

54 N.J.R. 782 (a)

VOLUME 54, ISSUE 9, MAY 2, 2022

RULE ADOPTIONS

Reporter

54 N.J.R. 782 (a)

NJ - New Jersey Register > 2022 > MAY > MAY 2, 2022 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > CHARITIES REGISTRATION UNIT

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:48-4.1, 4.3, 5.1, and 5.3

Text

Donor Disclosures

Proposed: October 18, 2021, at 53 N.J.R. 1774(a).

Adopted: February 18, 2022, by Sean Neafsey, Acting Director, Division of Consumer Affairs.

Filed: March 28, 2022, as R.2022 d.055, **without change**.

Authority: N.J.S.A. 45:17A-18 et seq., specifically 45:17A-21.b.

Effective Date: May 2, 2022.

Expiration Date: November 21, 2024.

[page=783] **Summary** of Public Comments and Agency Responses:

The official comment period ended December 17, 2021. The Division of Consumer Affairs (Division) received comments from:

1. Michael Geeser, Government & Regulatory Affairs Specialist, Harbor Compliance

2. Heather Lauer, Executive Director, People United for Privacy

3. Elizabeth McGuigan, Director of Policy, The Philanthropy Roundtable

4. Chris Hudson, Vice President of Government Affairs, Americans for Prosperity

1. COMMENT: Three commenters express support for the rulemaking, which eliminates requirements for charitable organizations to submit their Internal Revenue Service (IRS) Form 990 Schedule B or an equivalent schedule of donors. Multiple commenters believe that the rulemaking is appropriate in light of the United States Supreme Court decision in *Americans for Prosperity Foundation v. Bonta*, 141 S.Ct. 2373 (2021). One commenter also cited the decision of the United States District Court for the District of New Jersey in *Americans for Prosperity Foundation v. Grewal*, No. 3:19-cv-14228-BRM-LHG (D.N.J. Oct. 2, 2019), as justification for the rulemaking. A commenter expresses agreement with the Division's Economic Impact statement in the notice of proposal, which states that elimination of the donor disclosure rules is unlikely to have a substantial economic impact on charitable organizations.

RESPONSE: The Division thanks the commenters for their support.

2. COMMENT: All commenters cite to the U.S. Supreme Court decision in *Americans for Prosperity Foundation v. Bonta* as support for the rulemaking. Some commenters note that many organizations, with diverse viewpoints, signed amicus briefs in support of the petitioners in *Americans for Prosperity Foundation v. Bonta*. Some commenters assert that the U.S. Supreme Court has recognized that mandating an organization's disclosure of membership or donor lists may have an effect on the public's associational activities that are protected by the First Amendment.

RESPONSE: The Division recognizes the U.S. Supreme Court's decision in *Americans for Prosperity Foundation v. Bonta* and has engaged in this rulemaking in response to the Court's decision.

3. COMMENT: Some commenters state that individuals may fear negative consequences from disclosure, such as harassment, adverse action, and reprisal, or that individuals may prefer not to disclose affiliations for other reasons relating to privacy, religious practice, modesty, or avoidance of solicitations. A commenter avers that Americans agree that it is important to protect the rights to free speech and privacy. A commenter contends that privacy is especially important for organizations that challenge the practices of governments that seek the identities of a group's members or supporters. According to one commenter, it is essential that individuals maintain the right to express their viewpoints through associational affiliations

without fear of disclosure. A commenter believes that charitable organizations benefit society, aid in the protection of private free speech, and educate individuals and policymakers.

RESPONSE: The Division recognizes the Constitutional rights of New Jersey residents, including those protected by the First Amendment, as determined by the Supreme Court of the United States. As noted above, the Division has engaged in this rulemaking in light of the Supreme Court's ruling in *Americans for Prosperity Foundation v. Bonta*.

4. COMMENT: Two commenters disagree with the Division's Social Impact statement in the notice of proposal, which states that the proposed amendments will have negative impact on society because the Division will no longer have access to information in charitable organizations' annual registration statements, which the Division has previously identified as necessary to regulate charitable organizations effectively. Some commenters believe that the rule will have a positive social impact by protecting the First Amendment rights and the privacy of donors to charitable organizations.

RESPONSE: The Division maintains its position that the proposed amendments will have a negative social impact because the Division will no longer have access to information in charitable organizations' annual registration statements. The Division recognizes that the proposed amendments are necessary in light of the Supreme Court's decision in *Americans for Prosperity v. Bonta*, but it maintains that the resulting loss of information previously deemed necessary for the effective regulation of charitable organizations will have an adverse social impact.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments do not exceed any Federal requirements. In addition, the adopted amendments are warranted in light of the U.S. Supreme Court's decision in *Americans for Prosperity Foundation v. Bonta*.

Full text of the adoption follows:

SUBCHAPTER 4. REGISTRATION OF CHARITABLE ORGANIZATIONS--SHORT FORM REGISTRATION

13:48-4.1 Short form registration

(a) (No change.)

(b) Information required for the initial and renewal short form registration statement shall include the following:

1.-6. (No change.)

7. A complete copy of the charitable organization's most recent Internal Revenue Service filing(s), including, but not limited to, Form 990, Form 990EZ, Form 990PF and Form 990T (with schedule A) if the organization filed any one or more of these forms during the most recent fiscal year being reported. All schedules and statements shall be included, except for Schedule B;

8.-13. (No change.)

(c)-(f) (No change.)

13:48-4.3 Financial reports

(a) A charitable organization filing a short form registration or a short form renewal shall file an accompanying annual financial report on a form prescribed by the Attorney General. The financial report form shall include the following:

1.-7. (No change.)

8. A complete copy of the charitable organization's most recent Internal Revenue Service filings including, but not limited to, Form 990, Form 990EZ, Form 990PF, and Form 990T (with schedule A), if the organization filed any one or more of these forms during the most recent fiscal year. All schedules and statements shall be included, except for Schedule B; and

9. (No change in text.)

SUBCHAPTER 5. REGISTRATION OF CHARITABLE ORGANIZATIONS--LONG FORM REGISTRATION

13:48-5.1 Long form registration

(a) (No change.)

(b) Information required for the initial and renewal long form registration statement shall include the following:

1.-4. (No change.)

5. A complete copy of the charitable organization's most recent Internal Revenue Service filings including, but not limited to, Form 990, Form 990EZ, Form 990PF, and Form 990T (with schedule A) if the organization filed any one or more of these forms during the most recent fiscal year being reported. All schedules and statements shall be included, except for Schedule B;

6.-17. (No change.)

(c)-(f) (No change.)

13:48-5.3 Financial reports; audits

(a) (No change.)

(b) Information required for the financial report shall include the following:

1.-2. (No change.)

3. A statement of functional expenses classified into:

i.-ii. (No change.)

iii. Fund raising; and

4. A statement of cash flows.

Recodify existing (d) and (e) as (c) and (d) (No change in text.)

[page=784] (e) For the purpose of determining if an audit is required pursuant to (c) above, a charitable organization's gross revenue shall not include one-time bequests, fund raising campaigns for capital property in a single fiscal year, the value of services performed by volunteers, or items purchased by other entities for the use of the charitable organization where ownership of the item is retained by the original purchaser.

Recodify existing (g) and (h) as (f) and (g) (No change in text.)

NEW JERSEY REGISTER

Copyright © 2022 by the New Jersey Office of Administrative Law