New York Passes New Legislation Affecting Political Activity at the Local and State Level

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Governor Andrew Cuomo is expected to sign newly passed legislation that could dramatically alter the disclosure obligations of some entities and individuals who engage in state- and local-level political activity in the State of New York. This reform measure's principal elements do the following:

1. Lower the "source of funding" disclosure thresholds and requirements for an organization registered as a lobbyist/client under New York state law.

- An entity registered as a lobbyist/client that has spent over $15,000 (previous threshold was $50,000) *and* 3% of its budget during the course of any twelve-month period on New York lobbying must disclose each source that has contributed over $2,500 (previous threshold was $5,000) in funding that was used for lobbying activities. Membership dues and fees need not be reported. More lobbyists/clients will likely be required to file "source of funding" disclosures under this new regime.
- A 501(c)(3) organization registered with the New York Attorney General's Charities Bureau continues to not be subject to this "source of funding" disclosure that is submitted to the Joint Commission on Public Ethics. *However*, if a 501(c)(3) makes over $2,500 in *in-kind* donations (e.g. staff time, offices, office supplies, financial support) to a 501(c)(4) organization, the listed 501(c)(3) must now separately file a new report with the Attorney General (see directly below), and the recipient 501(c)(4) must notify the 501(c)(3) of this filing obligation. Based on the text of the bill, this 501(c)(3) filing obligation appears to be triggered only by an in-kind donation to a 501(c)(4) and not by a monetary donation to a 501(c)(4).

2. Institute a New Disclosure Report for Certain 501(c)(3)s that Provide In-Kind Support to 501(c)(4)s' lobbying activities. Any 501(c)(3) organization listed on a 501(c)(4)'s "source of funding" report must separately submit another filing on a semi-annual basis with the New York Attorney General's Charities Bureau. Importantly, this publicly available filing must feature the names of individuals who control the 501(c)(3) *as well as information—including donor identities—related to any donation exceeding $2,500 to the 501(c)(3) during the six-month reporting period. The new legislation appears to cover even those donors who did not intend to support any lobbying effort or other New York activity*. Depending on the ultimate regulatory interpretation issued by the Charities Bureau, this new filing could result in expansive donor disclosures for those 501(c)(3)s that provide in-kind support to 501(c)(4)s.

3. Impose a new disclosure obligation on 501(c)(4)s sponsoring issue-advocacy communications that reference candidates or officials. A 501(c)(4) organization must file special semi-annual reports with the New York Attorney General if it directly spends more than $10,000 in a calendar year, or provides another entity with more than $10,000, in a calendar year, to make one or more communications--including Internet communications such as online advertisements, websites, social media pages, and mass emails--that "refer[ ] to and advocate[ ] for or against a clearly identified elected official or the position of any elected official or administrative or legislative body" related to a government action. This disclosure requirement does not apply if the message is sent to those who contribute funds, "affirmatively consent" to be members, or have the right to vote on organizational matters (e.g. directors, officers, bylaws). This disclosure requirement also does not cover communications with the press or efforts to promote non-partisan debates, town halls, and similar

forums. *Please note that this report must, among other things, feature the identities of any donors that gave the 501(c)(4) filer $1,000 or more during the six-month reporting period, potentially regardless of whether the donor intended to fund New York activity*. This disclosure requirement represents a marked expansion of the disclosure obligations for any 501(c)(4) that sponsors issue-advocacy communications in the state.

4. Expand the "coordination" definition. An outside group, such as a super PAC or a 501(c)(4) organization, may generally accept and spend funds in unlimited amounts for the purpose of sponsoring election-related communications, provided that the group does not "coordinate" its efforts with a candidate or political party. New York has now broadened its state-law definition of "coordination" in a manner that will restrict:

- A candidate or candidate's agent from participating in an outside group's formation;
- A candidate or candidate's agent from participating in an outside group's fundraising event;
- An outside group from employing a candidate's former staffer or consultant;
- A candidate's immediate family member from establishing or managing an outside group;
- A campaign's ability to share or rent office space with an outside group; and
- An outside group's ability to reproduce campaign materials or participate in "strategic discussions" with a candidate or potential candidate.

5. Extend disclosure requirements for "independent expenditure committees." Individuals and entities that sponsor independent expenditures must now disclose additional information, including any relationships with candidates.

6. Refine the definitions and roles of "independent expenditure committees" and "political action committees." The new bill clarifies that independent expenditure committees are not able to make contributions to candidates, parties, and PACs. Political action committees, on the other hand, may not sponsor independent expenditures.

7. Mandate new registration requirements for individuals or entities that provide political consulting services to a candidate or officeholder and that also provide clients with services related to matters pending before any New York state or local government body or official.

If and when this new legislation is signed into law, the New York State Board of Elections, Attorney General's Office, and Joint Commission on Public Integrity will be charged with its implementation through the promulgation of new and amended rules, processes, and forms. Disclosure obligations and other compliance burdens for those involved in New York politics may change significantly in the coming weeks and months. Caplin & Drysdale's Political Law and Exempt Organizations Groups are available to assist with any questions that may arise as a result of this important development.

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