

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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Dear Colleagues:

I write on behalf of the New York City Bar Association (“the Association”) to express our interest in the current draft of the People’s Republic of China Non-Mainland Non-Governmental Organization Management Law (hereafter, the “Draft Law”) and to voice some of our concerns with regards to its scope and potential effects. Although the formal comment period has ended, the Association is an organization which has had a fruitful relationship with you. We therefore respectfully share our perspectives.

As you know, the Association is a 145-year-old organization of more than 24,000 members from New York City, throughout the United States and around the world with a long history of engagement in legal issues to promote the rule of law and better governance. The Association has long sought to deepen its relationship with and to promote the rule of law in China, for example through our Committee on Asian Affairs, which was founded with the specific purpose of promoting exchanges with Chinese legal educators and professionals. Over the years, we have had many mutually instructive and beneficial contacts with numerous judges, scholars, officials, and legal practitioners both in China and in New York. This letter is written with the same commitment to exchange and cooperation in mind, and I hope you will find our assessment of the coverage and potential impact of the Draft Law to be informative and persuasive.

The Association is generally concerned that the Draft Law's ambiguous and potentially expansive breadth, as well as the onerous registration and approval requirements it places on foreign non-governmental organizations ("NGOs"), will unduly discourage many foreign NGOs from engaging in a variety of beneficial exchanges with China. In particular, the Draft Law will make more difficult the kind of exchanges that we enjoy with bar organizations like the one you lead.

The impact will be far ranging. As you know, the entities covered by the Draft Law span a wide range of sectors, and include universities, academic and professional associations, scientific and research institutes, charities, environmental organizations, cultural and artistic organizations, humanitarian organizations such as providers of free healthcare, industry and trade groups such as chambers of commerce, and potentially even international organizations such as the World Health Organization and their affiliates. In the three decades since the commencement of China's economic reforms, such organizations have been instrumental in facilitating China's ever-greater engagement with the rest of the world as a leader in the international community. Through their participation in China's growth and progress, such organizations have enabled mutually profitable relationships between China and its most valued international partners in trade, cultural exchange, and strategic cooperation, and have no doubt contributed much to China's present prosperity and strength.

Such exchanges are far from one-sided, and organizations from China have been welcomed with increasingly open arms on American soil. Over 60 Confucius Institutes dot American university campuses across 37 states. Chinese artists and cultural professionals participate in numerous exchanges with the United States. To name just one of hundreds of such activities, over 120 master Chinese folk artists performed in the 2014 Smithsonian Folklife Festival on the National Mall in Washington D.C., a festival attended by over 1 million visitors last year. In New York, our Association regularly hosts delegations of lawyers and judges from China to share insights and best practices. The Association views China's prosperity and the continuing growth of its cultural and economic influence around the world as integral to the dynamism and health of the international community. However, unimpeded mutual exchange between China and the rest of the world is a vital part of that process, a process in which foreign NGOs play a crucial role.

The Draft Law's breadth and ambiguity as to its terms of implementation are such that even the most frequent and enthusiastic non-governmental and non-profit facilitators of China's successful engagement with the international community will face legal uncertainty in continuing their operations in China. It is our opinion that in its current form (as we have examined it in English), the Draft Law will have numerous negative consequences for China's ability to import cultural and knowledge capital from the rest of the world. Of these consequences, three are most serious:

The scope of the Draft Law is ambiguous and potentially overbroad. The Draft Law governs the "activities" of any "not-for-profit, non-governmental social organization established outside of mainland China." The term "activity" is undefined. This scope of application potentially includes every possible type of foreign NGO, and every possible form of activity it may undertake. The scope is so broad that every activity described in this letter, from study abroad programs to visits to China by professors or other professionals such as bar organization leaders, will be covered.

The Draft Law stipulates a multi-stage registration and sponsorship process that sets a high cost of compliance. The Draft Law requires that each covered organization seeking to conduct an activity in China obtain both a government sponsor and approval from the ministry of public security, and stipulates an open-ended continuing obligation to submit to monitoring. These requirements impose administrative and compliance costs on organizations, the vast majority of which, by virtue of being non-profit, would find it difficult if not impossible to sustain.

The Draft Law's ambiguities impose enormous uncertainties, even for organizations that can afford to meet its registration requirements. The Draft Law contains numerous ambiguities, from the lack of

specificity as to the criteria upon which an NGO's application for approval will be assessed, to the lack of specified penalties for violation of the law. For organizations that scrupulously comply with laws and regulations, this level of ambiguity is so significant that many will be deterred from participating in activities in China regardless of their ability to respond to the law's express stipulations.

The Association has, over the years, encouraged and facilitated a multitude of exchanges between American and Chinese legal academics and professionals. And as described above, numerous foreign NGOs have engaged in similar exchanges in a wide variety of other sectors. These activities, while not necessarily profit-driven, have delivered incalculable benefits for China, both economic and otherwise.

For many of these organizations, including the Association, the effort required to respond to the Draft Law's broad and ambiguous stipulations is unduly burdensome, and we believe that the Draft Law threatens to seriously disrupt the exchange of knowledge capital between China and the rest of the world. Such a disruption would unquestionably harm a wide spectrum of China's cultural and economic interests, and seriously damage the fabric of international commerce, as well as scientific and cultural exchange.

If China is to continue reaping the numerous benefits of exchanges that NGOs facilitate, we respectfully request that China seriously re-consider the potential impact and current framework of the Draft Law. We hope that you have found our letter informative, that the concerns we have expressed persuasive and that you would convey these concerns to colleagues in the government as you see fit.

Respectfully,

A handwritten signature in black ink, appearing to read "Debra L. Raskin". The signature is fluid and cursive, with a large initial "D" and "R".

Debra L. Raskin
President