

New Jersey Nonprofit Donor Disclosure Law Faces Lawsuit

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Despite expressing concerns about the measure at the time, New Jersey Governor Phil Murphy signed into law on June 17, 2019 a bill that creates new disclosure requirements for certain groups seeking to influence elections and government actions in New Jersey. The new law now faces a First Amendment challenge from the conservative advocacy group Americans for Prosperity, which has delayed enforcement of the law for the time being.

What Does the New Law Do?

The new law amends the New Jersey Campaign Contributions and Expenditures Reporting Act to require “527” political organizations and “501(c)(4)” nonprofit groups seeking to influence New Jersey elections, ballot measures, legislation, or regulation to disclose donors contributing \$10,000 or more. Disclosure is also triggered even if a group merely provides “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. The law is unusually broad in that it requires disclosures not only for communications related to an election, but also communications that seek to influence legislation or regulations.

If the law stands, it will present a challenge for organizations that wish to get involved in New Jersey elections and policy-related efforts. Some groups solicit contributions on the basis that they will not disclose their donors’ names. Now, however, the names of donors who contribute \$10,000 or more to covered groups must be publicly disclosed.

What is the New Law’s Current Status?

Governor Murphy, who had initially vetoed the measure because he believed it was too broad, agreed to sign the bill on the condition that New Jersey lawmakers make changes in a “clean-up” bill. Governor Murphy expressed his concern that the law extends disclosure requirements to cover advocacy not connected to an election. State Assemblyman Andrew Zwicker, a co-sponsor of the original bill, has introduced “clean-up” legislation that would eliminate the disclosure requirement for groups that seek to influence only legislation and regulation, and narrow what qualifies as an “electioneering communication.” The bill has been referred to the Appropriations Committee, but has not advanced further.

The conservative advocacy group Americans for Prosperity (AFP) has filed a lawsuit in the U.S. District Court of New Jersey seeking an injunction against the new law, arguing that its disclosure requirements are overly broad and violate AFP’s right to freedom of speech and association. AFP asserts, among other things, that requiring disclosure of donors for simply providing the broad category of “political information” would “chill their exercise of First Amendment rights to associate freely and advocate for issues that matter to them.” A hearing on the injunction is set for October 18, 2019, and the law will not be enforced pending the Court’s decision.

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.

Matthew T. Sanderson
msanderson@capdale.com
202.862.5046

Trevor Potter
tpotter@capdale.com
202.862.5092

Bryson B. Morgan
bmorgan@capdale.com
202.862.7836

Olivia N. Marshall
omarshall@capdale.com
202.862.5076

Attorneys

Bryson B. Morgan
(202) 862-7836
bmorgan@capdale.com

Trevor Potter
(202) 862-5092
tpotter@capdale.com

Matthew T. Sanderson
(202) 862-5046
msanderson@capdale.com

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