December 6, 2019

Office of the Mayor
City of Chicago
121 N. LaSalle St.
Chicago, IL 60602
Via E-mail to Rachel Leven, Deputy Policy Director: Rachel.Leven@cityofchicago.org

Steven Berlin, Executive Director
City of Chicago Board of Ethics
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Chicago, IL 60654
Via E-mail: Steve.Berlin@cityofchicago.org

Dear Mayor Lightfoot and Executive Director Berlin,

We are writing you today to express our concern with amendments to the City of Chicago's lobbyist registration ordinance set to take effect on January 1, 2020, which subjects all paid staff members, paid contractors, and pro bono representatives of a nonprofit organization to overbroad and burdensome registration and reporting requirements (SO2019-5305, or "the Ordinance"). We write in collaboration as publicly minded legal organizations with expertise in civil rights and civil liberties, civic engagement, good government, non-profit legal compliance, and constitutional law – and also as advocates for communities that are most impacted by systemic injustices. Collectively, our organizations represent or advise more than 200 nonprofit organizations in and around the City of Chicago.

We appreciate the opportunities to engage with your offices in recent weeks to provide input from nonprofit organizations on the enacted law. However, meaningful community engagement and a racial equity impact assessment should have been conducted during the legislative process for this reform.

Accordingly, we urge the City to delay implementation of the nonprofit lobbying registration provisions in SO2019-5305 for at least six months in order to engage in a process to amend the rules regarding registration for nonprofits in a manner that ensures that nonprofit organizations can continue to be a vital voice in public discourse without discouraging their advocacy.

The new law creates an overbroad registration requirement applied at the discretion of public officials.[1] It will, absent an undefined discretionary application, result in the excessive monetary punishment of individuals working for nonprofit organizations pursuing their mission. It will also cause the chilling of advocacy efforts by organizations that represent disenfranchised communities

[1] The new law requires all paid staff and contractors (along with pro bono representatives) of nonprofit organizations to register as lobbyists if they undertake to influence legislative action or administrative action. Administrative action, a term that is not included in the federal rules that govern tax exempt organizations' lobbying requirements, is broadly defined so as to cover most City agencies that impact people's lives, such as the departments relating to planning, housing, and health.

– communities that do not have the same access, power, and money that create the concerns the lobbying rules are intended to address.

The Ordinance is unconstitutionally vague and overbroad. Chicago has a legitimate interest in "provid[ing] for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose,"[2] and in "prevent[ing] actual or apparent public corruption."[3] But "lobbying is an activity protected by the First Amendment," [4] and "government may regulate in the area only with narrow specificity."[5] "Broad prophylactic rules in the area of free expression are suspect."[6] An ordinance may not regulate a "substantial" amount of constitutionally protected speech, "judged in relation to the statute's plainly legitimate sweep."[7] Similarly, laws affecting speech may not be so vague that an ordinary person must guess at their meaning, nor may they vest undue discretion to regulators to determine whether particular speech is lawful.[8]

The Ordinance violates these principles in ways too numerous to list in this letter, but two examples are illustrative. First, the City's definitions of "lobbyist" and "lobbying" cover a broad range of political speech that is exceedingly unlikely to implicate the City's legitimate interests in corruption or undue influence. For example, any nonprofit employee may be a "lobbyist" subject to annual registration, quarterly reports, and intrusive disclosures, if the employee writes a single letter to City Council urging it to enact an ordinance that would further the interests of the nonprofit organization or its membership. Similarly, a pro bono volunteer may be considered a lobbyist based on a single call to a City agency if undertaken "as a matter of professional engagement" – and the ordinance does not permit waiver of the $350 fee for unpaid representatives.

Such occasional requests of the City pose no risk of corruption or undue influence, and the City has no interest in tracking the nonprofit employees who make such requests from time to time in the course of their employment. Accordingly, most lobbyist regulation applies only to persons who reach a certain threshold of lobbying activity, as measured by time, expenditures, or compensation for such endeavors. For example, state law does not require individuals to register as lobbyists if they "receive no compensation other than reimbursement for expenses of up to $500 per year while engaged in lobbying State government, unless those persons make expenditures that are reportable [by law]."[9]

The overbreadth of certain terms, and the vagueness of others, encourages highly discretionary enforcement by the Board of Ethics. For example, in more than one forum with nonprofit

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[2] *United States v. Harriss*, 347 U.S. 612, 625 (1954).
[3] *Calzone v. Summers*, 942 F.3d 415, 423 (8th Cir. 2019).
[4] *Am. Civil Liberties Union of Illinois v. White*, 692 F. Supp. 2d 986, 992 (N.D. Ill. 2010) (internal quotations, alterations, and citations omitted).
[5] *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 433 (1963).
[6] *Id.* at 438.
[7] *United States v. Stevens*, 559 U.S. 460, 473 (2010).
[8] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).
[9] 25 ILCS 170/3(8).

representatives, Executive Director Steven Berlin has encouraged them "not to worry" about whether certain kinds of conduct constitute lobbying, whether their lobbyist fees will be waived, or whether they may be fined thousands of dollars if they do not register within five days of an act of lobbying—assuring them that his only interest is in bringing nonprofits into compliance, rather than punishing them. "But the First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. [A court may] not uphold an unconstitutional statute merely because the Government promised to use it responsibly." *United States v. Stevens*, 559 U.S. 460, 480 (2010).

Even without considering the legal arguments, the Ordinance's vagueness and overbreadth creates real and meaningful barriers to advocacy for individuals, communities, and organizations. Among other things, the Ordinance does the following:

- Imposes detailed quarterly reporting requirements, even for advocacy involving no contributions, expenditures, or specific compensation other than salary. This is likely to create more of a burden for nonprofit staff and contractors than it does for for-profit entities, particularly small community-focused nonprofit organizations.
- Applies a definition of lobbying that differs from the federal rules that govern federal tax-exempt status – as well as the state lobbying registration laws – requiring nonprofits to establish multiple separate systems to track even minimal activity. [10]
- Chills routine communication, advocacy, and organizing efforts on issues of public concern. Because there is no time threshold for lobbying, the Ordinance subjects one-time actions to burdensome requirements.
- Disproportionately impacts nonprofit organizing efforts in which advocates are paid a nominal amount or given a small stipend, in order to enable their ability to advocate on their own behalf and for their community. This type of organizing arrangement helps break down the systemic barriers to advocacy – but will be chilled by the new ordinance.

This ordinance further disenfranchises the voices of those most directly burdened and impacted by the decisions made by the government, including communities of color and low-income communities.

There is no doubt that there is a need for ethics reforms in Chicago and increased transparency in lobbying. But applying an overbroad and discretionary system to those that are advocating on behalf of marginalized communities and are not receiving significant compensation or even political access hurts the very communities and people that a transparent political process is designed to protect.

[10] The federal definition of lobbying only includes attempts to influence legislation and does not include administrative actions or attempts to influence actions of an executive body. This creates administrative confusion and complexity for nonprofits that, to this point, have been appropriately following the federal rules under one tracking system, and now must create a secondary tracking system for the broadly applied city rules.

We look forward to hearing from you. We request that you direct any responses to Ami Gandhi of Chicago Lawyers' Committee for Civil Rights at agandhi@clccrul.org or (312) 888-4193.

Sincerely,

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December 12, 2019

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Dear Mayor Lightfoot and Executive Director Berlin,

Thank you to the City and its representatives for participating in a meeting at the office of Chicago Lawyers' Committee for Civil Rights on Monday, December 9 with representatives from more than twenty community organizations and nonprofit organizations. The meeting discussed the new legal requirements regarding lobbyist registration as applied to nonprofit organizations (SO2019-5305, or "the Ordinance").

The representatives included organizations from across the city, bringing perspectives from neighborhood organizations, community advocacy organizations, and organizations focused on broad social issues. These organizations work directly with communities of color and communities that face more barriers to participating in the political process. Many of the leaders of these organizations participated enthusiastically in the Mayor's transition committees earlier this year. They are eager for stronger mechanisms that promote racial equity and create a process to meaningfully engage the communities most impacted by policy decisions prior to those policies being decided and implemented.

The attendees brought meaningful and relevant issues to the conversation that must be addressed through legislative amendments – not merely discretion and interpretation. In particular, the attendees underscored the core problem that the stated intention of the law (transparency and good governance) does not match the requirements and impact of the law. In its implementation, the law will undermine the good governance goal of equalizing political access by instead increasing barriers for communities, with a particular impact on communities of color.

Attendees expressed that this new law will result in organizations and individuals being less likely to engage in political advocacy. Many stated that because of the way the law applies to their group, they will have to take significant time and resources away from other community work in order to meet the compliance requirements.

In addition to the concern about the mismatch of intent and impact, the group collectively identified many specific concerns about the text of the law. Some of those specific concerns are listed at the end of this letter. Most immediately, the group noted that the process of creating the law lacked any equity analysis or input from those who are most likely to be burdened by the law. While this

might have merely been an oversight at the time of drafting, with the information that has now been presented, continuing to implement a law without such a process would demonstrate an acceptance of the clear limitation that this imposes on individuals and organizations engaging in the political process through their constitutional rights.

To address these issues, any process to amend the legislation should meaningfully include the organizations and communities most affected by these rules. By necessity, this requires a delay in implementation of the law. Further, this process requires engagement beyond simply soliciting comments from the public.

We ask and expect that this law is delayed for at least six months and that the City specifies a process for drafting the new law that meaningfully includes the groups and communities impacted. The resulting law and the process to construct that law should follow the principles identified in the Report of the Transition Committee submitted to the Mayor regarding good governance practices on equity, accountability, and transparency (page 8); meaningful community engagement (pages 96 and 97); and how to equitably include those racial groups that will be most affected by a policy (page 101).

We understand that an ordinance that delays the law must be introduced at City Council by next Wednesday, December 18. We therefore request a response to this and our December 6 letter by no later than Monday, December 16 at 4:00 p.m. We look forward to hearing from you. We request that you direct any responses to Ami Gandhi of Chicago Lawyers' Committee for Civil Rights at agandhi@clccrul.org or (312) 888-4193.

Sincerely,

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Many problems with the Ordinance were raised by community organizations at the December 9 meeting. Included among those issues were the following:

- The ordinance fails to understand and interact with common ways that community organizations provide support for residents who are advocating for themselves – but are supported by a nonprofit organization that enables them to advocate for themselves. In many cases, identifying where someone is advocating "individually" or advocating "on behalf of an organization" is an impossible or meaningless distinction. This is especially problematic given the lack of a time or money threshold, as it opens the door for someone violating the law even by having a one-off interaction with an alderman or other government official.
- The definitions are broad and vague, particularly concerning what an "administrative action" covers and whether or not the new exemptions will be applied.
- There is too much discretion given to public officials at every stage of the registration process, including for waivers of fees and penalties.
- It potentially opens the door for political retaliation via investigation of entirely proper civic engagement by community-based organizations.
- The definition of lobbying is different than the federal rules, requiring additional burdensome tracking, which influences communities' decisions of what strategies to pursue.
- There is no minimum time or money threshold for whether an individual is required to register.
- People who work for coalitions or organizations that are part of coalitions (or people with multiple jobs) might not be eligible for fee waivers.
- There is no age threshold in the registration rules.
- The rules waive fees only for 501(c)(3) organizations, but not (c)(4) organizations. Many groups have cost sharing agreements with an appropriately set up and similarly staffed (c)(4) organization.
- The penalty for noncompliance ($1,000 per day) is far too high. Relying on a process to create a "settlement" for any fines for noncompliance is an inherently inequitable system that favors people with access to resources.
- Many organizations are worried that various types of funders will not be able to fund organizations that have to register with the City as lobbyists – even though the City's definition of lobbying differs from what the funder's restrictions on lobbying are.
- Because this is an individual registration issue and not an entity registration, many people who are vulnerable will be impacted in a manner that is not considered within this law – including undocumented and other immigrant community members.
- The law could apply to people that are attending a protest – if they happen to be paid staff of an organization that is supporting the protest.

- Many organizations would have dozens of people that would be required to register, even though they are fundamentally advocating for their own self-interest and even though many of these organizations have limited capacity.
- The law puts the burden on low-capacity community-based organizations to proactively contact Chicago Board of Ethics numerous times regarding areas of the law that are overbroad and unclear.
- The law places unreasonably onerous registration and reporting requirements on community members who are paid a small amount to help increase their capacity for civic engagement because they cannot afford to volunteer, particularly impacting people of color and low-income individuals.