment (*see* <http://www.voicescarryblog.com/quit-harrassing-sd-pro-life-donors/>). Earlier this year, an individual in Illinois who was accused of "swerving his car at a teenaged sidewalk counselor as he exited the parking lot of Planned Parenthood" pleaded guilty to a lesser offense (*see* <http://www.lifenews.com/2013/08/27/pro-choice-man-pleads-guilty-in-case-of-swerving-car-at-pro-lifer/>). Just weeks ago, a peaceful pro-life demonstrator in Toronto was reportedly attacked and beaten by a knife-wielding assailant; the assailant was arrested and charged with three counts of assault (*see* <http://www.lifesitenews.com/news/pro-life-activists-knifed-severely-beaten-during-attack-by-knife-wielding-m>).



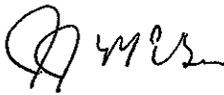
In sum, NYCF satisfies the requirements set forth under the revised regulations, is legally entitled to an exemption from donor disclosure requirements, and requests that JCOPE grant such an exemption at its earliest possible convenience. The risk that our donors could be subjected to the types of reprisals outlined in this letter is simply too great for an exemption not to be granted.

Because of our concerns about the exemption application process, and because of our continuing objection to the fact that one organization has been granted an exemption under different standards than the standards being applied to us, NYCF respectfully submits this application under protest.

Pursuant to instructions set forth on the Source of Funding Exemption Instruction Form, I declare that the information contained in this application is true, correct, and complete to the best of my knowledge and belief.

Thank you for your consideration.

Respectfully submitted,



Rev. Jason J. McGuire  
Executive Director



**APPLICATION REQUESTING AN EXEMPTION FROM  
SOURCE OF FUNDING DISCLOSURE REQUIREMENTS**

NYS Joint Commission on Public Ethics  
540 Broadway, Albany, NY 12207  
518-408-3976/jcope@jcope.ny.gov

The regulations governing a Client Filer's obligation to disclose sources of funding are contained in 19 NYCRR Part 938. These regulations provide that a Client Filer may seek an exemption from the source of funding disclosure requirements. Part 938.4 sets forth the applicable standards upon which an exemption shall be granted by the Joint Commission on Public Ethics. In addition to completing this form, please review the procedures to apply for an exemption in Part 938.5.

**ALL CLIENT FILERS SEEKING AN EXEMPTION TO THE SOURCE OF FUNDING  
DISCLOSURE OBLIGATIONS MUST FILL OUT THIS FORM.**

Name of Client Filer Requesting Exemption:	New Yorkers for Constitutional Freedoms
Name of Individual Authorized to File Request:	Jason McGuire
Title:	Executive Director
Telephone Number:	585 225-2221
Address:	PO Box 107 Spencerport, NY 14559
E-Mail Address:	Jason@Albanyupdate.com

1. Client Filer is an IRC §501(c)(4) organization seeking an exemption from disclosing all Sources pursuant to 19 NYCRR Part 938.4(b), which requires a showing that the Client Filer's "primary activities involve areas of public concern that create a substantial likelihood that disclosure of ... its Sources will cause harm, threats, harassment or reprisals to the Sources or individuals or property affiliated with the Sources."
2. Client Filer is not an IRC §501(c)(4) organization and is seeking an exemption for a Source, Sources, or class of Sources pursuant to 19 NYCRR Part 938.4(a), which requires a showing by "clear and convincing evidence that disclosure of the Source [or Sources] will cause a substantial likelihood of harm, threats, harassment or reprisals to the Source or individuals or property affiliated with the Source [or Sources]." \_\_\_\_\_

**All** Client Filers must submit, *with this form*, a letter addressed to the Commission requesting an exemption and setting forth in detail why the applicable regulatory standard (19 NYCRR Part 938.4(a) or (b)) has been met.

- All information in support of the exemption request must be submitted together with the letter.
- The letter must also contain the following signed declaration: "I declare that the information contained in this application is true, correct, and complete to the best of my knowledge and belief."

**All information submitted in support of an exemption will be made publicly available and discussed in the Public Session of the Commission's meeting. The only exception to this rule is information for which the Commission has granted a Client Filer's request for confidential treatment.**

**IMPORTANT INFORMATION FOR CLIENT FILERS SEEKING CONFIDENTIAL TREATMENT  
OF INFORMATION SUBMITTED IN SUPPORT OF AN EXEMPTION**

Pursuant to 19 NYCRR Part 938.8, a request for confidential treatment of information may only be granted by the Commission upon a showing of particular circumstances, such as when the information would reveal an ongoing investigation by a governmental body that has not been made public, or information that, if revealed, would constitute an unwarranted invasion of personal privacy.

Please indicate if the Client Filer is requesting, pursuant to 19 NYCRR Part 938.8, that specific information submitted in support of the exemption be treated as confidential. \_\_\_\_\_

**Procedure for a Client Filer Requesting Confidential Treatment of Certain Information.**

1. In a separate letter, indicate precisely what material is the subject of the confidentiality request and set forth, in detail, why such material is entitled to be treated as confidential pursuant to Part 938.8.
2. Provide two copies of the material for which confidentiality is requested.
  - One copy of the material must be in an un-redacted form.
  - The second copy of the material must include any proposed redactions. The redacted version of the material is the version that, should the Commission grant the confidentiality request, will be made publicly available (together with the material for which no confidential treatment has been requested).

Generally, proposed redactions should only include personal information which, because of a name, number, symbol, mark or other identifier, can be used to identify a person, such as an address, telephone number, birth date, or social security number. If the Client Filer is unable to submit a redacted version that adequately preserves the requested confidentiality, provide a detailed explanation setting forth the reasons why the material in its entirety should remain confidential.

**Impact of a Grant or Denial by the Commission of a Confidentiality Request.**

- If the Commission *grants* the confidentiality request, the material that is the subject of the request will be considered by the Commission in an Executive Session that is closed to the public. All other material, and the Client Filer's application for an exemption from the source of funding disclosure requirements as a whole, will be made publicly available and considered by the Commission in a Public Session.
- If the Commission *denies* the confidentiality request, the Client Filer has two options. Indicate below whether the Client Filer elects Option A or Option B (*choose only one*):

(A) The material that is the subject of the confidentiality request that was rejected by the Commission will remain confidential and will not be considered by the Commission when evaluating the application for exemption. \_\_\_\_\_

or

(B) The material that is the subject of the confidentiality request that was rejected by the Commission will be made *publicly available, in an un-redacted and complete form (or with redactions made by the Commission in its discretion)*, and will be considered by the Commission in the Public Session when evaluating the application for an exemption. \_\_\_\_\_



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July 11, 2013

New York State Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

**Re: Request for Exemption from Donor Disclosure Requirements**

Dear Sir or Madam:

We write for the purpose of requesting an exemption from the existing requirement that our organization disclose each source of funding in excess of \$5,000. Our request is not confined to one single donor or category of donors; rather, we seek to shield the identities of all of our large donors from disclosure.

Pursuant to 19 NYCRR 938.4(b), the Commission “may grant an exemption to disclose all Single Sources of Contributions to a Client Filer, if (i) the Client Filer has exempt status under I.R.C. §501(c)(4); and (ii) the Client Filer shows that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its Single Source(s) will cause harm, threats, harassment or reprisals to the Single Source(s) or individuals or property affiliated with the Single Source(s). Factors the Commission will consider when determining whether this showing has been made include, but are not limited to, the factors identified in 938.4(a).” Those factors include evidence of harm, threats, harassment, or reprisals directed at the organization or its donors; the level of severity of such incidents; whether or not a pattern of threats or manifestations of public hostility exists; “[e]vidence of harm, threats, harassment or reprisals directed against organizations or individuals holding views similar to those” of the organization; and the potential negative impact of disclosure upon the organization and its donors (*see* 19 NYCRR 938.4(a)).

New Yorkers for Constitutional Freedoms (NYCF) is a nonprofit advocacy organization under Section 501(c)(4) of the Internal Revenue Code. Since 1982, NYCF has lobbied the New York State government regarding matters of concern to the evangelical Christian community. As such, NYCF took a leadership role in opposing the legalization of same-sex “marriage,” and continues to take a lead role in promoting pro-life policies in New York. NYCF’s work involves “areas of public concern that create a substantial likelihood that disclosure of” our large donors “will cause harm, threats, harassment or reprisals” to said large donors (*see* 19 NYCRR 938.4(a)). Accordingly, we believe that an exemption from donor disclosure requirements is clearly warranted.

There is significant evidence from around the country that organizations and individuals who oppose abortion and same-sex “marriage” have experienced reprisals. One example in the recent past involves California’s 2008 marriage amendment, Proposition Eight. Donors who supported Proposition Eight were subjected to reprisals including boycotts of their employers and businesses, street protests, and pressure to resign from their jobs. In one particularly egregious incident, same-sex “marriage” supporters protested outside a family-owned restaurant because a 67-year-old restaurant employee had donated \$100 to support Proposition Eight; the employee took a leave of absence due to concerns regarding the harassment. Furthermore, opponents of Proposition Eight placed maps on the Internet identifying individuals who donated to Proposition Eight and providing those individuals’ employers and addresses. These maps were



used to harass and retaliate against pro-traditional-marriage donors from around the country, including donors from here in New York. Other forms of retaliation against Proposition Eight supporters have included trespassing, vandalism, theft, vulgarity, harassing phone calls, racial and religious slurs, arson, threats of violence, and assault and battery (see <http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8>). Due to the pervasive nature of this behavior, organizations opposing same-sex "marriage" have made efforts to shield the identities of their donors from disclosure.

In regard to the abortion issue, attacks on pro-life individuals are, sadly, not as rare as might be hoped. In 2009, pro-life activist James Pouillon was gunned down while peacefully demonstrating against abortion (see <http://www.lifenews.com/2010/09/14/state-5455/>). Other peaceful pro-life demonstrators have had firebombs thrown at them (see <http://www.catholicnewsagency.com/news/police-response-to-firebomb-attack-on-pro-life-demonstrator-criticized/>), while other pro-life groups have expressed concern regarding donor harassment (see <http://www.voicescarryblog.com/quit-harrasing-sd-pro-life-donors/>).

It should be noted that New Yorkers for Constitutional Freedoms is no stranger to threats and reprisals. Harassing phone calls and threats against family members and property are an unfortunate reality for our organization. One New York trial judge recognized the sensitive nature of our work when he allowed the undersigned not to disclose a home address in connection with a lawsuit that followed the legalization of same-sex "marriage" in New York.

The freedom to participate in the political process without harassment or reprisals is vitally important. New Yorkers for Constitutional Freedoms asks that the Commission allow our large donors this freedom.

Thank you for your consideration.

Respectfully submitted,



Rev. Jason J. McGuire  
Executive Director

