

## Handout

### Workshop on Possible Merger of LWVNYS Education Foundation and League (and impact on local Leagues)

Historically, most Leagues have operated as 501(c)(4) organizations with most state Leagues and some larger local Leagues forming Educational Funds organized under 501(c)(3) to raise tax-deductible funds to support certain League operations. The League of Women Voters of New York State (the "League") is a 501(c)(4) organization and the League of Women Voters of New York State Foundation (the "Foundation") is a 501(c)(3) organization, both under New York Not-for-Profit Corporation law. The two organizations share the same Board of Directors. Members elect the League board every two years and the League board elects the Foundation board.

#### Goal and Possible Issues:

Over the last few years, several state Leagues have converted their statewide membership organization to (c)(3) status in order to simplify the administrative burden of being a dual-entity organization. Because both the League and the Foundation are strictly nonpartisan and since volunteers do most of the lobbying in the League, the (c)(3) limitation on lobbying activities should not provide any practical limitation on League lobbying activities.

We would like to accomplish the same goal in New York both for the substantial savings of administrative work and expenses and because of concern over the anticipated increase in reporting necessitated by the new non-profit disclosure legislation passed last year by the state Legislature and currently under legal challenge.

Our preliminary advice from the New York Council on Non-Profits is that we should seek to merge the two organizations, with the Foundation being the surviving entity. To do so, we need to change the Foundation to a membership organization, and subsume the members, assets and operations of the League into the Foundation. The Foundation would change its name to the League of Women Voters of New York State.

We understand that we would need to comply with the merger processes for New York Not-for-Profit corporations required by the Charities Bureau in the New York Attorney General's office. We are also assuming that the (c)(3) tax status of the Foundation will not be impacted by the merger. We will have to notify the IRS about our changes to our bylaws.

GOAL: After merger, LWVNYS will be a §501(c)(3) membership organization with all of the present LWVNYS members, assets and operations.

#### **How will this affect the local Leagues?**

##### *Unincorporated local Leagues*

- Their legal status continues to be that of an unincorporated association.

- They will probably have to make changes to their bylaws.
- They lose their (c)(4) tax status because there is no longer a parent (c)(4) organization under which they obtain their (c)(4) status. There are two possible resolutions to the loss of their tax status.
  - a. They continue to operate as a separate (c)(4) entity by filing an application with the IRS. The state League will help with the paperwork and the filing fee.
  - b. They cease to have their own legal or tax status and operate as a true chapter of the state League. They can still operate under their own name, but finances and membership will be handled by the state office.. Leagues that have previously lost their tax-exempt status will be encouraged to take this option

*Incorporated local Leagues*

- They will need to make sure they are compliant with current New York state Not-For-Profit requirements.
- They can apply for their own tax status with state League help (see a above).
- Or they can dissolve and operate as a chapter (see b above).

*Dual-entity Leagues that have formed their own (c)(3) Foundation*

- Use our paperwork as a template to merge the membership entity into the (c)(3).
- Keep the two entities and obtain apply for (c)(4) status for the membership organization.

## DESCRIPTION OF AG PETITION PROCESS

### **a. Verified Petition or Affidavit to the Attorney General or the Supreme Court signed by both corporations seeking approval of merger:**

#### **Attachments:**

- The plan of merger must be attached as an exhibit.
- Certificates of incorporation, by-laws and any other governing instruments, including any amendments for each constituent corporation and any proposed amendments or changes to the certificate of incorporation or by-laws of the surviving corporation as a result of the merger
- For each constituent corporation, a statement that the plan of merger was approved by a vote of the directors in accordance with law, at a meeting duly called and held. Include a statement of the total number of directors, the number of the directors present at the meeting, the vote pro and con, and what constitutes a quorum. A copy of the board resolution, certified by the secretary, should be attached as an exhibit.
- If there were members entitled to vote, for each such constituent corporation, a statement that the plan of merger was approved by a vote of the members in accordance with law, at a meeting duly called and held. Include a statement of the total number of members, the number of the members present at the meeting, the vote pro and con, and what constitutes a quorum. A copy of the membership resolution, certified by the secretary, should be attached as an exhibit.
- The objects and purposes of each corporation that will be promoted by the merger. Include a description of the purposes and activities of each constituent corporation, an explanation of why the corporations are merging, and how their purposes will be promoted by the merger.
- A statement describing all property held by the constituent corporations and the manner in which it is held; and a statement of all liabilities and the amount and sources of the annual income of each constituent corporation, usually provided in the form of financial statements and IRS Form 990 for each corporation, which should be attached as exhibits.
- A statement whether any votes against adoption of the resolution approving the plan of merger were cast at the meeting of members or directors at which the resolution was adopted by each constituent corporation.

- A statement of the facts confirming that the merger is authorized by the laws of the jurisdiction in which each of the constituent corporations was formed. Provide the citation for any jurisdiction outside New York.
- A statement whether or not any of the constituent corporations has restricted funds. If there are restricted funds, an exhibit should be annexed which identifies for each such restricted fund (a) the amount of the fund, (b) the historic dollar value of any endowment fund, (c) the nature of the restriction and whether the restriction is temporary or permanent, (d) the gift instrument or other document(s) containing the restriction and (e) the provisions of any applicable reversionary or kremainder provision. The affidavit or petition should state that no restricted funds will be required to be returned, transferred or conveyed to any third party by reason of the merger except as specifically identified therein. The affidavit or petition may and should seek *cy pres* relief pursuant to N-PCL §907(c) with respect to restrictions which have become obsolete or which would become impossible or impracticable after the merger. The facts and circumstances supporting *cy pres* relief, and the precise nature of the relief requested, should be set forth in detail (see also "*Cy Pres Relief in Connection with Merger*," below).
- All required consents and approvals of any governmental body or officer should be attached as exhibits.
- If the application is to the Attorney General for approval, a statement as to whether anyone raised, or has a reasonable basis to raise, objections to the merger or consolidation, the names and addresses of such persons, the nature of their interest, and a description of their objections.

In addition, the affidavit or petition should include:

- A list of the names of the directors (sometimes called trustees) of each constituent corporation, and any anticipated changes in the membership or directors of the constituent corporations that would result from the merger; as well as any changes in the membership or directors of any such corporation that have already occurred in connection with pre-merger governance and organizational changes. Copies of supporting documentation should be attached as exhibits.
- Any letter of intent and any other agreements entered into by any constituent corporation in connection with the proposed merger. A copy should be attached as an exhibit.
- A description of all governance or organizational changes made by the constituent corporations in advance of the merger, including changes to or restructuring of their boards of directors and executive management, with supporting documentation attached as an exhibit.

The Office of the Attorney General may request additional documents and information needed in order to review the application, such as IRS form 1023 or the IRS letter of determination of exempt status.

### **Proposed Order of the Court or Attorney General Approval**

If the application is made to the Attorney General, it must be accompanied by a proposed Attorney General Approval including the following:

- A finding that the interests of the constituent corporations and the public interest will not be adversely affected by the merger.
    - Any proposed terms and conditions for the merger that the Attorney General in his discretion may prescribe
  - Direction that a copy of the certificate of merger as filed by the Department of State shall be served on the Attorney General.
1. Following step (1), but before Special Meeting, the Education Fund Board takes the following steps, all contingent on LWVNY member approval of merger:

