Testimony of Common Cause/NY
Submitted to
New York State Joint Commission on Public Ethics
December 7, 2016

Thank you for the opportunity to testify today on the staff's proposed lobbying and source of funding regulations. I am Trevon Mayers, Assistant Director of Common Cause/NY. Common Cause/NY is a nonpartisan citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For more than 45 years, we have worked at both the state and municipal levels to bring about honest, open and accountable government. We have been a long-standing advocate for innovative campaign finance, lobbying and ethics laws in New York, as well as throughout the country.

First, we want to commend the Commission and its staff for allowing a public discussion of these proposed regulations. We appreciate the thoughtfulness that this process has led to and we applaud these efforts toward greater transparency and collaboration.

We understand that the proposed guidelines set forth in Title 19 Parts 938 and 942 are intended to consolidate existing lobby rules and advisory opinions in one place, as well as to clarify what types of activities constitute lobbying and revise disclosure requirements accordingly. This is an admirable goal and we are appreciative of this open approach to this challenging task. While many of these proposed guidelines are indeed substantive, we are concerned that the language used in these proposals do not clearly define the obligations of reporting individuals and entities and in some cases, creates unduly broad and vague requirements.

LOBBYING REGULTIONS DISCUSSION DRAFT

What follows is a short summary of our preliminary reactions to some of the terms defined in the proposed regulations noticed for this hearing.

942.3 Definitions

We find the definition of Designated Lobbyist in section (f) to be vague and overly broad. It is unclear at what point an internal board member, volunteer, or other affiliated but non-employed person becomes a designed lobbyist, and whether or not such a designation would require an additional disclosure obligation on behalf of the individual. As it is currently written, this definition implies that internal board members, volunteers, or other non-employed affiliated persons become designated lobbyists even in circumstances where the Client neither solicits nor directs their activities. There are also no clear guidelines as to what constitutes an action on behalf of a Client. Additionally, as a consequence, this definition can potentially serve as a disincentive for organizational membership if identification as a member or board member of the organization discourages participation with the organization or the member communicating with their elected representatives. I rule which creates a disclosure requirement

when a volunteer or member chooses to identify themselves as a member of an organizational lobbyist in discussions or communications with an elected representative or the public appears to interfere with the member's right of association.

942.7 Grassroots Lobbying

We acknowledge that section (g) appears to be a properly constituted definition of social media lobby activities that are attributable to that of an organization

942.9 Reportable Lobbying Activity

For section (e)(ii), Common Cause/NY would hope that these regulations would provide more guidance to filers as to the appropriate level of detail to provide in disclosing expenditures, to foster uniformity in how different lobbyists report similar expenditure measures. A requirement for uniform reporting would make it easier for the public and interested organizations to fully analyze lobby disclosures and obtain, interpret, and compare the lobbying activities of various entities. We strongly recommend the inclusion of statutory language that clearly details the reporting obligations for grassroots lobbying expenses. Lobbying data should also be provided in a format that allows it to be easily analyzed. The website on which lobbying disclosures are made available to the public should present the information in a form that: a) is fully searchable, b) downloadable in formats used by common spreadsheet and data programs, c) permits cross-reference, and d) is user-friendly to reflect current standards of transparency and usability of data.

942.9 Reportable Lobbying Activity

Common Cause/NY finds the definition of a coalition in section (h)(iii) to be unclear and particularly problematic. As written, this definition does not clarify whether a formal and/or informal agreement between members that engage in lobbying activities constitutes the formation of a coalition. This distinction is important for several reasons:

1. A coalition does not require nor depend on a formal financial structure to operate, therefore no financial contributions are necessary at any point to administer a coalition.

2. Coalitions may partake in joint actions, but each member or entity is separately administered, and is therefore responsible for its own lobby reporting obligations. The requirement to duplicate disclosure obligations does not make it clear which member(s) then has the additional responsibility to file a Lobbying report on behalf of the coalition.

3. Coalition membership and activities are not static and often change. Certain members of a coalition can support lobby activities that other members do not. In such cases, there is no way to keep an up to date written instrument that accurately discloses the activities of all members, and it is unclear who will maintain this instrument and for what purpose.

We believe that lobbying disclosures should be tied to expenditures, not collective action. An administrative rule of this breadth interferes with individuals'' and entities' ability to effectively petition their government.

STAFF DRAFT OF SOURCE OF FUNDING REGULATIONS

Aside from our general objections to the over-broad nature of the underlying statute, Common Cause/NY

has three primary concerns with the proposed Source of Funding regulations.

The first echoes our concern and objections to the definition of coalition described in section 3 of Part 942. That definition is no more workable in this context than it is in the context of lobbying disclosures.

Further, the second clause of Section 938.2 (f)(2) is unclear. If it is meant to cover all contributions made to a pass-through coalition by the Client Filer, then it is appropriate to include all amounts that the Client Filer contributes to lobbying activities of the coalition. If, on the other hand, it is meant to ascribe all amounts expended by the pass-through coalition as if expended by each individual coalition member and turning each one into a Client Filer potentially subject to Source of Funding disclosures, even if the individual entity's activities would not otherwise qualify the entity for Source of Funding disclosures it is overbroad and has a chilling effect on collaborative action. Government should never be in the position of chilling any entity's right of association.

Finally, The Staff Draft appears to change existing advice as to local chapters or affiliates of larger national organizations. Prior advice clarified that reporting was required of contributions made to the New York lobbying entity, whether specifically designated for lobbying activities or not, not to all contributions made to the parent or other chapters. It is unclear whether the definition of Affiliate Relationship is meant to cover Filers as well as sources without that clarification. New York does not appear to have a reasonable interest in disclosure of amounts contributed, to use an arbitrary example, by an Oregon resident to an Oregon chapter for c4 activities carried on in Oregon, or for another example, amounts contributed by a California resident for c4 activities by a North Carolina chapter. Further, if one were to utilize the Reportable Amount of Contribution formula from 938.2 (i) on a national, rather than state, expenditure basis, the disclosed amounts for a national organization with multiple chapters would be mostly insignificant. For example, a $3000 donation made to an Oregon chapter of a national multi-chapter organization with a New York chapter that is a New York filer could result in a reportable amount of contribution of under $50. The former guidance should be clarified and incorporated into the proposed rules.