

Federal Judge Strikes Down New York Lobbying and Issue Advocacy Donor Disclosure Requirements

October 3, 2019

On September 30, Judge Denise Cote of the United States District Court for the Southern District of New York [ruled unconstitutional](#) two provisions of New York State law that were enacted in 2016 with the strong backing of Governor Andrew Cuomo to require certain 501(c)(3) and 501(c)(4) organizations that fund New York lobbying and engage in issue advocacy to publicly disclose their donors. The state is [reportedly](#) considering an appeal of the ruling to the United States Court of Appeals for the Second Circuit.

Citizens Union filed suit against New York in December 2016, asserting that the donor disclosure requirements unconstitutionally burden First Amendment rights of free speech and association, including the right to anonymously engage in issue advocacy. On December 29, 2016, the New York Attorney General agreed to postpone enforcement of the donor disclosure requirements pending the outcome of the lawsuit, so these two donor disclosure requirements were not yet being enforced and will not be enforced unless the Second Circuit reverses on appeal, although many charitable and social welfare organizations have been closely monitoring the litigation.

The first of the challenged provisions, Section 172-e of the Executive Law, requires 501(c)(3) organizations that make in-kind donations of more than \$2,500 to certain 501(c)(4) organizations engaged in New York lobbying to file donor disclosure reports on a semi-annual basis. These reports must, among other things, disclose the identities of donors of more than \$2,500 to the 501(c)(3) organization regardless of whether the donor intended or even knew that their donation would be used to provide in-kind support to a 501(c)(4) engaged in New York lobbying. Judge Cote ruled that this broad donor disclosure requirement was not drawn narrowly enough to justify the government's interests, writing that the requirement was a "poor fit" and that "[t]he link between a 501(c)(3) donor and the content of lobbying communications by the 501(c)(4) is too attenuated to effectively advance any informational interest."

Importantly, this ruling does not directly effect a separate lobbying donor disclosure requirement found in New York Legislative Law, referred to as [Source of Funding](#) disclosure, which requires certain lobbyist clients to disclose their donors. This donor disclosure requirement has already been implemented and is being enforced by the New York State Joint Commission on Public Ethics.

Caplin & Drysdale will continue to monitor any changes to the new law. Please contact a member of [Caplin & Drysdale's Political Law Group](#) if you have questions concerning this alert or for more information.

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