New York
COMMON CAUSE
Holding Power Accountable

Testimony by
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Before the
New York State Joint Commission on Public Ethics

Regarding
Public Hearing to Address New Lobbying Disclosure Requirements

June 7, 2012

Good morning, members of the Commission. Thank you for the opportunity to speak today My name is Susan Lerner, and I am the Executive Director of Common Cause/New York. Common Cause/NY is a non-partisan, non-profit 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. Common Cause has consistently spoken out on the need for greater government transparency, and has long advocated for ethics reform in the State of New York.

Reportable Business Relationships

A threshold issue to determine regarding the disclosure of reportable business relationships is the time by which a new relationship must be reported. Common Cause/NY believes that a lobbyist's Statement of Registration should be amended within 30 days of the date on which a new reportable business relationship within the covered categories has been entered into in order to provide the required information.

We do not believe that there is any need for a delay in requiring disclosure of reportable relationships from the date of adoption of the implementing regulation. The statutory requirement is straightforward and the lobbying community has been on notice for quite some time regarding this additional requirement of disclosure.

The only comparable requirement that we found in an admittedly incomplete review of other states' lobbying disclosure laws is found in the laws of the State of Washington, which requires lobbyists who employ legislators, board or commission members, or state employees to disclose that fact. The reporting is done on Washington State Public Disclosure Form L-7, which is a simple and straightforward form. It can be accessed on the PDC's website, http://www.pdc.wa.gov/.

It is Common Cause/NY's position that the proposed regulation should make clear that lobbyists will be considered to have constructive knowledge of any official's relation to any entity that the official includes in its financial disclosures pursuant to Public Officers Law Sec. 73-A. If the interest or relation

is disclosed in the financial disclosures required by Public Officers Law 73-A, then there will be an irrebuttable presumption that the lobbyist who failed to report the relationship with the official "knows or has reason to know" of the status of the official vis a vis the reported entity, pursuant to new subdivision (w) of section 1-C of the Legislative Law.

Source of Funding Reporting

This new requirement raises more challenging issues than the relatively straightforward requirement to disclose reportable business relationships between public officials and lobbyists and their clients. The first issue which should be considered is how to insure that the public receives meaningful disclosure of the actual and original source of funding used to fund lobbying activities by entities which lobby on their own behalf, as required by new paragraph 4 to subdivision (c) of section 1-H of the Legislative Law. Disclosures which simply reveal what is known as a "Russian doll problem" – where the immediate source of the funding is an intermediary entity, perhaps a committee or association, which is not the original source of the funds – should not be considered to satisfy the requirements of the law. The public has an interest in the disclosure of all major entities that may be involved in a layered organizational structure. Common Cause/NY urges the Commission to draft rules which will provide information regarding the original source of funding, which would treat each of the individual members of a coalition or association (and not the coalition or association) as the donating entity, so long as that individual member provided more than $5,000 to the coalition or association. This can be done by requiring the lobbying entity to obtain the required information from its funders above $5,000. Just as in the campaign contribution area, the reporting organization should be required to reject any contributions above $5,000 designated for lobbying in New York State or which will be used for lobbying from entities or associations which do not provide the required information.

News reports regarding the admitted "bundling" of individual donations on a "pass-through" basis to a c4 organization formed in order to lobby, illustrate the need for such a requirement. *See, e.g.* "Pro-Cuomo cash scandal hits home", The Buffalo News, June 6, 2012, **http://www.buffalonews.com/city/communities/buffalo/article889451.ece**. Another way to address this concern would be to require any coalition or association making a donation above $5,000 to the lobbying entity to certify, under penalty of perjury, that the funds provided were not expressly solicited for the purpose of contribution to the lobbying entity. If the funds were identified as specifically "bundled" to fund the lobbying entity, then further disclosure could be required.

The disclosure system set up by our lobbying law is retrospective; that is, the reports which must be filed disclose the lobbying activities which took place in the proceeding reporting period. The language of the new provisions requiring disclosure of funders follows this same approach. The reports are now expanded to include the source of funding for the lobbying activities which took place during the reporting period. Common Cause/NY believes that the language of the amendment to the Lobby Law requires the disclosure of funding sources whose contributions were used during the reporting period, which would, logically, require the disclosure of funding which was received not only during but also before the reporting period. This would apply most directly to the bi-monthly reporting periods. Unlike lobbyists who are hired to lobby for clients, who often receive monthly retainers, advocacy organizations who lobby on their own behalf are not likely to receive funding in such neat monthly

allotments. Accordingly, good faith compliance with the reporting requirement may necessitate the disclosure of funding that was received before the actual 2-month period in which the lobbying activities reported took place, and, for the first semi-annual reporting requirement, before the june 1 effective date in the statute. Given that the Public Integrity Reform Act of 2011 containing the disclosure provisions was passed in mid-June of 2011 with great public fanfare and extensive press coverage and signed into law in mid-August of 2011, 501c4 advocacy organizations that lobby in New York State and their donors have been on notice that organizations would be required to disclose their funding sources above $5,000 for almost a year.

The effective date of June 1, 2012 for this reporting requirement is an unfortunate mis-match to the over-all reporting requirements of Lobby Act, which requires disclosure on a bi-monthly or semi-annual basis, so that a July 1 effective date would have been easier for reporting. Nevertheless, this should not prove unduly difficult for compliance. Under the circumstances, and in light of the significant public interest in disclosure, we believe that full disclosure should be required starting with the semi-annual statement which covers the period January 1 through June 30, 2012 and the bi-monthly report covering the May-June reporting period, both of which are due to be filed on July 15.

Finally, we are concerned that any exemptions to disclosure should be narrowly tailored and determined on a case-by-case basis. Exemptions should not be granted for those who fear being held appropriately accountable for their activities in perfectly legal ways, i.e., such as potential economic boycotts or being subject to criticism or questioning by customers, members, or shareholders. Being held to account by stakeholders or interested members of the community, even if uncomfortable for a funder, should not be considered to rise to the level of "harm, threats, harassment, or reprisals" which would exempt an organization from disclosure. The language of the statute should be interpreted to mean serious charges, like threats of violence and threats for which there is actual evidence. There is a growing body of case law in the campaign finance disclosure area, particularly cases involving the National Organization for Marriage, which may prove helpful to the commission in developing the appropriate standard for this exemption. The discussion of the appropriate limits of exemption from public disclosure found in a law review article by Dale Ho, Assistant Counsel, NAACP Legal Defense and Education Fund, *NAACP v. Alabama* and False Symmetry in the Disclosure Debate, 15 NYU Journal of Legislation and Public Policy 405 (May, 2012), is also helpful.

That said, Common Cause/NY believes that there are, unfortunately, areas of "public concern" which have been the subject of repeated violence, not just historically but currently. Not only have those who champion civil liberties and civil rights been subject to threats and actual violence directed towards persons and property, but also those who work in the area of reproductive rights. Because those who provide abortion and other reproductive health services, as well as those who advocate for such services, face the real and continued threat of shootings and bombings, we believe that organizations which lobby for reproductive rights should be exempted from disclosure by regulation, should such organizations request such exemption.