January 6, 2016


On behalf of the American Political Science Association (APSA), we write to express our strong objection to the elimination of public officials’ exemption from Federal Policy for the Protection of Human Subjects (‘the common rule’) as proposed in the Notice of Proposed Rulemaking (NPRM). APSA is a scholarly society of over 13,000 members based in the US and across the globe. Our membership includes political and social science faculty at public and private colleges and universities in the United States whose research and teaching is aimed at expanding our understanding of US government, state politics and policy, international relations, comparative politics, political theory, public law, public policy, public management and public administration. The ability to do research and educate people about government, politics, and policy is crucial for the functioning of democracy and is a hallmark of democratic systems.

We are committed to the ethical, professional and legal requirement to protect human participants in research as subjects. We applaud the work on, and commitment to, simplifying and streamlining the common rule regarding human subjects research protections. However, we see a great threat to the future of research aimed at understanding government, policy, and politics in the proposed elimination from exemption of the critically important research strategy of interviewing or working with public officials in their official capacity. The unhampered ability to interview public officials in their professional capacity in order to understand and explain public policy or law, processes, the history of such things, the way government or particular institutions work, or the nature of the experience of a public official is an irreplaceable resource for research, and must be exempt from the common rule. Public officials as public officials ought to expect that their views and acts are subject to public enquiry – regardless of whether that enquiry happens within an interview as part of a political science research endeavor or as part of a journalistic or citizen enquiry. And certainly, the public has a right to know why their government works as it does.

Maintaining the exemption for public officials supports our foundational ideas of democratic accountability. In *New York Times v. Sullivan* (376 U.S. 254 (1964)), the Supreme Court explicitly exempted public officials from the usual libel standard, requiring instead that officials demonstrate actual malice or reckless disregard of the truth before they could take action against authors or publishers. The Court created this rule to overcome the chilling effects that the threat of a libel lawsuit posed so that anyone writing in good faith could express their views without being concerned about potential litigation. This ruling has not been challenged in the ensuing fifty years and, if anything, has been broadened to include public figures. The Court recognized that public officials have significant resources to deal with
the press and contest perceived misrepresentations of them or their views. The existing public officials’ exemption in IRB regulations, which the NPRM proposes to eliminate, can be justified on similar grounds: public officials have significant resources to address any perceived misrepresentations of themselves or their work as they may appear in published political science research. A lack of protection for researchers from potential libel lawsuits would have a chilling effect on scholarship, undermining research endeavors in political science.

For example, consider a scholar conducting interviews with public officials as part of an empirical research project reviewing a particular federal program or policy, and that the research concludes the program or policy did not have the promised public benefit or outcome. If the individual public officials interviewed disagree with the findings, or do not approve of how their work as a public official or they are represented, then under the new proposed rules the researcher would be open to suits for reputational harms. Such cases would provide a strong disincentive for future researchers to interview future public officials. Retaining the exemption eliminates this possibility, and reinforces the bedrock value of accountability of public officials to the American public.

We believe that maintaining the exemption for research involving public officials in their capacity as public officials does nothing to undermine our commitment to strong protections for human subjects in scientific research. It is consistent with the streamlined, more manageable process proposed in this NPRM. However, we believe keeping the existing exemption for public officials also safeguards our commitment to the scholarly enterprise and democratic accountability.

Sincerely,

Steven Smith
Executive Director

Jennifer Hochschild
President