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Draft Testimony for New York State Legislature Public Hearing May 13, 2020

To: New York State Senate Committee on Commerce, Economic Development, and Small Business;
New York State Assembly Committee on Small Businesses

Regarding: The federal response and economic impact of COVID-19 on small businesses

From: Chai Jindasurat, Policy Director, Nonprofit New York

Dear Senator Kaplan, Assemblymember Stripe and members present for today's hearing,

Thank you for the opportunity to testify today. My name is Chai Jindasurat and I am the Policy Director at Nonprofit New York, an association of 1,500 nonprofit organizations in the downstate region. The over 60,000 nonprofits in New York employ 18% of the private workforce, 8% higher than the national average. We provide more than 1.4 million jobs and pay \$80 billion in wages.

Nonprofits make our communities and our economy more equitable and inclusive. We are for the most part small businesses, exempt from paying corporate income taxes. Nonprofits have experienced significant revenue losses, layoffs, and closures due to COVID-19, particularly nonprofits heavily reliant on revenue-generating events and fundraisers, nonprofits with fee-for-service contracts reimbursed for the number of people or units served, and community development corporations who generate revenue from rent.¹ 85% canceled programs and events, 70% lost revenue, a reported 64% disruption of services to clients and communities. Major clinics reducing staff by 30%; 40% of food pantries shut down, and 90% of arts nonprofits denied business interruption insurance coverage, based on a recent survey. Nonprofits in New York are not financially strong² and these losses could lead to significant closures, lost jobs, and adverse consequences to the communities we serve.

The federal actions taken by Congress have been critical for our country, and we are grateful the payroll reimbursement for paid sick and family leave allows nonprofits to be reimbursed for new requirements under the Families First Coronavirus Response Act. However, the cash flow crunch to make it through the first quarter caused nonprofits to have to lay off staff. Under the CARES Act, nonprofits up to 500 staff are eligible for PPP loans. However we have heard small, culturally specific nonprofits have had challenges accessing the program, and our larger social service nonprofits with more than 500 staff are ineligible but these organizations operate on very thin margins.

¹ According to a pulse poll that was sent out by Nonprofit New York, 85% of respondents canceling programs and/or events, 70% experiencing reduced revenue, and 64% reporting a disruption of services to clients and communities. Dance/NYC reported that its survey respondents had lost at least \$15.2 million in income and that due to mandated social distancing, 69% of dance organizations surveyed are experiencing cash flow issues and/or financial hardship. New Yorkers for Culture & Arts found that surveyed freelance artists were reporting an average of \$7,021.88 worth of canceled work. *Times Union* reported that Planned Parenthood of Greater New York reportedly will be reducing its staff by roughly 28% across all departments. As reported by the *NY Post* and *ABC News*, roughly 40% of food pantries in NYC have shut down.

² SeaChange Capital Partners. (2016). Risk Management for Nonprofits.

Most nonprofits with general liability or commercial property insurance have very limited business interruption coverage.³ Unlike for-profit entities, most nonprofits are not well-versed in insurance coverage negotiations and do not have weighty insurance brokers advocating for their interests. Accordingly, without specific legislative intervention, nonprofits are unlikely to receive coverage under their business interruption coverage for any COVID-19 related losses.

While the Commerce Clause of the U.S. Constitution imposes certain limits on the ability of states to retroactively interfere with vested contractual rights, such an interference can be upheld if it is rationally related to a legitimate state interest.⁴ We believe states have the power to retroactively mandate business interruption coverage of COVID-19 losses under existing policies under the current circumstances.

For these reasons, Nonprofit New York strongly support A10226/S8211, which would allow business interruption claims to be filed for losses sustained as a result of COVID-19, and asks the legislature to consider this legislation as critical to support our state's small businesses and economy to survive the COVID-19 crisis.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Johnson". The signature is fluid and cursive, with the first name "Chris" and the last name "Johnson" clearly distinguishable.

³ For those that do purchase the insurance, the coverage often does not extend to contingent business interruption, which is designed to cover business income loss resulting from loss, damage, or destruction of property owned by others, including: direct "suppliers" of goods or services to the insured and/or direct "receivers" of goods or services manufactured or provided by the insured. In addition, even if a claim for business interruption is related to COVID-19, insurers have disputed whether the physical loss requirement has been met and have pointed to pandemic, infectious or contagious disease exclusions in their policies to deny coverage.

⁴ General Motors Corp. v. Romein, 503 U.S. 181, 191 (1992)