ALLIANCE FOR JUSTICE

PRESIDENT
NAN ARON

CHAIR
ANNE HELEN HESS

May 17, 2013

Attorney General Eric Schneiderman
120 Broadway
New York, New York 10271

Dear Attorney General Schneiderman:

We appreciate the work you and your staff have devoted to your oversight efforts. A more compliant nonprofit sector benefits us all. However, such attempts should not stifle the valuable work in which publicly supported, well-established membership organizations engage.

In the context of a post-*Citizens United* landscape, we understand the need to take bolder action to expose actual abuse of the political process. However, your proposal disproportionately impairs well-established, membership organizations, which are involved in a plethora of activities that serve to enrich the social well being of our communities, without a substantial and justifiable gain for the public interest. Your proposal creates costly administrative burdens that are not offset by beneficial gains in public understanding. We are concerned that the proposal lumps together all types of 501(c)(4) organizations without regard to how they are organized or the nature of their funding. We represent long-standing, membership organizations focused on promoting social issues. Achieving the goals our members support – whether it be promoting civil rights, protecting the environment, or strengthening education –requires passing legislation and other types of civic advocacy, including occasional election activities. We have outlined some of our concerns and have proposed alternatives that allow you to achieve more transparency, but also allow true membership organizations to continue the work our members have conducted for years. We have three main concerns:

1. Because the regulations are not aligned with other requirements imposed on nonprofit organizations, New York's rules create a patchwork quilt of reporting requirements and add bureaucracy without providing meaningful information to the public;
2. Problems defining terms in the regulations will lead to confusion; and
3. The exception for membership communications is too narrow and does not serve the public.

<u>Disclosure of the amount and percentage</u>

We understand the interest New York (and every other state and the Federal government) has in regulating the activities within its own borders. However, we do not understand how requiring groups to track their non-New York work, based on New York definitions, is useful for the oversight of activities within your state. Just as New York is grappling with how to define the term, so are many

other states and Congress. To create a system as suggested would result in duplicative, and highly burdensome reporting at a tremendous cost that detracts from the substantive work in which we are able to engage.

Furthermore, by creating a new definition of "election related expenditures" you will force organizations to track yet another type of activity, and staff will need to attempt to understand how this term differs from the IRS definition of lobbying (which they must track), the IRS definition of "exempt-function expenditures" (which they must track) and various state and federal definitions of "express advocacy" and "electioneering communications" (which they must track). If New York, and other states, adopt their own divergent definitions of advocacy-related terms, nonprofit organizations' staff will spend countless time attempting to determine how to report their activities under a patchwork quilt of definitions. More importantly, adopting a bevy of diverse definitions means the disclosures will be less accurate as staff struggle with the complicated reporting bureaucracy. Experience shows that despite best efforts for compliance, the use of a vast array of definitions means the information disclosed will contain inadvertent errors. But when staff can apply a single, clear standard to their work, they can more consistently report accurate information. Adopting different standards than the rest of the country will not provide the public with meaningful disclosure; without consistency it becomes difficult for people to make apples-to-apples comparisons and gain a true understanding of the information provided. By adopting the same definitions as are in place on the federal level, New York will simplify reporting, will increase accuracy and will provide consistent information the public can use to understand organizations' political activities.

It is our recommendation, for the reasons explained above, that New York should adopt the same definitions as are in place at the federal level, rather than creating a new definition for "election related expenditures." It is important to remain consistent wherever possible. Even if you are not prepared to go forward with federal definitions, we encourage you to coordinate with other regulators and municipalities within New York so that definitions can remain constant across the state. If you find it prudent to go forward with the proposed definition, we ask that you limit it's application to only New York activities, narrow the scope of information that must be reported, and at the very least allow for the use of "good faith estimates" for the amounts that must be reported.

<u>Definition of Election Targeted Issue Advocacy</u>

We appreciate that the window for election targeted issue advocacy has been shortened from 180 days to 45 days before a primary or 90 days before a general election. However, the proposed regulation states that a 501(c)(4) must disclose donors if it spends more than $10,000 on New York election related expenditures "45 days before **any** primary election or 90 days before **any** general election...." (emphasis added). While we understand the window before a New York primary or general election, applying the standard to "any" primary or general election essentially eliminates the purpose of closing the window. As written, activity in any state with an upcoming election will trigger reporting of all activity by the organization. For instance, Virginia and New Jersey have primaries in June 2013 and

general elections in November 2013; some New Jersey municipalities held elections in May 2013. During a presidential election year, primaries are held in some state nearly every week from January through June. It is simply unworkable for groups to track all state, local, and special elections nationally to monitor the continual opening and closing of the New York window.

Membership communications

Eliminating member communications from the definition of election targeted issue advocacy is a good first step. However, we once again request that you eliminate such communications from the definition of express election advocacy as well. Our members choose to join our organizations precisely so they can receive information about the organizations' activities and viewpoints. We communicate with our members as a way to further our social welfare missions. To limit our ability to talk with our members is taking away a long held right. In fact, the U.S. Supreme Court believed a law that prohibited corporations and unions from advising their members "of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures" faced "the gravest doubt...as to its constitutionality." *U.S. v. Congress of Indus. Orgs.*, 335 U.S. 106, 121 (1948). Membership communications are heard only by those who make affirmative effort to learn political information from us and the fact that we are talking to our donors is not relevant to the public. If the rationale for requiring disclosure and providing the public with information is to avoid corruption of the election by a group of powerful donors, then exposing membership communications does nothing to further this goal.

We once again ask that the regulations not take effect immediately. We respectfully disagree with the Department of Law's assessment that "the extensive comment periods for the proposed rule and revised proposed rule have allowed covered organizations ample time to prepare for compliance...." While 501(c)(4)s may be preparing for the new rules, they cannot put new systems into place until the rules have been finalized.

Finally, while we have chosen to focus only on those issues that are of the greatest concern to us, we would like to reiterate that we still stand by our comments that were submitted in March and would encourage continued consideration of those recommendations. We hope you find these comments helpful as you finalize the regulations. We are happy to provide more detail about any of the issues we raised—or to answer any questions you might have.

Sincerely,

/s/ Abby Levine

Abby Levine
Legal Director
Alliance for Justice