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FOR JUSTICE

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June 27, 2014

Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Attention: Regs@jcope.ny.gov

Via Email

Re: Proposed Public Service Announcement Regulations

Ladies and Gentlemen:

I am writing on behalf of the Brennan Center for Justice to express our cautious support for the draft regulations proposed by the New York State Joint Commission on Public Ethics regarding appearances by public officials in third-party public service announcements,¹ and to pass along some suggestions for improvement.

We note that the Public Integrity Reform Act of 2011, under which these regulations are promulgated, provided JCOPE with minimal guidance on the content of these regulations:

The Commission shall: ... (d-1) Adopt, amend and rescind rules and regulations defining the permissible use of and promoting the proper use of public service announcements.²

The effect of the proposed regulations is to clarify that a public service announcement (PSA) featuring a New York State official will not be considered a “gift” provided it appears more than 90 days before an election in which the official is a candidate.³ As a practical matter, many communities in New York State are expensive media markets, and an advertisement featuring a

¹ Public Service Announcements: Permissible and Proper Usage, N.Y. Comp. Codes R. & Regs. tit. 19, § 940.2(c) (proposed May 14, 2014)

² Executive Law Section 94(9)(d-1)

³ Wisconsin prohibits similar PSA appearances within five months of an election
http://gab.wi.gov/sites/default/files/guideline/24/1245_public_service_announcements_pdf_42338.pdf

public official might be viewed as bestowing an inappropriate benefit on the official. On the other hand, a legitimate public service announcement featuring a popular public figure might prove effective for organizations struggling to get their message out, and may also be viewed as part of an official's duties, like other public appearances and communications. The Commission has attempted to balance these concerns, and we are generally supportive of their efforts to clarify best practices in this area.

Changes that we propose to the draft Regulations are as follows:

First, following advice issued by the House Ethics Committee, require that PSA's not include any personal, political or campaign information, and do not link or refer to websites created or operated by a campaign or any campaign-related entity, including political parties and campaign committees.⁴

Second, clarify that organizations referred to in 940.3 (a) (2) do not include entities whose only activity is to produce and pay for a public service announcement.

The Commission also has retained the power to determine whether a PSA "imparts information generally regarded as serving the public interest," and we urge the Commission to interpret this in a way that PSA's paid for by persons or entities with a commercial or private interest in the underlying issue do not fall into this category.

Finally, we urge the Commission to revisit these regulations if it finds that PSA's are on the uptick, especially during the legislative session or near in time to other key decision points by policymakers.

As always, we wish the Commission well in its work and thank its members and staff for their efforts.

Sincerely,

Kelly Williams
Corporate General Counsel, on behalf of
Brennan Center for Justice at New York University School of Law

⁴ http://ethics.house.gov/general-prohibition-against-using-official-resources-campaign-or-political-purposes#campaign_90_day_ban