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Martin Levine, Esq.
Director of Lobbying
New York State Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Transmitted electronically to: martin.levine@jcope.ny.gov

Dear Mr. Levine:

On behalf of the Board of Directors and members of the Empire State Society of Association Executives (ESSAE), we respectfully submit the following comments regarding the JCOPE Staff Proposal for Comprehensive Lobbying Regulations, which will echo comments and submissions already made to JCOPE by a number of professional associations and citizen groups.

ESSAE is a nonprofit professional organization for persons engaged in the management of voluntary trade and professional organizations. ESSAE provides quality educational, leadership, and professional development opportunities to association executives and supplier members, to encourage high professional standards in the management of associations. ESSAE membership comprises over 475 members statewide.

Definition of “Designated Lobbyist” – 942.3(f)

The proposed definition of “designated lobbyist” takes an overly broad position, essentially providing that where there is an organization that lobbies, that entity is required to treat more than just its employees and officers as authorized lobbyists. Specifically, the proposed regulation states that a designated lobbyist may include any “person who lobbies on behalf of a client as an *internal board member, volunteer, or by virtue of some other affiliated but non-employed status...*”—but is not an outside lobbyist. This overreaching language concerns ESSAE.

First, associations are proud of their volunteer activists who participate in various advocacy efforts, but are uncompensated. They do this because of their belief in their profession, mission or cause. The draft definition could be read to require associations to include on its statement of registration individuals who merely participate in a lobby or advocacy day, and are by no means professional lobbyists. Such individuals are not “designated” to lobby on behalf of a particular association, but may nonetheless join the association in its efforts to advocate for certain issues. These volunteers are exercising their own free speech rights.

For these reasons, we believe it is imperative to revise the definition of designated lobbyist to clearly exclude persons who are truly volunteers and have no fiduciary or formal management responsibilities to the organization.

Grassroots Lobbying – 942.7

This clarifies JCOPE’s disclosure requirements for “grassroots” or indirect lobbying. However, the exception would benefit from additional detail: “A person must serve more than a staff communications, marketing or clerical function, but need not have full or final decision-making authority over the communication to qualify as a grassroots lobbyist.” Associations and non-profits often encourage employees or volunteers to encourage members of the public to take a particular action, including through the distribution of flyers, circulating emails or through social media. These individuals are passing along information and may respond to a limited range of questions pertaining to the position, but do not decide on the position, formulate the message or act as a spokesperson to the media, public officials or at public assemblies. The proposed revisions should clarify that such individuals do not need to be identified and are not engaging in “grassroots lobbying communications.”

Disclosure of Individual’s Social Media Activities – 942.7(g)(2)

Proposed revision would require disclosure by deeming the “personal social media activities of an individual member or employee of [an] organization...attributable to that organization” when the activity was “encouraged by the organization as part of a Social Media Campaign.” This ignores or overlooks that associations attract members, volunteers, and employees who share the organization’s mission and goals. Moreover, the incredible growth of social media makes it very difficult, if not impossible to track, the personal social media habits of every member, volunteer or employee—including those whose work duties have no connection to advocacy. This section, which does not appear to have a solid foundation in statute and will not provide meaningful information to the public and should be deleted.

“Coalition Disclosures” as Reportable Lobbying Activity – 942.10(h)(iii)

The draft regulations would require that lobbyists identify coalitions they participate in, to disclose coalition members in lobby reports and require clients to identify coalitions that act as third parties for such clients. Associations and non-profits with limited resources assemble as coalitions to share information and get their voices heard. Typically these coalitions are unincorporated, do not share bank accounts, have a relatively informal structure and each group contributes based on its level of resources and the assessment of the issue’s relative priority to the group. The existence of the coalition itself does not impose legal liability on any other coalition member or responsibility for another group or individual’s actions. In practice, its representatives typically do not have the ability to bind other members of the coalition.

The ability to form these coalitions is critical to both the coalition members and the functioning of democracy. The New York Temporary State Commission on Lobbying addressed this issue in Opinion No. 42 (00-1). The Lobby Commission recognized the informal structure and *ad hoc*-nature of the vast majority of coalitions and deemed informal coalitions “unincorporated associations.” The Lobby Commission held coalitions must either “identify a responsible party or parties (i.e. president, treasurer, or named agent). Otherwise, members of a coalition may be required to file separately.”

The Lobby Commission also required that coalition materials list coalition members or provide a website address so lawmakers and the public could identify who was involved in a coalition

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effort. This approach has worked well, not unduly burdened the ability of groups to assemble as coalitions, and has provided the public with information about groups working in coalition to influence government in New York.

We believe that the proposed revision would have a negative impact on First Amendment rights to speak, assembly and petition government. ESSAE sees neither a basis nor a need for the proposed revisions on coalitions and urges that it be deleted.

Additionally, we would like to encourage JCOPE to offer opportunities for training on new Lobbying Regulations when they are promulgated. All New York State associations (whether they retain a lobbyist or not) would benefit by understanding the new regulations, their impact on an association's operations and to ensure compliance. ESSAE would be pleased to work with JCOPE in offering such training to our members across the Empire State.

If you have any questions, or would like additional information about the impact of associations on the life of New York State, please feel free to contact Executive Director Vanessa LaClair at (518) 463-1755 or vanessa@essae.org.

Thank you for your fullest consideration of our comments.

Sincerely,



Debra Trulli-Cassalle
Chair, Board of Directors



Vanessa E. LaClair, CMP
Executive Director