



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

October 12, 2012

NYS Joint Commission on Public Ethics
540 Broadway
Albany NY 12207

RE: Comments on New Disclosures Required by Source Funding Disclosure Requirements
I.D. No. JPE-37-12-00010-P

My name is Julie Suarez and I serve as Director of Public Policy for New York Farm Bureau ("NYFB"), a not-for-profit membership organization serving the interests of New York's farmers. On behalf of NYFB, I would like to thank you for providing NYFB with the opportunity to comment on Source Funding Disclosure to facilitate the development of guidelines and regulations in this area.

NYFB is registered as a lobbyist pursuant to the Lobbying Act (the "Act") and is anticipated to meet the threshold described in §1-h (c) (4) of the Act, triggering source funding disclosures. NYFB also reports as a lobbying "client" under the Lobbying Act, and therefore would also need to report qualifying sources of funding under the Lobbying Act, §1-j (c) (4). NYFB's public policy work and lobbying activities are solely intended to further NYFB's farmer-member-developed policies. NYFB does not represent any other organizations. NYFB the "lobbyist" is identical to NYFB the "client," because NYFB employs its lobbyists and does not utilize outside lobbyists.

As a membership organization, NYFB has a variety of membership dues categories, sponsorships, and business relationships that bring in revenue to NYFB. This revenue is applied to NYFB's menu of programs, including, but not limited to, promotion and education, legal advocacy, leadership development and legislative affairs. No income that NYFB receives is directly allocated to "lobbying" and is included in NYFB's "general fund."

The proposed regulations define "contribution" as "any payment to, or for the benefit of, the Client Filer and which is intended to fund, in whole or in part, the Client Filer's activities or operations." This definition is substantially broader than the statute approved by the Legislature which reads in pertinent part Client Filer "...shall report to

the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.” The proposed definition includes all activities and operations, not only those related to legislative affairs.

NYFB does not receive specific contributions for lobbying purposes. The definition of contribution also relates to payments “intended to fund” the Client Filers “activities and operations.” Our members and business partners do not state the intent behind their payments, and the requirement that a client filer presume that intent is unreasonable.

With regard to the entities with which NYFB does business, NYFB does not know what the intent behind a payment related to such business relationship is. Requiring a Client Filer, like NYFB, to assume or presume the intent behind a payment from a business partner or even a member goes far beyond the plain language of the statute. Since NYFB cannot know the intent in all circumstances, it is possible that any funding NYFB receives would require disclosure because some of its budget may be used for lobbying purposes, and NYFB does not designate its income upon receipt for any specific purpose. If NYFB receives a contribution (i.e. donation) to pursue its lobbying agenda, clearly this would need to be disclosed under the statute, unlike business or dues-related payments where the intent is unknown.

NYFB is concerned that this extremely broad reporting requirement will muddy the waters with non-relevant information, rather than create more transparency. In disclosing all sorts of payments, the payments that are truly related to lobbying will be obscured. In addition, the Client Filer is also burdened with seeking the “intent” behind all payments it receives over \$5,000.00.

Organizations, like NYFB, are placed at a competitive disadvantage by these broad guidelines because it is required to disclose all payments it receives over \$5,000.00, regardless of any connection with its lobbying activities. All non-profits compete for funding, sponsorship monies, and royalties. The requirement is that NYFB disclose the companies that we do business with if the business relationship results in payments of \$5,000.00 annually. For NYFB, these financial relationships are important to pursuing the menu of programs and services described above. In addition, some of the arrangements have been in place under multi-year agreements, which prohibit disclosure of the terms of the agreements. While these arrangements have nothing to do with lobbying, the funding they provide exceeds \$5,000.00, and we have no way to know the intent of the other parties in doing business with NYFB. Did these businesses intend to support NYFB’s mission by contracting with it, or did it do business with NYFB entirely of its own business reasons? The onus is on NYFB to report or not report based on its speculation on the intent of our business partners.

The above scenario also highlights another factor of concern to NYFB. Since the proposed definition grossly exceeds the actual statutory language, Client Filers were unable to put members, sponsors or other business partners on notice that their payments would require disclosure under the revisions to the Lobbying Act. By requiring the reporting of transactions that occurred prior to the adoption of the language, the proposed regulations potentially damage organizational relationships by changing the playing field mid-game.

Another point that bears noting is the fact that the “expenditure threshold” test laid out in the regulations only counts lobbying expenditures and compensation. In contrast, all payments exceeding the \$5,000.00 threshold that are received must be disclosed. This regulatory mandate makes the regulation more intrusive and burdensome than it was intended to be.

NYFB is writing to encourage the Commission to revise the proposed regulations to clarify that only funding sources, which specifically designate the funds given to the lobbying organization to be used for “lobbying,” must be disclosed. Otherwise, organizations such as NYFB would need to report all of its sources of funding over \$5,000.00, simply because once the funds enter the NYFB bank account they *might* be used to fund lobbying activities. As a result, groups like NYFB would be burdened with additional disclosures, and ultimately would not provide any other meaningful information to the public because there is no lobbying intent behind these funding sources.

Another point that NYFB wishes to make relates to the definition of “single source.” For large membership organizations like NYFB, the “reason to know” standard is an impossible one to meet, as it is an unclear standard. NYFB believes that actual knowledge is a more appropriate standard. While we offer family memberships, we do not require our members to disclose their relationships with each other, our vendors, or our business partners. While we know that we have some married members, who for personal reasons, choose to maintain separate memberships, we do not require married persons or individuals living in the same household to have a family membership. Further, several families may operate a single farm. Currently, we have no way to link memberships from these families together. Under that proposed “reason to know” standard, no less than a full scale audit of its membership would enable NYFB to attempt to meet this requirement.

Again, on behalf of New York Farm Bureau, thank you for the opportunity to comment on the Source Fund Disclosure provisions of the Act. If I can be of any assistance, please do not hesitate to contact me at (518) 431-5607.

Sincerely,

A handwritten signature in cursive script, reading "Julie C. Suarez". The signature is written in dark ink on a light-colored background.

Julie Suarez
Director of Public Policy

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, New York 10013
646.292.8310 Fax 212.463.7308
www.brennancenter.org

October 4, 2012

Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Attention: Shari Calnero, Associate Counsel

Via email and first class mail

Re: Proposed Rule Making

Ladies and Gentlemen:

We are writing to express our general support for the draft regulations adopted by the New York State Joint Commission on Public Ethics in July 2012 to implement Legislative Law Section 1-h(c)(4). The proposed regulations will implement the nation's first system of disclosure of funding sources for specified lobbying entities spending in excess of \$50,000 per year on lobbying expenditures.

The new regulations are meant to address concerns raised in the wake of influential public campaigns by newly-formed lobbying entities unrecognizable to the public meant to influence the legislative and lawmaking process. The goal of the new regulations, implemented under the provisions of the Public Integrity Act of 2011, is to end the practice of this "black box" lobbying in our state in order to give the public, the media and our policymakers a plain and clear understanding of who is backing such efforts. New York State has led the way forward for the rest of the nation on transparency and accountability in lobbying activities.

We raise one serious concern with the regulations as proposed and ask that this be corrected in the final regulations: the Public Integrity Reform Act of 2011, under which the regulations have been promulgated, allows lobbying organizations to apply for an exemption to the general rule requiring disclosure in circumstances where the lobbying organization demonstrates "by clear and convincing evidence that disclosure of the ...[source of funds] will cause harm, threats, harassment or reprisals to the [source] or individuals or property affiliated with the [source]." While there is little legislative history to draw upon in general, it is our understanding, as an organization that participated in discussions about the bill in the months leading up to its

adoption, that the process for exemptions was intended for the benefit of donors to lobbying campaigns that have in the past faced credible threats to their safety, such as donors to campaigns for the expansion of civil rights and liberties.

We would urge the Commission to clarify that disclosure is the rule, and that the granting of an exemption is to be the rare exception, for the sole purpose of precluding harassment, intimidation and other behaviors that constitute a credible threat to safety and security. There were instances of donors to campaigns for and against such laws having been subjected to intimidation and harassment in other states and the circumstances in which such exemptions from disclosure were granted in those instances should be the standard by which exemptions from disclosure are granted.

One of the factors enumerated in the regulations for granting an exemption is of particular concern by allowing the Commission to take into consideration "...the impact of disclosure on the ability of the Single Source or Client Filer to *maintain ordinary business operations and the extent of the resulting economic harm.*" (emphasis added) We note that this factor was not part of the statute passed in 2011, it has been added by the drafters of the regulations at the Commission. We urge its omission in the final regulations. It is clearly not part of the legislative history of the statute, is without real precedent and should be deleted. The passage of the Public Integrity Reform Act of 2011 amply demonstrates that the people of New York State believe that lobbying expenditures should be fully disclosed in a meaningful way. We strongly urge that for-profit businesses acting through trade associations and other entities not be allowed to cloak their lobbying expenditures by arguing that they face an economic boycott or shareholder disapproval if their identities are disclosed. Consumers in the United States have always voiced their concerns about corporate behavior by shunning the products of businesses whose policies and practices they feel are unethical, and good corporate managers understand the risk of economic boycott in a free marketplace. And shareholders have become increasingly vocal about their right to understand the attempts of corporate America to influence the policymaking process through political spending.

Some commentators have expressed concern about the regulations provision that donor disclosure shall begin with donations made on or after July 1, 2012. Though the language of the statute provides that the disclosure requirement take effect June 1, 2012, and ideally the Commission would have had all of the regulations governing donor disclosure in place before then, we believe the Commission's interpretation is reasonable under the circumstances and do not support any change to this provision. The donor disclosure provision is the first of its kind and this made the task of drafting the regulations by the Commission's staff, newly hired by a Commission constituted just a few months earlier, unique. Without clear guidance from the Commission in advance of the initial reporting period about the exact content of donor disclosure reports, there might have been confusion among lobbying organizations and inadvertent inaccuracies. The path chosen by the Commission, to require disclosure beginning with donations made on or after July 1, 2012, might result in the accumulation of some large donations in advance of the deadline, but the mandated periodic reporting of lobbying expenditures in the coming months will reveal which organizations, if any, have engaged in this practice. Establishing the reporting date close to the time of the issuance of the draft regulations

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will help lobbying organizations ensure that they have collected all of the necessary information from their donors to file accurate reports.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Williams". The signature is written in black ink and is positioned above a horizontal line.

Kelly Williams

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

RECEIVED OCT 25 2012

HAND DELIVERED

October 25, 2012

VIA HAND DELIVERY

Shari Calnero, Esq.
Associate Counsel
Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: JCOPE Proposed Rule Making - JPE-37-12-00010-P

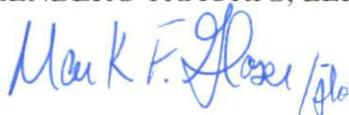
Dear Ms. Calnero:

We are submitting the attached formal comments regarding the Joint Commission on Public Ethics' ("JCOPE") proposed rule making on source of funding reporting on behalf of several of our clients who have joined the approximately 28 trade associations that have signed the enclosed letter. As is described in the correspondence, our clients are concerned that the proposed regulation: (i) exceeds the statutory authority granted to JCOPE; (ii) is inconsistent with the Public Integrity Reform Act of 2011's ("PIRA") legislative intent; and (iii) violates the constitutional right to freedom of association.

Respectfully, for the reasons described in our comments, the proposed regulation should be revised. We welcome the opportunity to discuss the issues raised in the enclosed letter with Commission staff and members in order to ensure that the regulation conforms with the requirements of the federal and State Constitution, as well as the authorizing New York State statute.

Very truly yours,

GREENBERG TRAUIG, LLP



Mark F. Glaser

MFG/JLO/mdw
ALB 1639783v2

October 25, 2012

VIA HAND DELIVERY

Joint Commission on Public Ethics
ATTN: Shari Calnero, Esq., Associate Counsel
540 Broadway
Albany, New York 12207

Re: JCOPE Proposed Rule Making - JPE-37-12-00010-P

Dear Ms. Calnero:

This letter is submitted on behalf of the undersigned trade associations. These organizations are leaders in their industries, representing tens of thousands of members that employ hundreds of thousands of New Yorkers. They provide their members with a wide range of services, including hosting seminars, facilitating networking and marketing events, participating in litigation, and generally ensuring that all members understand how best to comply with the ever-changing laws and regulations that affect the relevant businesses. These groups encourage collaboration, promote volunteerism, provide continuing education for compliance with professional licensing requirements, as well as educational programs for consumers, conduct research to further the interests of society, and set standards for quality and ethics. In addition, the organizations provide legislative and regulatory assistance to their members -- both at the federal level and in New York -- and, as such, are registered lobbyists, clients of registered lobbyists, or both.

The undersigned organizations fully support appropriate disclosure regarding lobbying activity and take their compliance obligations seriously. However, these organizations are greatly concerned about the Joint Commission on Public Ethics ("JCOPE" or "the Commission") "Source of Funding Reporting" proposal. They believe it exceeds express statutory authority granted to the Commission as part of the Public Integrity Reform Act of 2011 ("PIRA") and violates the freedom of association rights guaranteed under the New York and United States Constitutions. They further believe that it would undermine the purpose of the related statutory provision -- namely, to disclose accurately to the public the amount of revenue spent on lobbying activity by organizations that engage in such activity. This is so because the amounts that would be disclosed pursuant to the JCOPE proposal in its current form would mislead the public about the amount of association funds that were actually spent on lobbying activity in New York State. That is, it would greatly overstate the amount of association revenue that is spent on lobbying since such associations commonly spend a large part of their revenue on activities that are not related to lobbying. Such a result would have the effect of JCOPE requiring regulated organizations to provide false and misleading information about lobbying activity to the public.

DISCUSSION

In June 2011, the Legislature passed and the Governor signed ethics reform legislation that increases disclosure obligations for both public officials and members of the private sector who interact with government. The legislation included amendments to the Lobbying Act, requiring that certain lobbying entities and clients of lobbyists “report to the commission the names of each source of funding over five thousand dollars from a single source that *were used to fund the lobbying activities reported* and the amounts received from each identified source of funding.” See N.Y. Leg. Law §§ 1-h(c)(4); 1-j(c)(4) (emphasis added). PIRA also tasked JCOPE with promulgating regulations to implement the new disclosure requirements.

The statute provides that entities that: (i) engage in lobbying on their own behalf; (ii) spend more than \$50,000 in lobbying compensation and expenditures during the prior calendar year or in the 12 months preceding the relevant bimonthly reporting period; and (iii) devote at least 3% of their total expenditures during the same period to lobbying activity in New York State, must identify information regarding sources that provided more than \$5,000 to support the entity’s lobbying activities. N.Y. Leg. Law § 1-h(c)(4). Clients of lobbyists that meet similar thresholds must also disclose information about sources that contribute more than \$5,000 to support the lobbying effort. N.Y. Leg. Law § 1-j(c)(4). Although the statute, by its express terms, only requires disclosure of funding pertaining to State lobbying activities, the proposed regulation would unfairly and arbitrarily require trade associations to disclose the full amount of dues payments from members, as well as payments from any other source, if those payments exceed \$5,000, even though the majority of an association’s income may support operations of the association unrelated to New York State lobbying. See proposed 19 NYCRR 938.2, 938.3. Moreover, the proposed regulation ignores the fact that “lobbying” and “lobbying activity” are defined terms under the Lobbying Act that require that the lobbyist “attempt to influence” some enumerated governmental action. See N.Y. Leg. Law § 1-c(c). Payments made for other association activities that are not State lobbying activities are clearly beyond the scope of PIRA and the entire Lobbying Act, and, thus, JCOPE lacks the authority to require disclosure of dues or other revenue not used for lobbying activity.

I. The Proposed Regulation Exceeds the Statutory Authority PIRA Granted to JCOPE and PIRA’s Legislative Intent.

It is axiomatic that to determine the meaning of any statute, an agency should first look at the plain meaning of the language and, “where the words of a statute are clear and unambiguous, they should be literally construed.” *People v. Munoz*, 207 A.D.2d (2d Dep’t 1994) (citing N.Y. Stat. §§ 76, 94). Additionally, even where the statute is clear, the legislative history should be considered. See generally, *Williams v. Williams*, 23 N.Y.S.2d 592, 600 (1969).

Here, JCOPE’s proposal conflicts with the plain language of PIRA as well as the legislative history. As noted above, PIRA requires that covered filers disclose “the names of each source of funding over five thousand dollars from a single source that were used to fund the *lobbying activities reported* and the amounts received from each identified source of

funding.” See N.Y. Leg. Law § 1-h(c)(4)(ii) (emphasis added). The operative language unequivocally provides that disclosure is required only to the extent that the entity is supplying money to fund a lobbying effort, and only the money that goes towards that effort is to be reported. JCOPE even acknowledges in its Regulatory Impact Statement that “payment[s] in exchange for goods or services rendered or delivered directly to the individual or entity making the payment is not a contribution under these regulations,” and as such should not be included in the calculation. Yet, the regulation fails to acknowledge that associations may be receiving funds for countless reasons unrelated to supporting New York lobbying efforts.

This interpretation of the statute is supported by the legislative history, which indicates that neither the Governor nor the Legislature intended JCOPE to require disclosure of funding that was unrelated to lobbying activities. Rather, the Governor’s memorandum makes clear that the new provision was intended to require disclosure of monies contributed to organizations for the purpose of funding a lobbying campaign, not funds used for the operation of an association. Prior to the enactment of PIRA, there was concern that lobbying campaigns were being mounted by anonymous groups or individuals, and the sources of funding for the lobbying campaigns were not being disclosed to the public. Governor Cuomo noted in the memorandum of support accompanying his program bill that “registered lobbyists whose lobbying activity is performed on their own behalf, and not pursuant to retention by a client, and that have spent at least \$50,000 and 3% of their total expenditures during the last year on such activities in New York State, must disclose each source of funding over \$5,000 used for such lobbying.” Similarly, clients of lobbyists “that meet the same threshold criteria . . . must similarly disclose the sources of funding for their lobbying activity.” Thus, contributions to groups, coalitions, and other organizations that are earmarked for or otherwise support lobbying activities would have to be disclosed under this requirement, not membership dues or other payments that are used for the other activities of a trade association.

As noted above, trade association revenues, including membership dues or fees, are often not directly or solely “used to fund the lobbying activities.” Rather, these amounts are paid in order for individuals and entities to be able to benefit from all of the services that the association provides. In the case of the undersigned trade organizations, this includes the members having the right: to attend educational and informational seminars; to participate in events where regulators explain how they expect companies to act in order to comply with the law; to partake in networking receptions; and to benefit from many other association services. Non-members also may participate in selected events, such as educational programs, or may provide sponsorship dollars for meetings, neither of which are related to lobbying. Nothing in the legislative intent, nor in the plain language of PIRA, indicates or should be interpreted to require trade associations and their members to disclose otherwise proprietary information of what is paid -- by members or non-members -- to participate in the many non-lobbying activities of the associations. As such, JCOPE would be exceeding its authority if it implemented the proposed regulations as written.

II. The Proposed Regulation Violates the Constitutional Right to Freedom of Association.

Even if JCOPE had the statutory authority to promulgate a regulation that required the disclosure of all membership dues, the Commission's proposal would still violate the First Amendment of the United States Constitution and Article I, Section 9 of the New York State Constitution. The United States Supreme Court has repeatedly recognized that there is a First Amendment right to the freedom of association and that any "state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 460 (1958). Furthermore, the Court has held that government compelling disclosure of certain information can "in itself . . . seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Davis v. Fed. Elec. Comm'n.*, 554 U.S. 724, 744 (2008).

To determine whether a disclosure requirement violates this constitutionally protected right, the "courts . . . balance the burdens imposed on individuals and associations against the significance of the government interest in disclosure and consider the degree to which the government has tailored the disclosure requirement to serve its interests." *AFL-CIO v. Fed. Elec. Comm'n.*, 333 F.3d 168, 176 (D.C. Cir. 2003) (citing *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976)). A state disclosure requirement is unconstitutional even if the burden it imposes on association rights is "insubstantial," if there is no governmental interest in the disclosure, or if that interest could be achieved in a less restrictive manner. *Id.* For example, disclosure obligations that potentially "chill future individual political activity . . . and frustrate the organizations' ability to pursue their goals effectively by revealing to their opponents 'activities, strategies and tactics,'" implicate First Amendment rights of association and, even if there is a valid governmental purpose, violate the Constitution if the goal could be achieved with a more narrowly tailored policy. *Id.* at 177-78. The disclosure of broadly inaccurate data concerning members' "lobbying activities" is likely to discourage membership in trade associations, and therefore chill the ability of trade groups throughout the State to exercise their constitutionally protected freedom of association.

In sharp contrast to the proposed regulation, the federal Honest Leadership and Open Government Act ("HLOGA") struck a very different balance in expanding lobbying disclosure obligations. HLOGA, much like PIRA, requires disclosure of information about individuals and entities that provide financial support to associations that engage in lobbying. In 2008, a trade association challenged this law that requires associations registered as lobbyists at the federal level "to disclose affiliates that (i) contribute more than \$5,000 in a quarter to fund the registrant's lobbying activities and (ii) actively participate in the planning, supervision, and control of those lobbying activities." *Natl. Ass'n of Mfrs. v. Taylor*, 549 F.Supp.2d 33, 63 (D.C. Cir. 2008). The plaintiff trade association asserted that disclosing this information would burden its First Amendment association rights. In evaluating this challenge, the Court considered whether (i) the government had a compelling interest to support this disclosure requirement; (ii) the disclosure requirement "effectively advances those interests;" and (iii) the requirement "is narrowly tailored to advance the compelling interests asserted, i.e., whether less

restrictive alternatives to . . . [the requirement] would accomplish the government's goals equally or almost equally effectively." *Id.* at 52.

The Court upheld the law but in so doing, highlighted the degree to which the proposed rule at issue here is not narrowly tailored. In enacting HLOGA, Congress sought, among other things, to "remove the cloak obscuring so-called stealth lobbying campaigns . . . [by] coalitions that . . . lobby on a range of issues that could never be identified by the name of the coalition." *Id.* at 52. The Court acknowledged that this was a compelling government interest, and the requirement would advance those interests by reducing the opportunity for individuals and entities to avoid complying with the Lobbying Disclosure Act. *Id.* at 58. However, the disclosure obligations were "narrowly tailored . . . to represent the least restrictive means," as the federal government only required disclosure of entities that made payments to support the lobbying efforts. *Id.* at 58-59. It did not require the association to disclose information about members who did not participate, or otherwise fund, the lobbying activities, and it definitely did not require associations to disclose payments made to the organization for reasons unrelated to lobbying.

Notably, in addressing how to comply with the HLOGA disclosure requirements, the federal Lobbying Disclosure Act Guidelines use examples that illustrate why the regulation proposed by JCOPE is overly broad. The federal guidance explains that association and coalition filers, when determining whether additional disclosure is required, must determine what "portion of [each member's] annual dues . . . fund [the organization's] lobbying activities." The organization is required to disclose information about the member that participates in the association's lobbying activity, only if that *portion* of the dues that support the lobbying effort exceeds \$5,000 during a quarter.

JCOPE's proposal requiring disclosure of information regarding association members will only pass constitutional muster if the government has a legitimate purpose for requiring the disclosure, and the disclosure requirement is narrowly tailored in the least restrictive means. New York State may have a valid governmental interest in understanding how much money is paid to an organization to fund that organization's lobbying activities, and in making this information public. It is undeniable, however, that JCOPE's proposal to require associations to disclose "all payment[s] to, or for the benefit of, the [association]...which is intended to fund, in whole or in part, the [association's] activities or operations," exceeds constitutional bounds. Requiring disclosure of those amounts would force organizations to list members and the full amount that those members pay in dues, as well as payments made by non-members in order to participate in various events, even though these payments fund many association functions and activities wholly unrelated to New York lobbying activity.

Equally importantly, rather than enhancing the public's understanding of private expenditures made to fund lobbying in New York State, the Commission's proposal would mislead the public and distort that understanding because it would require reporting amounts that are significantly greater than the amounts actually provided to fund such lobbying efforts. For example, assume a trade association expends 25% of its dues revenues on lobbying-related activities. The other funds are used to pay for other activities of the organization such as

informational and educational meetings, networking events, etc. Yet, the Commission would require that 100% of the dues be reported. Thus, the public would think it knows what the dues payers are paying to fund lobbying activities when, in fact, those reported amounts in this case would be four times greater than what is actually being spent by those payers on lobbying.

It is important to note that New York lobbyists currently file extensive reports with JCOPE every two months, disclosing their lobbying activity, and clients file similar reports bi-annually. These reports list all activities, regulations and legislation lobbied, report which entities have been lobbied, and all salaries, fees paid, and expenses incurred in furtherance of those activities. Thus, the amount spent by a trade association on lobbying efforts is already filed with JCOPE. This regulatory proposal, however, would thwart the principal purpose of PIRA, as it would have the effect of masking the identity of contributors who provide \$5,000 or more to a lobbying effort by a trade association. The identity of those contributors will be indistinguishable from members and non-members whose payments to the organization are for general association benefits and services.

Requiring disclosure of all membership fees and all other payments to an association that are unrelated to lobbying efforts is likely to have a chilling effect on some entities participation in associations and their events. The public would be misled as to how much revenue is being used to support lobbying efforts, and some prospective members would likely be deterred from joining because of the inaccurate, negative impressions the public may draw from related news reports. There is no government or public interest in knowing how much a business or individual pays a private organization if those payments are not being used to fund lobbying activities. To achieve the governmental goal that is legitimate -- disclosure of information regarding sources and amounts of lobbying funding -- the proposed regulation should be more narrowly tailored in order not to burden the constitutional right of freedom of association, while also providing the public with accurate information regarding the funding of lobbying activity.

III. There is a More Narrowly Tailored Way to Achieve the Government's Legitimate Interest in Lobbying Disclosure, Consistent with PIRA's Plain Meaning and Statutory Intent.

These comments do not seek to undermine the ethics reforms that were enacted in 2011. PIRA intended to increase transparency of payments that are made to organizations for the purpose of lobbying, and JCOPE should promulgate a regulation that furthers that goal. Accordingly, we recommend that the proposed regulation be revised to require that the amount reportable by trade associations registered as lobbyists reflect only the allocable portion of the dues or other payments made to the organization that is attributable to lobbying activity. If an organization is formed for the sole purpose of engaging in lobbying, this would mean 100% of the contributions would be disclosed. If, however, an organization spends only 20% of its budget on State lobbying activities, only 20% of the payments received should be disclosed, if that 20% exceeds \$5,000. This approach would bring the regulation into conformity with the statute and with constitutional dictates, as well as assure that the public is receiving accurate information about lobbying expenditures in New York State.

This is not a new concept. As noted above, the federal government requires that filers report, when appropriate, only that portion of association dues that are attributable to lobbying. Additionally, many New York trade associations, consistent with section 162 of the Internal Revenue Code, are already calculating this figure and reporting it to their members. Organizations should be permitted to look at their overall budget and determine what percentage of their Total Expenditures are lobbying expenditures and, to the extent the applicable percentage of a member's or non-member's payments exceeds \$5,000, report the name of that member and the applicable portion of that member's contribution. The proposed regulation should be revised to require filers to report only the portion of their members' dues that are identified as being allocated for the non-tax deductible purpose of supporting lobbying activity.

By making this change or adopting a different methodology that distinguishes between funds paid to an organization that "fund the lobbying activity" and those that are used for other purposes, covered associations registered as lobbyists or clients of a lobbyist would be required to disclose the portion of revenues, including membership dues, that are allocable to lobbying activity, if that portion exceeds \$5,000, and the names of the corresponding contributors. PIRA does not require reporting of any additional information, and requiring more would be a violation of the United States Constitution and the New York Constitution.

CONCLUSION

All of the associations listed below -- even those that may not meet the thresholds established in PIRA -- have significant concerns about the proposed JCOPE source of funding regulation. As demonstrated above, nothing in the legislative intent or in the language of PIRA authorizes the Commission to require the reporting of amounts of ordinary payments, including membership dues, to trade associations that are spent for purposes other than lobbying. No public purpose would be served by requiring such disclosure and, in fact, the public would be misled, believing that an entity is spending more on lobbying activity than it actually is. Requiring disclosure of more than the payments that are attributable to lobbying efforts places a significant burden on the rights of these organizations to freedom of association in violation of the United States and New York Constitutions. There is no valid governmental purpose for the additional disclosure required by the proposed regulation. Instead, the proposal should be revised to achieve only the intended, valid governmental interest by the least restrictive means - requiring disclosure of information regarding sources of lobbying funding, but only that funding.

We would appreciate the Commission's consideration of the foregoing comments, and we welcome the opportunity to discuss this issue with Commission staff and members, in order to ensure that the final regulation conforms with the requirements of both the applicable statutory and constitutional law.

Respectfully submitted,

Jay Simson

Jay Simson
President
American Council of Engineering Companies of New York

J. Bruce Ferguson

J. Bruce Ferguson
Senior Vice President, State Relations
American Council of Life Insurers

Gary Henning

Gary Henning
Regional Vice President, Northeast Region
American Insurance Association

James L. Clarke

James L. Clarke
Senior Vice President of Public Policy
American Society of Association Executives

Michael J. Elmendorf

Michael J. Elmendorf
President and CEO
The Associated General Contractors of New York State, LLC

Heather C. Briccetti

Heather C. Briccetti
President & CEO
The Business Council of New York State, Inc.

Ross J. Pepe

Ross J. Pepe
President & CEO
Construction Industry Council of Westchester and the Hudson Valley, Inc.

Michael P. Demetriou

Michael P. Demetriou
President
Council of Insurance Brokers of Greater New York, Inc.

Michael A. Lanotte

Michael A. Lanotte
Senior Vice President/Association Services & General Counsel
Credit Union Association of New York

James T. Rogers

James T. Rogers
President and CEO
Food Industry Alliance of New York State, Inc.

Denise M. Richardson

Denise M. Richardson
Managing Director
The General Contractors Association of New York, Inc.

Richard A. Poppa

Richard A. Poppa
President & CEO
Independent Insurance Agents & Brokers of New York, Inc.

Thomas E. Workman

Thomas E. Workman
President & CEO
Life Insurance Council of New York, Inc.

Marc Herbst

Marc Herbst
Executive Director
Long Island Contractors Association, Inc.

Robert G. Gruber

Robert G. Gruber, CLU, ChFC, LUTCF
President
National Association of Insurance & Financial Advisors – NYS

James S. Calvin

James S. Calvin
President
New York Association of Convenience Stores

Michael P. Smith

Michael P. Smith
President & CEO
New York Bankers Association

Richard T. Anderson

Richard T. Anderson
President
New York Building Congress

Paul F. Macielak

Paul F. Macielak
President & CEO
New York Health Plan Association

Nancy P. Geer

Nancy P. Geer, PHC
Executive Director
The New York Housing Association, Inc.

Ellen Melchionni

Ellen Melchionni
President
New York Insurance Association, Inc.

Renee Guariglia

Renee Guariglia
President
New York State Association of Health Underwriters, Inc.

Margaret M. Gorman

Margaret M. Gorman
Director, Government Relations
New York State Chemical Alliance

Jane Downey

Jane Downey
President
New York State Speech-Language-Hearing Association, Inc.

Diane K. Fowler

Diane K. Fowler
Executive Director
Professional Insurance Agents

Kristina L. Baldwin

Kristina L. Baldwin
Assistant Vice President
Property Casualty Insurers Association of America

Steven Spinola

Steven Spinola
President
Real Estate Board of New York



AIA New York State

An Organization of The American Institute of Architects

Executive Committee

October 25, 2012

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President
Buffalo/Western New York

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F. Eric Goshow, AIA
President Elect
New York

Shari Calnero, Esq.
Associate Counsel
Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

David L. Businelli, AIA
Immediate Past President
Staten Island

**RE: Source of Funding Reporting
I.D. No. JPE-37-12-00010-P**

Timothy G. Boyland, AIA
VP Government Advocacy
Staten Island

Dear Ms. Calnero:

Raymond L. Beeler, AIA
VP Public Advocacy
Westchester + Hudson Valley

On behalf of AIA New York State, Inc. ("AIANYS"), an organization of The American Institute of Architects, representing 6,600 members in New York State, I write in response to the proposed "Source of Funding Reporting" regulations published in the New York State Register on September 12, 2012. AIANYS appreciates the Joint Commission on Public Ethics' ("JCOPE") efforts to promulgate regulations as required by the Public Integrity Reform Act of 2011, but believes that certain trade groups and professional associations with clear, well-defined membership and missions are unnecessarily captured and burdened by the proposed regulations.

Jeffery T. Smith, AIA
Treasurer
Southern New York

Randolph Collins, AIA
Secretary
Eastern New York

Susan Chin, FAIA
Regional Director
New York

The membership and mission of AIANYS, like many other trade groups and professional associations, are easily identified based on the name of the organization. AIANYS, as is clear from its name, represents the interests of architects throughout the state. AIANYS' website contains detailed information on its history, leadership, and advocacy efforts. Subjecting organizations such as AIANYS to the proposed source of funding regulations is an unnecessary burden on the hardworking professional associations and trade groups throughout the state, and their members. The reporting proposed by the regulations will not provide JCOPE or the public with any meaningful insight into the membership, funding, and mission of trade groups and professional associations, such as AIANYS, that is not already publically available.

Francis Murdock Pitts, FAIA
Regional Director
Eastern New York

Anthony P. Schirripa, FAIA
Regional Director
New York

Edward C. Farrell
Executive Director

AIANYS respectfully requests that JCOPE consider recommending to the Legislature an exemption from the source of funding reporting requirements for professional associations and trade groups whose membership and mission are

52 South Pearl Street
Third Floor
Albany, New York 12207
518.449.3334
www.aianys.org
aianys@aianys.org

clearly identified by the name of the professional association or trade group. Chapters of the AIA are generally organized as 501(c)(6) entities. An exemption for such trade groups or professional associations would strike an appropriate balance between enabling JCOPE to obtain information regarding the amount and source of funding for certain ad hoc organizations or associations with ambiguous missions and unknown or unnamed membership constituencies, and not unnecessarily burdening trade organizations or professional associations with clear, well-defined membership and missions.

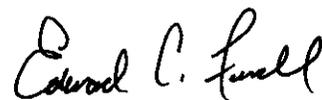
AIANYS also seeks clarification on the following scenarios¹:

- (1) Large professional firms often pay dues to a professional association or trade group on behalf of their individual employees. Such aggregate payments are most often performed for the convenience of the professional firm and its employees. If a contribution to a trade group or professional association is made by a professional firm on behalf of several individual employees, must this contribution be reported (if over \$5,000)? These contributions should be considered individual dues and not as an aggregated contribution to the association.
- (2) A similar situation arises with respect to payments to trade groups or professional associations for tickets to charitable events or registration fees for continuing education programs. Must payments to a professional association or trade group from a professional firm for tickets for its employees to a charitable or continuing education event be reported as a contribution of the professional firm? These contributions should not be considered applicable for lobbying efforts.
- (3) Individual professional association or trade group members, or other funding entities such as the utility company or others will often contribute funds to the trade group or professional association to directly fund a specific program or project. These fundraising efforts go toward educational programs and exhibits for the membership and general public. These funds, therefore, have no connection to the lobbying activities of the trade group or professional association, and therefore, were not "used to fund the lobbying activities reported." Legislative Law Section 1-h (c)(4)(ii). The definition of "contribution" in the proposed regulations, however, includes "any payment to, or for the benefit of, the Client Filer and which is intended to fund, in whole or in part, the Client Filer's activities or operations." How should Legislative Law Section 1-h (c)(4)(ii) and the definition of "contribution" be interpreted? Must the source and amount of these funds (which are directed for specific, non-lobby, activities), if over \$5,000, be reported as funds "used to fund to lobbying activities reported"?

¹ Each scenario assumes that the trade group or professional association has satisfied the \$50,000/three percent threshold.

Thank you for your attention in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward C. Farrell". The signature is written in a cursive style with a large initial "E".

Edward C. Farrell
Executive Director



HEATHER C. BRICCETTI, ESQ.
President & CEO

October 25, 2012

Ms. Shari Calnero
Associate Counsel
Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

When ethics reform legislation was being acted on during the 2011 legislative session, language was included that focused on concerns about the source of funding of entities engaging in very public legislative advocacy, but without any real public disclosure as to the individuals or organizations backing and funding these groups. By all accounts, these concerns were the origin and focus of the “source of funding language” included in Chapter 399, Laws of 2011.

At that time, The Business Council raised concerns about the additional and unnecessary compliance burden this language would impose on trade associations and similar organizations. Many of these entities, including The Business Council, have long histories of involvement in advocacy efforts, and provide public information as to their membership and financial backing. Moreover, we raised concerns that – as potentially applied to trade associations and other membership groups – the statutory “source of funding” disclosure requirement would do little more than require these organizations to reveal their dues structure, but would result in little if any public benefit.

Unfortunately, JCOPE’s proposed rule exacerbates the impact of this statutory language, and does so in a way that goes beyond the clear grant of legislative authority granted in Chapter 399.

In part, Chapter 399 requires that any lobbyists’ client that is required to file a semi-annual report under the Lobbying Act, spends more than \$50,000 in reportable lobbying expenses during a twelve month period, and whose lobbying expenses exceed three percent of their total expenditures, “report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the *lobbying activities reported* and the amounts received from each identified source of funding.” [Emphasis added.]

In sharp contrast, the JCOPE proposed rule would require the disclosure of the source and amount of “any payment [of more than \$5,000] to, or the benefit of, the Client Filer [e.g., trade association] and which is intended to fund, in whole or in part, the Client Filer’s *activities or operations*.” [Emphasis added]



Contrary to the clear provision of statute – that clients report sources of funding over \$5,000 spent on *reportable lobbying expenses*. The proposed JCOPE rule would require the disclosure of the source, and total contributions or payments, of more than \$5,000 regardless of how the funds are used.

This is clearly inconsistent with the statute that requires disclosure of contributions of more than \$5,000 from a single source that is used “to fund the lobbying activities reported” by the client/lobbyist. The term “lobbying” or “lobbying activities” is specifically defined in pre-existing statute – Legislative Law Article 1-A, § 1-c (c) – as applying to attempts to influence action on legislation, executive orders, regulations, ratemaking, governmental procurement and tribal compacts. The Legislative Law further requires that clients report their lobbying expenses, including compensation paid or owed to each of its lobbyist, and any other expenses paid or incurred by such client for the purpose of lobbying. As such, the concept of “lobbying expenses,” for purposes of the Chapter 399 source of funding reporting mandate, is clearly and specifically defined.

Ironically, JCOPE’s draft rule – in (c) in Part 938.1 - correctly describes this clear statutory mandate. In its section entitled “Intent and Purpose,” draft Part 938 recognizes that the source of funding disclosure, by statute, only applies to “each source of funding over \$5,000 for . . . lobbying.”

Unfortunately, draft Part 938.1 goes on to assert that in issuing regulations, JCOPE will “clarify the source of funding reporting requirements,” and in doing so, “. . . the Commission has sought the broadest determination possible of what must be disclosed pursuant to statute and as allowed by law.”

While the regulated community appreciates the use of regulations to “clarify” statutory compliance obligations, proposals must reflect the fundamental principal of administrative law that regulations be consistent with underlying statute. Agencies may not expand their grant of legislative authority through rulemaking (*Freitas v. Geddes Savings and Loan*), and may not create a rule which is inconsistent with a statute (*Rotunno v. City of Rochester*). The draft Part 938 rule fails on both counts with regard to its suggested implementation of the source of funding requirement.

In its proposed rule, JCOPE purports to “clarify” a pre-existing provision of state law that needed no clarification, namely the detailed statutory definition of what constitutes “lobbying” or “lobbying expense.”

Our specific concerns focus on three provisions of the proposed rule:

- Section 938.2 (c) defines “contribution” as “any payment to, or for the benefit of, the Client Filer and which is intended to fund, in whole or part, the Client Filer’s activities or operations.”
- Section 938.3(a) requires that Client Filers are required to disclose “contributions,” in accordance with Section 938, beginning with semi-annual reports due on 1.1.13 and thereafter.
- Section 938.3 (b), (c) and (d) each impose disclosure requirements on Client Filers of any single source of “contributions” exceeding \$5,000 over a twelve month period.

We oppose JCOPE’s proposed regulation for several reasons.

First and foremost, it simply inconsistent with statute, and as such exceeds JCOPE's granted authority to compel financial disclosures.

Second, in many instances, such as the case of trade associations, the JCOPE proposal would have the perverse outcome of requiring disclosure of an aggregate amount of contributions that are several times larger than that of actual reportable lobby expenses. The Business Council generates the bulk of its revenues through general membership dues payments, only a portion of which is used for (and reported as) lobbying expenses – about 20% of dues payments, in our case. In addition, The Business Council and other organizations generate revenues from a range of activities wholly unrelated to lobbying activities, including sale of tangible goods and services. Under the draft rule, the entirety of all these funding sources are swept into its reporting mandate for sources of *lobbying* funds.

We note that the regulatory impact statement published in the September 12, 2012 *State Register* states that under the draft rule's definition of "contribution," "[a] payment in exchange for goods or services rendered or delivered directly to the individual or entity making the payment is not a contribution under these regulations." The EIS hints at a regulatory exemption for these types of commercial transactions. While such an exemption would at least partially address our concerns, we fail to see such an outcome would flow from the proposed regulation. It is unclear to us whether JCOPE believes the definition of "contribution" somehow excludes these types of mercantile transactions, or whether explicit language exempting such transactions was inadvertently left out of the express terms. Our recommendation is that JCOPE's final rule includes a clear exemption for these types of transactions.

Third, JCOPE has missed an opportunity to address real ambiguity in Chapter 399 regarding how trade associations and similar organizations are to comply with the "source of funding" requirement, and how they are to determine what constitutes a source of funds used to "fund lobbying activities," in instances where a Client Filer receives payments for general purposes, with no portion of such funds designated specifically for lobbying.

The Business Council's experience is likely typical of many trade associations, whose income is largely derived from dues payments made by member businesses. Under the JCOPE proposed rule, every member that paid us more than \$5,000 in a 12 month period, whether in dues, to attend a conference or meetings, or for any other "activity or operation", would be disclosable, regardless of whether such funds could be used to finance lobby activities. Not only is this outcome inconsistent with the underlying statute, we see no additional public benefit coming from JCOPE's proposed expanded reporting mandate.

There is a far more appropriate alternative. In response to JCOPE's earlier request for input on implementation of its new source of funding disclosure statute, The Business Council previously recommended a logical, workable approach for trade associations and other entities receiving general purpose dues payments. Specifically, we recommended, and we continue to recommend, that the final rule require a Client Filer to determine the ratio of its reportable lobby expenses to its total expenditures, and apply that ratio to its revenues on a source-specific basis. Source of funds reporting would be defined by, and limited to, those payers whose pro-rated payments exceeded \$5,000. Alternatively, a Client Filer can apply its calculated

tax deductibility factor, calculated under section 162 of the Internal Revenue Code, to source-specific payments. Under IRC 162, the portion of such dues payments attributed to lobbying activities is not deductible under federal tax law. Many trade associations are already calculating this figure and reporting it to their members. Both approaches present valid, reasonable methods for determining what share of general dues payments are related to lobbying, and therefore should be reported under PIRA.

While we would support a broad, straightforward exemption for trade associations and similar organizations that have a publically available membership list, it is unclear whether the statute supports this type of broad exemption. Without such an exemption, we strongly recommend that JCOPE adopt a final rule that focuses this new source of funding reporting and disclosure mandate on contributions that actually exceed the specific statutory threshold.

In closing, The Business Council believes it is important that regulatory agencies adopt rules that are both consistent with statutory intent, and that provide the regulated community with compliance obligations that are straightforward and clear, and that impose only those compliance obligations necessary to achieve statutory intent.

Our recommendations today are intended to address both these regulatory objectives.

Based on our discussions, we believe that a number of trade associations in New York State share the concerns and recommendations discussed above.

Please feel free to contact me if I can provide you with any additional information regarding this issue.

Thanks you.

Sincerely,

A handwritten signature in black ink, appearing to read "William C. Brucetta". The signature is written in a cursive style with a prominent initial "W".



121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

Michael Fallon, Esq.
mfallon@hinmanstraub.com

October 26, 2012

Shari Calnero, Associate Counsel
NYS Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: Proposed Rule Making - JPE-37-12-00010-P (Source of Funding Reporting)

Dear Ms. Calnero:

Hinman Straub, PC is an Albany law firm with an extensive government relations practice. In conjunction with our communications partner, Corning Place Communications, we currently represent 82 lobbying clients.

A number of our clients are trade organizations, coalitions and similar groups, which will be impacted by the "source of funding reporting" regulation that the Joint Commission on Public Ethics (JCOPE) adopts pursuant to Chapter 399 of the Laws of 2011 [specifically Legislative Law §§ 1-h(c)(4) and 1-j(c)(4)].

I write on behalf of these clients to express our views on JCOPE's draft "source of funding reporting" regulations [proposed 19 NYCRR 938.2, 938.3, published in the September 12, 2012 NYS Register].

We do not object to the requirement that entities to which Legislative Law §§ 1-h(c)(4); 1-j(c)(4) applies be required to disclose the source of their "lobbying activities." However, JCOPE's proposed regulation is far too broad, in that it exceeds the authority delegated to JCOPE by the Legislature through the *Public Integrity Reform Act of 2011* (Chapter 399 of the Laws of 2011).

Chapter 399 amended the Lobbying Act to require that certain lobbying entities and clients "report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts

received from each identified source of funding,” and also directed JCOPE to promulgate regulations to implement these new disclosure requirements [see Legislative Law §§ 1-h(c)(4); 1-j(c)(4)].

Legislative Law §§ 1-h(c)(4) and 1-j(c)(4) require lobbyists and clients that: (i) engage in lobbying on their own behalf; (ii) spend more than \$50,000 in lobbying compensation and expenditures during the prior calendar year or in the 12 months preceding the relevant bimonthly reporting period; and (iii) devote at least 3% of their total expenditures during the same period to lobbying activity in New York State, to:

“report to the commission the names of **each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received** from each identified source of funding. (emphasis added)

As drafted, JCOPE’s proposed regulation would require associations and other entities that receive outside funding to report to JCOPE the amount and source of all monies they receive, not just monies that are used to fund lobbying activities.

JCOPE’s own regulatory impact statement acknowledges that it has proposed a rule that is broader than the underlying statutory authority granted through Chapter 399 of 2011 – requiring disclosure of the source and amount of all funding, rather than funding that supports lobbying -- in order to “close a potential loophole”:

“This section [938.2] also **defines a contribution as any payment to, or for the benefit of, a lobbyist or client filer and which is intended to fund, in whole or in part, the filer's activities or operations.** A payment in exchange for goods or services rendered or delivered directly to the individual or entity making the payment is not a contribution under these regulations. **The definition of contribution closes a potential loophole and recognizes that money is fungible, and that even if contributions to a lobbyist or client are not expressly designated for lobbying activities in New York State, those contributions can allow the lobbyist or client to spend other funds on lobbying activities.**” (emphasis added)

While we acknowledge that the statute, as enacted, leaves open the possibility described by above, the closure of any perceived or potential loopholes should be addressed by the Legislature, not by regulatory fiat. Rather than rely on authority that it has not been granted in statute, we urge JCOPE to instead revise its proposed regulations so that they are consistent with the language and legislative intent of Legislative Law §§ 1-h(c)(4) and 1-j(c)(4).

As an alternative to what has been proposed, we urge JCOPE to instead adopt narrowly tailored regulations to carry out these provisions of law. We recommend that such

regulations require associations and similar organizations that are registered as lobbyists and required to disclose the source of their lobbying funding to report:

- that portion of a member's dues payment that is attributable to lobbying activity (based upon the organization's overall lobbying activities); and
- any monies that are specifically "earmarked" in support of a lobbying effort, either by the donor or the lobbying entity.

As JCOPE's current filing process requires filers to declare, under penalty of perjury, that the information contained in their filing is "true, correct and complete," JCOPE will have the authority to investigate any potential violations of Legislative Law §§ 1-h(c)(4) and 1-j(c)(4).

Thank you for the opportunity to comment on JCOPE's regulations regarding the source of lobbying funding of associations and other entities registered as lobbyists. We hope that JCOPE and its staff find this information to be helpful as it moves forward in this rulemaking process.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Fallon". The signature is written in a cursive, flowing style.

Michael Fallon



Family Planning Advocates of NYS
17 Elk Street
Albany, New York 12207-1002
Phone: (518) 436-8408
Fax: (518) 436-0004
Website: www.familyplanningadvocates.org

October 25, 2012

Shari Calnero
Associate Counsel
Joint Commission on Public Ethics

Comments submitted electronically

Re: JPE-37-12-00010-P
Source of Funding Reporting

Dear Ms. Calnero;

Family Planning Advocates of New York State (“FPA”) is a 501(c)(4) membership organization that represents the state’s family planning provider network in New York on legislative, budget and regulatory issues. Our provider members include eleven Planned Parenthood affiliates, hospital-based and freestanding family planning centers, and a wide range of health, community and social service organizations that collectively represent an integral part of New York’s health care safety net for uninsured and underinsured women and men throughout New York State. These providers pay dues to support the lobbying and other services FPA offers to its members.

We write today to comment on the exemptions from disclosure of contributions. We support the proposed exemptions from disclosure as we strongly believe they are vital for the protection of both FPA and our members.

As you are undoubtedly aware, abortion and even contraception are issues of significant public concern. As a representative for Planned Parenthood and other providers that offer reproductive health services, including abortion, we and our members are all too familiar with threats, harassment and reprisals directed at both individuals and organizations involved in providing and advocating for these health services. One of New York’s darkest days was on October 23, 1998—the day Dr. Barnett Slepian was murdered in his own home because he provided abortion services. Although that was more than a decade ago, reproductive health care providers are still the subject of concerted efforts by anti-abortion activists who are intent on discrediting Planned

Parenthood and putting it out of business. Our members are regularly subjected to protestors who taunt patients and block driveways; frightening threats and defunding efforts. An example of current harassment is occurring in Utica, where a contractor who is building a new Planned Parenthood health center is confronted by picketers at his home every day because of his work on the Planned Parenthood facility. We are very concerned that disclosure of FPA's sources of funding would subject our contributors and members, especially our Planned Parenthood members, to harassment from individuals and organizations opposed to reproductive rights. It is for these reasons we support the proposed exemptions and encourage you to address our concerns about certain provisions of the proposed regulation.

There are two specific provisions of the exemptions that cause us concern: the standard of review for granting exemptions and the timing seeking an exemption and its duration.

Standard for Seeking an Exemption

We don't feel the standard for seeking an exemption from a single source or all single sources of funding is appropriate. FPA is concerned that it will be difficult, if not impossible, to show by clear and convincing evidence that disclosure *will* cause harm, threats or harassment. The legislative language provides that an exemption can be granted if the commission determines there is a *substantial likelihood* that disclosure would cause harm, threats or harassment, not a showing that this will occur. N.Y. Legislative Law §1-h. It would be more appropriate, and more in line with legislative language to require those seeking an exemption from disclosing a single source or all single sources to show they have a reasonable belief that disclosure of funding sources would lead to harm, threats or harassment.

Timing for Seeking and Duration of Exemption

FPA is also concerned about the timing for seeking and duration of the exemption. We feel the proposed regulation would make it impossible for an organization to assure donors that their contributions are confidential. FPA feels it would be a better solution to allow organizations to apply for an exemption at the start of the year, or upon registering with the commission, and to have the exemption cover the entire year.

FPA would be happy to answer any questions the Commission may have on our concerns regarding the disclosure of sources of funding.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Tracey Brooks', with a stylized flourish at the end.

M. Tracey Brooks
President and CEO



Healthcare Association
of New York State

*Proud to serve New York State's
Not-For-Profit Hospitals, Health Systems,
and Continuing Care Providers*

Daniel Sisto, President

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Shari Calnero, Esq.
Associate Counsel
New York State Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: JCOPE Proposed Rulemaking (JPE-37-12-00010-P)

Dear Ms. Calnero:

FORMER CHAIRS

STANLEY BREZENOFF • New York
STEVEN GOLDSTEIN • Rochester
JON SCHANDLER • White Plains
JOHN SPICER • New Rochelle
WILLIAM STRECK, M.D. • Cooperstown

The Healthcare Association of New York State (HANY), on behalf of our 500 not-for-profit and public hospital, nursing home, home health agency, and other health care provider members, welcomes the opportunity to submit comments in response to the above-referenced Notice of Proposed Rulemaking published by the Joint Commission on Public Integrity (JCOPE).

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MARK WEBSTER • Ogdensburg

HANY engages in education, research, data analysis, and advocacy on behalf of our members to improve the delivery of health care services for all New Yorkers. The Association conducts an extensive array of activities to improve the quality of care provided by our members. These include the provision of data analytics, adoption and implementation of evidenced-based practices to improve patient outcomes, and on-site technical assistance.

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KENNETH ROBERTS • Port Jefferson
STEVEN SAFYER, M.D. • Bronx
JOEL SELIGMAN • Mount Kisco
BETSY WRIGHT • Jamestown

Our Quality Institute is a nationally recognized leader in quality improvement research, education, and dissemination of information to health care institutions and clinical providers such as physicians, nurses, epidemiologists, and infection control officers.

CLASS OF 2014

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STEPHEN MILLS • Flushing
SCOTT PERRA • Utica
SARAH SCHERMERHORN • Schenectady
JAMES WATSON • Bath

HANY provides scores of in-person and Web-based education programs for members and affiliated providers. For example, in 2011, some 11,200 individuals attended 151 HANY-sponsored education programs on topics as diverse as understanding compliance program obligations, reducing central line infections, and mastering complex Medicare billing and coding rules.

Of particular significance is HANYS' partnership with the Johnson Graduate School of Management at Cornell University to offer *The Academy for Healthcare Leadership Advancement*. The *Academy* combines nationally recognized data analytics excellence and in-depth health care system knowledge to provide intensive leadership education to up-and-coming health care provider executives.

HANYS' data analytics capabilities are nationally renowned. Using sophisticated modeling programs developed in-house, HANYS provides extensive analyses of national Medicare policy changes and their facility-specific impact to every hospital in 40 states across the country. Our data and quality research units continuously collaborate to provide reports to members on topics as diverse as the causes of hospital readmissions to the management of care in the health home setting.

I provide this lengthy description of the Association to emphasize that HANYS is much more than a lobbying entity. We serve a complex and sophisticated constituency and do so in multiple dimensions. In fact, HANYS' expenditures for non-lobbying activities far exceed those used for lobbying efforts.

This point directly informs our remarks with regard to JCOPE's proposed rulemaking. We have significant concerns about the proposed "source of funding" requirements. The basis for the proposed rule is Legislative Law, Section 1-j(c)(4), which states that every entity meeting certain criteria "shall report to the commission the names of each source of funding over \$5,000 from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding."

In contrast, the proposed rule would require that an entity report each source and the amount over \$5,000 "contributed" by each source that is used in whole or in part to support the activities or operations of the entity.

We believe that the JCOPE proposal, which encompasses any and all activities and operations, strays from the statute, which focuses on lobbying activities. The statute speaks to a subset of activities, i.e., lobbying, while the proposal speaks to an entity as a whole. We respectfully submit that this expansive reading is inappropriate.

Using HANYS as an example, the statute requires the reporting of information regarding its lobbying activities. However, the JCOPE proposal would require the reporting of information regarding research, education, and data analysis, among other things—activities that are carried out separately and apart from HANYS' lobbying activities.

The statute requires reporting about lobbying. If HANYS were required to report about its entire operation, JCOPE, and by extension the public, would be provided with distorted information, the bulk of which has nothing to do with lobbying. We trust that the Commission does not intend to gather information not pertinent to the goal of transparency regarding lobbying activities.

HANYS is a proponent of disclosure and believes that the public is entitled to know who is funding a lobbying effort. However, the total amount of dues paid to a trade association does not accurately reflect the amount of money being expended on New York State lobbying.

We currently file a detailed report every two months disclosing all monies spent on our lobbying in New York State. In addition, our membership list is readily available to the public. We believe that the detailed disclosure of monies spent on lobbying, together with the disclosure of our membership list, satisfies the intent of the new ethics statute.

Furthermore, the proposed regulation would force HANYS to disclose proprietary information about dues-paying members. The amount of dues paid by a specific member is a trade secret and, if disclosed, could put HANYS—and member health care institutions—at a competitive disadvantage. Moreover, doing so would not advance the policy goal of greater disclosure of lobbying information.

We propose an alternative: that JCOPE require trade associations such as HANYS to disclose the percentage of dues that are attributable to New York State lobbying if that portion exceeds \$5,000, as is currently required by Section 162 of the Internal Revenue Code.

Thank you for your consideration. Please contact HANYS' General Counsel, Mark Thomas, at (518) 449-8893 with questions or to request further information.

Sincerely,



Daniel Sisto
President

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