

After Multiple Lawsuits, New Jersey Nonprofit Disclosure Law Permanently Enjoined

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A New Jersey law passed in June of 2019 that created new disclosure requirements for certain groups seeking to influence elections and government actions in the state was struck down by Judge Brian Martinotti of the U.S. District Court for New Jersey on March 11, 2020.

The law required “527” political organizations and “501(c)(4)” nonprofit groups seeking to influence New Jersey elections, ballot measures, legislation, or regulations to disclose donors contributing \$10,000 or more. Disclosure would also triggered even if a group merely provided “political information” (including advertisements and get-out-the-vote efforts) about an election, legislation, or regulation in New Jersey. Previously, these groups were not required to publicly disclose their donors.

Several groups brought challenges to the law, including the conservative advocacy group Americans for Prosperity (AFP) and the American Civil Liberties Union of New Jersey (ACLU-NJ). Both groups argued in separate lawsuits that the law’s disclosure requirements were overly broad and violated New Jersey citizens’ rights to freedom of speech and association. Judge Martinotti temporarily enjoined the law, agreeing that it was likely too broad, especially the provision on “providing political information,” which required disclosures not only for communications related to an election, but also communications that seek to influence legislation or regulations—an unusually wide-ranging requirement. The Court opined that the law went “beyond permissible boundaries set by *Citizens United*,” and further found that the donor disclosure provisions of the law would chill free speech, citing harassment already experienced by those AFP donors whose identities have become known.

On March 11, 2020, Judge Martinotti converted the preliminary injunction into a permanent one, ordering that New Jersey “not take any action to enforce . . . the Act against any ‘independent expenditure committee’ as defined in the Act.” Whether the New Jersey legislature will take up new legislation to address disclosure rules for nonprofits and other groups remains to be seen, though some legislators have suggested the issue will be revisited.

Caplin & Drysdale will continue to monitor any legislative developments in New Jersey pertaining to campaign finance. 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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