OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 940 PUBLIC SERVICE ANNOUNCEMENTS WITH COVERED OFFICIALS: PERMISSIBLE AND PROPER USAGE

940.1 Purpose.
Pursuant to Executive Law §94(9)(d-1), the Joint Commission on Public Ethics shall adopt, amend, and rescind rules and regulations "defining the permissible use of and promoting the proper use of public service announcements." The purpose of these regulations is to: (a) provide guidance as to what constitutes, for the purposes of the Public Officers Law, a public service announcement; (b) clarify that an appearance in a public service announcement does not ordinarily constitute a "gift" under Public Officers Law §73(5), Legislative Law Article 1-A, Title 19 NYCRR Part 933, and Title 19 NYCRR Part 934; and (c) place limitations on when certain individuals – referred to as "Covered Officials" – who are also Candidates may appear in public service announcements.

Public service announcements in which no Covered Official appears, is named, or is otherwise identified or referenced are not covered by these regulations.

940.2 Definitions.
(a) *Appear* shall mean to appear (by likeness, picture, or voice), be named, or otherwise identified or referenced.

(b) *Candidate* shall have the same meaning as that term is defined in New York Election Law §14-100.

(c) *Covered Official* shall mean an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any Member of the New York State Legislature; or any head and/or executive director of a State Agency.

(d) *Party* shall have the same meaning as that term is defined in New York Election Law §1-104(3).

(e) *Party Committee* shall have the same meaning as that term is defined in New York Election Law §14-100.

(f) *Publish* or *Publishing shall* mean publication, dissemination, broadcast, or on-line posting through any print or electronic media, including television, radio, and the Internet.

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(g) *State Agency* shall mean any civil department; State department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City

University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

940.3 Public Service Announcements.

(a) A *Public Service Announcement* is a communication that meets all of the following criteria:

(1) The communication (i) is designed to promote programs, activities, or services of nonprofit organizations or federal, state or local governments; or (ii) imparts information generally regarded as serving the public interest;

(2) The communication is sponsored or paid for by (i) a person~~;~~ or (ii) an organization or entity with a mission or history that includes providing outreach and public service announcements to the community;

(3) The communication is subject to the public service announcement policies, if any, of the entity ~~publishing~~ Publishing the communication;

(4) The communication does not advertise a commercial product or service;

(5) The communication is not paid for or controlled by a Covered Official who is a Candidate and who Appears in the communication, or his or her Party or Party Committee, or any organization affiliated with the Covered Official or his or her Party or Party Committee;

(6) The communication does not constitute "lobbying" or "lobbying activities," as those terms are defined in Legislative Law Article 1-A;

(7) The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official; (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official; (iii) does not include any personal, political or campaign information, and (iv) does not link or refer to any websites created or operated by a campaign or any campaign-related entity, including a campaign committee, Party, or Party Committee.

(8) The communication is of primary interest to the general public or a segment of the general public.

(b) Examples of Public Service Announcements include, but are not limited to, communications regarding nonprofit or governmental outreach or awareness activities such as: breast cancer screening; heart disease prevention; domestic violence awareness and prevention; energy conservation; organ donation; emergency or other disaster relief; programs designed to encourage reading; job training and job fairs; and fund drives for charitable activities.

(c) The following is a non-exhaustive list of communications that are not regulated or otherwise restricted by this Part:

(1) News, Editorials, or Opinions in which a Covered Official Appears that are Published in a News Medium that is not controlled by the Covered Official or his or her Party or Party Committee;

(i) "News Medium" means an entity that regularly Publishes news to either the public-at-large or to subscribers.

(ii) "News" means information that is about current events or that would be of current interest to the public and that, through the use of editorial skills, is turned into a distinct work that is Published to an audience.

(iii) "Editorial" means a communication that provides an opinion of the news medium that is Publishing the communication.

(iv) "Opinion" means a communication, including but not limited to, a column, a letter to the editor, or blog or comment on a blog, expressing a viewpoint and is authored by an individual or entity other than the news medium that is Publishing the communication.

(2) State Agency websites; official websites of, and communications from, Members of the New York State Legislature;

(3) A Covered Official's personal communications, including but not limited to, letters, emails, and postings on social media pages.

940.4 Public Service Announcements Excluded as Gifts Under Parts 933 and 934.
Notwithstanding any provision of Public Officers Law §73(5), Legislative Law Article 1-A, Part 933, and Part 934, paying for the production or the Publishing of a communication which satisfies the definition of a Public Service Announcement in Part 940.3 does not constitute a "gift" as that term is defined or otherwise used in Public Officers Law §73(5), Legislative Law Article 1-A, Part 933, and Part 934.

940.5 Appearance By a Covered Official in a Public Service Announcement in the Ninety Days Prior to an Election.

(a) Notwithstanding any other provision of this Part, a determination made pursuant to the provisions of Executive Law §§94(13) and~~,~~ (14) that a Covered Official knowingly and intentionally Appeared in a communication which satisfies the definition of a Public Service Announcement in Part 940.3 ~~that~~, with the knowledge that such Public Service Announcement would be Published in the ninety calendar days prior to any election in which the Covered Official was a Candidate, shall be a violation of Public Officers Law §74(3)(d), in addition to any other applicable provisions, and subject the Covered Official to the penalties contained therein.

(b) An Appearance as described in Part 940.5(a) shall not be a violation of Public Officers Law §74 when the Appearance occurs during a declared state of emergency where the Public Service Announcement relates to such emergency.