



Political Law Alert

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New York Passes Ethics Package Impacting Lobbying and Disclosure

On Wednesday, August 24, 2016, New York Gov. Andrew Cuomo signed into law an ethics package (the Bill) including campaign finance, lobbying and disclosure amendments. Below, we briefly summarize key provisions that (i) expand the requirement for lobbyists and clients to disclose the sources of their funding, (ii) reverse a Joint Commission on Public Ethics (JCOPE) advisory opinion, which found that certain contacts with the press were covered lobbying, and (iii) expand the disclosure requirements for independent expenditure PACs making independent expenditures. Please note that the Bill also expands the disclosure requirements for certain social welfare organizations making issue advocacy communications, as well as requires persons providing political consulting services to, or on behalf of, an elected official or candidate for elected office to register with the Department of State. Most of the significant provisions in the Bill will become effective September 23, 2016, 30 days after the governor signed the Bill.

Disclosure of Source of Funding

The New York Public Integrity Reform Act of 2011 amended the New York lobby law to require lobbyist clients and entities that lobby on their own behalf to disclose each source of their funding over \$5,000 if (i) they spend more than \$50,000 on reportable compensation and/or expenditures for lobbying, and (ii) their expenditures on lobbying in New York are at least three percent of their total expenditures (both in-state and out-of-state) during the applicable expenditure threshold period (either a calendar year or the prior 12 months). The Bill lowers the \$50,000 expenditure amount to \$15,000 and lowers the \$5,000 disclosable donation amount to \$2,500. The Bill also adds an exemption under which disclosures need not include amounts that constitute membership dues, fees or assessments charged by the reporting entity to enable an individual or entity to become a member. Thus, while the Bill expands the pool of entities that will be required to disclose their sources of funding, it also exempts the disclosure by membership organizations of members paying dues.

JCOPE has enacted implementing regulations, and both the provisions of the Bill and the implementing regulations take effect on September 23, 2016.

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Changes to Grassroots Lobbying

On January 26, 2016, JCOPE released an advisory opinion expanding coverage of grassroots lobbying under the lobby law. For a full discussion of the opinion, please see our mailing from February 11, 2016. Most controversially, the opinion held that communication with the media in an attempt to influence an editorial would constitute delivery of a message and be classified as covered grassroots lobbying, thus raising the specter of lobby registration for many public relations professionals. The Bill, however, amends the definition of lobbying effective immediately to exclude communication with a professional journalist or newscaster, including an editorial board or editorial writer of a newspaper, magazine, news agency, press association or wire service, relating to news. Thus, the Bill reverses that portion of the JCOPE opinion concerning registration for contacts with the press. The Bill does not impact the rest of the opinions holdings expanding the coverage of grassroots lobbying and addressing application of the law to “door opening” activities.

Independent Expenditure Committees

While state law has required entities making independent expenditures to register and report in the state pursuant to the

state’s reporting schedule for political committees, the Bill adds a new type of committee called an “independent expenditure committee” (IEC), defined as a political committee that only makes independent expenditures and does not coordinate with a candidate or party committee that is acting on behalf of a candidate. The Bill also detailed the term “political action committee” to mean a political committee that does not make independent expenditures. Further, the Bill strengthens the definition of “coordination” between candidates and those making independent expenditures by including scenarios that will be considered coordination, such as when the IEC is formed by the candidate, one of his or her agents benefitted by the independent expenditure, or when the candidate appears at a fundraising event hosted by the IEC within two years of the IEC making an expenditure to benefit the candidate. An IEC will be required to disclose on its registration statement the identity of any person exerting control over the group, including whether such person(s) have been employed or retained as a consultant for a candidate or party committee in the previous two years, or are an immediate family member of a candidate. Finally, an IEC will be required to file weekly reports and pre-election 24-hour reports to itemize contributions received of \$1,000 or more.

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