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Proposed Disclosure Rule in Albany Riles Political Circles

New York state's Joint Commission on Public Ethics to take up proposed regulations Tuesday



A view of New York's State Capitol in Albany earlier this month. *PHOTO: KEVIN HAGEN FOR THE WALL STREET JOURNAL*

By **ERICA ORDEN**

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“To the esteemed members of the New York Press Corps,” the email read, if the state ethics commission “has its way, this note will have to be reported to the government.”

The letter, sent earlier this month from a group of Republican consultants, was intended to set off alarms.

And it did, intensifying an already vivid debate in New York political circles about lobbying, communications and free speech with regard to consulting rules proposed by the state's Joint Commission on Public Ethics. The panel is set to address the proposed regulations on Tuesday.

The commission is seeking to require disclosure of three types of activity by political consultants. The proposed disclosure of two of the activities—when consultants initiate contact with public officials on behalf of their clients and when consultants attend meetings between clients and public officials—has attracted little opposition.

It is the third, which defines consultants' work on "grass-roots campaigns" as lobbying—even when the work involves contacting only a member of the media, rather than a public official—that has sparked First Amendment-fueled outrage.

"Any attempt by a consultant to induce a third-party—whether the public or the press—to deliver the client's lobbying message to a public official would constitute lobbying under these rules," JCOPE's proposal reads.

The new standard would apply "if the consultant controlled the delivery of the message and had input into its content," it says. That has caused a wide range of consultants, civil-liberties groups and others to cry foul.

That standard "reaches conduct outside the scope of permitted inquiry, and deep into the heart of protected free speech," said attorney Andrew Celli in a letter to the commission on behalf of several public-affairs firms. They included BerlinRosen, which has close ties to New York City Mayor Bill de Blasio and has worked on several City Hall policy campaigns, including his push for universal prekindergarten.

"It is difficult to see how a P.R. professional seeking to persuade a reporter or editor to write or broadcast something about the professional's client or its position could ever constitute 'delivery' of a client's message to a public official," Mr. Celli wrote.

Those concerns have been echoed in other letters to the commission, including those by Brennan Center for Justice and government-watchdog group Common Cause New York, as well as in the mass email by GOP consultants William O'Reilly and Jessica Proud.

The "expansion would be an intrusion on protected speech," the general counsel for the

Brennan Center and the executive director for Common Cause said in a joint letter, adding that “its lack of clarity would render compliance extremely difficult and enforcement almost impossible.”

Consultants aren’t the only ones alarmed. In an interview, Donna Lieberman, the executive director of the New York Civil Liberties Union, called the proposal “antithetical to free speech.” “Editorial boards, columnists, Joe Schmo who happens to have a lot of Twitter followers,” Ms. Lieberman said, “these are not public officials.”

Still other objections have surfaced. An executive from CenterState CEO, a Syracuse-based economic-development group, expressed concerns that the standards could endanger tax-exempt status for nonprofits by categorizing their outside media campaigns as lobbying.

The concept of regulating communication with media as “grass-roots lobbying” has some supporters. Benton Campbell, chairman of the New York City Bar Association’s Committee on Government Ethics, suggested in a letter to JCOPE that its proposed standard was too narrow, because it requires the consultant to be involved in both the delivery and the creation of the content, rather than allowing for one or the other.

A spokesman for the commission, Walt McClure, said the proposal originated not from a specific incident but instead from “trends in the industry.”

It is perhaps for that reason that the proposed regulations have attracted the attention of virtually everyone in New York politics who uses or is a lobbyist, consultant or communications adviser—in other words, everyone in politics.

In November, for example, Jim Calvin, president of the New York Association of Convenience Stores, wrote to JCOPE, suggesting that the commission had an overly broad interpretation of activity that he considers ancillary to lobbying efforts.

“Packing snowballs,” he said, “is not combat.”

But, Mr. Calvin added, “while someone who packs snowballs should not be obligated to report, I agree that someone who both packs and throws snowballs should be required to do so.”

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