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Opinion No. 06-017

Lifetime Ban on Legislative Lobbying

## QUESTION

Senate Bill 7001 would enact the Comprehensive Governmental Ethics Reform Act of 2006. Under proposed Amendment 52 to this bill, former legislators would be permanently banned from lobbying members of the General Assembly. Is this provision constitutional?

## OPINION

The proposed ban unconstitutionally infringes on the First Amendment rights of former legislators because it is not narrowly tailored to further a compelling state interest.

## ANALYSIS

Senate Bill 7001 would enact the Comprehensive Governmental Ethics Reform Act of 2006 ("Reform Act"). As drafted, Senate Bill 7001 rewrites the state laws governing paid lobbyists. Proposed Amendment 52 amends Section 33 of the Reform Act regarding paid lobbyists. The amendment would delete the current subsection (m) in proposed Tenn. Code Ann. § 3-6-304[1] and provide the following new subsection (m):

> No elected official in the executive branch, member of the governor's cabinet, or cabinet level staff within the governor's office shall be a lobbyist during the twelve-month period immediately following his or her departure from such office or employment. *No member of the general assembly shall, once such member leaves office, be permitted to lobby members of the general assembly.*

(Emphasis added). The request concerns the constitutionality of the second sentence, which is italicized. This provision would prohibit a former legislator from ever lobbying members of the General Assembly. Although in the context of the statute the term "lobby" refers to lobbying for

[1]The amendment refers to proposed Tenn. Code Ann. § 3-6-305. That statute, however, contains no subsection (m). We assume that proposed Tenn. Code Ann. § 3-6-304(m) was intended. This error should be corrected before Amendment 52 is adopted.

compensation, this lifetime ban is an unconstitutional infringement on the rights of legislators guaranteed by the First Amendment to the United States Constitution.

The right to lobby, including the right to lobby for pay, is protected by the First Amendment to the United States Constitution. Op. Tenn. Att'y Gen. 05-054 (April 20, 2005); Op. Tenn. Att'y Gen. 05-067 (May 3, 2005); Op. Tenn. Att'y Gen. 05-173 (December 8, 2005). In Op. Tenn. Att'y Gen. 05-173, this Office discussed standards applicable to a statute that limits the right of an elected official to lobby the government for a certain period of time after leaving government service. In order to survive constitutional scrutiny, any such law must be narrowly tailored to further a compelling state interest. Preventing corruption or the appearance of corruption, ensuring the efficient operation of state government, and ensuring that officials and employees are able to exercise their judgment in the public interest are all valid compelling state interests. But the proposed lifetime ban is not narrowly tailored to promote these interests. A ban on lobbying after leaving office for a limited time might be defensible to prevent a member of the General Assembly from trading on his or her influence while in office. But a lifetime ban is far broader than necessary to accomplish this purpose. A new session of the General Assembly is elected every two years. Each new session has different members and considers legislation introduced during that session. With the passage of time, the ability of a former legislator to influence legislative matters will greatly diminish. For these reasons, the proposed ban unconstitutionally infringes on the First Amendment rights of former legislators because it is not narrowly tailored to further a compelling state interest.

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