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GOVERNMENT RELATIONS

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Governor Cuomo's "Ethics Reform Plan" Becomes Law

Governor Cuomo recently signed into law the highly anticipated "Ethics Reform Plan." The new law amended or added statutory provisions in four primary areas: (1) lobbying source of funding disclosures; (2) disclosures by tax exempt organizations; (3) independent expenditures related to campaign contributions; and (4) registration requirements for political consultants. Many of the changes take effect in late September, therefore, advocacy groups, political consulting firms, and other incorporated or unincorporated entities that lobby or contribute to New York political campaigns should quickly become familiar with the new requirements, particularly those dealing with disclosure and registration.

Lobbying Source of Funding Disclosure Threshold Lowered

Since 2012, the New York Legislative Law has required lobbyists who lobby on their own behalf, and their lobbying clients, to disclose their larger sources of funding. Originally, if these groups spent more than $50,000 on lobbying and at least three percent of their total expenditures during the reporting period were devoted to lobbying, they were required to disclose the identity of each source of funding over $5,000. The new law will capture more reporters by lowering the financial thresholds for lobbying source of funding reporting requirements. Specifically, lobbyists who lobby on their own behalf, and their lobbying clients, now must disclose each source of funding greater than $2,500 if the lobbyist or the client has spent more than $15,000 on lobbying and at least three percent of its total expenditures during the same period were devoted to lobbying in New York. However, there is a minor carve-out for organizations that raise lobbying money from membership dues or similar fees; those funds do not have to be disclosed. These lower financial thresholds take effect in late September.

New Disclosure Requirements for Certain Tax-Exempt Organizations

Internal Revenue Code Section 501(c)(3) charities involved in lobbying efforts were also a target of the new law with two new additions to the Executive Law. First, these charities, which were historically exempt from lobbying disclosures, now must disclose any in-kind donation they make to lobbying efforts in excess of $2,500 during a reporting period. In-kind donations are defined as donations of staff, staff time, personnel, office space, office supplies, financial support of any kind and any other resources. Section 501(c)(3) charities will also have to disclose and provide information to the Attorney General's Office regarding the identity of any donor who made a gift or donation over $2,500 during the reporting period. These provisions go into effect in late October.

Section 501(c)(4) entities (*e.g.*, civic leagues or associations of employees) were targeted for their actual lobbying efforts, as opposed to just in-kind donations. Under the amended law, Section 501(c)(4) entities must disclose certain "covered communications." That term is defined as communications conveyed to 500 or more people in the form of audio, video, written, or other published statements, which refer to and advocate for or against a clearly identified elected official, or a particular issue relating to existing or pending legislation, rules, regulations or hearings. Although there are some limited exclusions, generally, all covered communications in the aggregate amount exceeding $10,000 in a calendar year must be reported in a filed financial disclosure report with the Attorney General's Office. This report must include information about the covered communications, the individuals who control the 501(c)(4), and the names and addresses of any individual, corporation, association or group that made a donation of $1,000 or more to the 501(c)(4). Importantly, these financial disclosure reports will be made available to the public. The disclosure and reporting obligations of Section 501(c)(4) entities will go into effect in late September.

Coordinated Expenditures Targeted by Creation of New Independent Expenditure Committees

As you may recall, the 2010 U.S. Supreme Court decision of *Citizens United v. FCC* provided a new opportunity for corporations, labor unions and other entities to make unlimited "independent expenditures" with regard to political advocacy. Under *Citizens United*, independent expenditures are defined as "political speech presented to the electorate that is not coordinated with a candidate." These independent expenditures were also a target of the Ethics Reform Plan.

Specifically, additions to the Elections Law define a new type of political contribution entity known as the Independent Expenditure Committee (IEC). Unlike a Political Action Committee (PAC), an IEC cannot contribute to any candidate, constituted committee, political committee or party committees. Rather, IECs, which can be created by individuals, groups of individuals, incorporated or unincorporated business entities, labor unions, or business, trade or professional associations, may only make *independent expenditures*. While the definition of independent expenditures remains largely the same, the new law expanded and refined what is considered coordinated activity. Independent expenditures, which traditionally include advocacy-type communications, may be considered "coordinated" (no longer independent) and thus subject to contributions limits in many different circumstances, including but not limited to:

- The IEC or its agent making payments or expenditures is an immediate member of the candidate's family or the IEC is established by such family member and the payment or expenditure is made for the benefit of the candidate;
- The candidate appears at a fundraising event hosted by the IEC or its agents who are making payments or expenditures benefiting the candidate any time within two years of the general, primary or special election in which the candidate is running; and
- The IEC and candidate employ or retain the same individual or group for professional campaign services within two years of the general, primary or special election in which the candidate is running.

Regardless of whether the expenditure is independent or coordinated, the IEC must register with the State Board of Elections. Such registration includes disclosure of information about the IEC focused on revealing the identity of individuals in charge of operations or management of the IEC and whether there are any immediate family members of a candidate involved in the IEC.

Once registered, the IEC must make weekly disclosures to the Board of Elections during the applicable reporting period including: (1) any contributions to the IEC of $1,000 or more; or (2) any expenditure by the IEC over $5,000. Notably, among other things, the identity of any donor giving $1,000 or more must be disclosed.

Political Consultants Must Now Register with the Department of State

The new law also imposes for the first time registration requirements on political consultants. Those individuals who provide political consulting services to or on behalf of an elected public official, candidate for elected office, or person nominated for elected public office in New York must register with the New York Department of State if he or she provides services, advice or consultation to another client on any one of the following topics:

- State or local government contracts for real property, goods, or services;
- Appearance in a ratemaking proceeding; and
- Appearance in a regulatory matter or other legislative matter.

For example, a political consultant hired by an elected official to provide voter outreach services but who also is retained by a local trade association to assist in its campaign against pending legislation would be required to register with the Department of State. The registration must provide information on the political consultant as well as his or her clients and must be submitted every six months. The amendments provide that regulations will be forthcoming, and the amendments will not take effect until the end of October.

Other provisions of the new law may have a profound effect on those lobbyists found to be acting outside the confines of the law. First, while New York previously had a relatively toothless restriction on lobbyists entering into contingent fee arrangements, the new legislation adds a new civil penalty of $10,000 or the value of the contingent fee, whichever is greater. Second, the new legislation offers more due process for those lobbyists subject to a Joint Commission on Public Ethics investigation including, more detailed notice of the specific allegations and additional evidence in "sufficient detail to enable the individual to respond at least seven days before [a] hearing."

As these provisions become effective within the next two months, we anticipate that it will impact smaller not-for-profits and lobbying groups the most. While the expanded definition of coordination and certain disclosure requirements may help to combat what the Governor refers to as "the shadowy intersection of government, lobbying, and political consulting," the lowering of financial thresholds to report sources of funding may act as a deterrent and new administrative burden to many smaller entities and lobbying groups looking to advocate their causes and concerns before their elected representatives.

To learn more, please contact Matthew A. Young, any of the attorneys in our Government Relations Practice, or the attorney in the firm with whom you are regularly in contact.

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