

Common Cause New York
Testimony to JCOPE Review Commission
Submitted in Person by Prudence Katze
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Evan Davis and Dan Karson of the New York City Bar Association outlined our concerns in regard to JCOPE's lack of independence. "JCOPE must be structured with safeguards that will give the public confidence that JCOPE will interpret and enforce ethics and lobbying rules without regard to political consequences."

We acknowledge that JCOPE's lack of resources and staffing has made it difficult to modify its data collection and reporting to keep up with 21st century standards. However, we feel that JCOPE has not fully utilized its rule-making authority to insure that the information which it gathers and makes available to the public is as useful and meaningful as it could be. We hope that the JCOPE Review Commission will take this opportunity to urge a more proactive rule-making posture by JCOPE to take full advantage of its ability to provide guidance and require standardized reporting. Such proactive rule-making will not only facilitate easier reporting by lobbying entities but make the data provided easier for the [public to understand. In addition to this testimony, which will detail my experiences in both helping prepare Common Cause/NY's lobbying disclosures but also our extensive experience in utilizing the online lobbying data provided by JCOPE, I am also providing copies of Common Cause NY's 2013 report "It's All Politics: New York as a Case Study in the Evolution and Campaign Finance"

We are going to go into more detail regarding:

Grassroots lobbying

Problem: Political spending is now often done through a myriad of different streams, yet reporting requirements are uneven and confusing.

Recommendation: Clarify, through stronger language, the proposed guidance on Grassroots Lobbying by making clear that mass communications to influence the public does not include communications by an entity directly to its members.

Expanding the scope of the Lobbying Act (Legislative Law Article 1-A) to include a definition on grassroots lobbying is a step in the right direction, but we are concerned that the wording "controls" is vague and potentially restricts the full scope of an entity's lobbying power on behalf of another.

Website

Problem: Website is unwieldy and confusing

Recommendation: Utilize existing resources, such as the AG's NYOpenGovernment.com, to create a streamlined tool for disclosure. 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.

Campaign contribution cross-reference can be easily facilitated. The Attorney General's NY Open Government website already demonstrates that capability. JCOPE's current website is clunky – to say the least, and it is difficult to utilize and fully evaluate the information that is there. We strongly recommend coordination between the different agencies which are reporting various types of political spending, so that ultimately a member of the public can get a clear total picture of how a particular entity or individual is using political money, including lobbying expenditures, to try and influence public policy. As our report makes clear, it is Common Cause/NY's position that the current reality takes advantage of historical legal and regulatory differentiations between campaign and lobbying expenditures to obscure the full scope of political spending to gain access and influence. While a full solution would take legislative action, there is much that JCOPE could do. To that end, we would like to see JCOPE working with the AG, the Comptroller and BoE to coordinate how individuals and entities are identified in the various disclosures and websites these entities maintain to facilitate cross-agency comparisons and aggregation.

JCOPE said they would have a website redesign in 2015 – what is the status on that? What process for involving the end users of the website – reporting entities and those who analyze and use the data presented? Processes designed without the input of end users tend to miss the mark and require costly changes after the fact. For instance, the current website does not aggregate the semi-monthly disclosure statements of entities which are both registered lobbyists and clients, requiring each entity so designated to re-key in all of the data previously entered in each bimonthly report. This introduces the regular possibility of human error causing an unnecessary and inadvertent discrepancy between the bimonthly reports and the bi-annual. Technology has a simple solution for such a common problem, yet the existing website does not provide it.

Source of Funding Disclosure

Problem: JCOPE's current Funder Disclosure Mandate is unclear

Recommendation: Expand the reporting requirements to 501(c)3 organizations, eliminate the "pass-through" loophole by requiring all major entities involved in a multi-layered lobbying structure to report their spending.

Unless steps are taken to require proper disclosures and transparency of third-party coalition campaigns, voters will find themselves ever more confused, misled, and excluded from meaningful political participation. New York took an initial important step to mandate disclosure of the funders behind these veiled lobbying actors when a 2012 Lobbying Act amendment mandated 501(c)4 organizations who lobby on behalf of themselves and who spend more than \$50,000 on lobbying activity in New York State make publically available each source of funding that exceeds \$5,000 for such lobbying.

Families for Excellent Schools: An Example of Potential Disclosures Slipping Through the Cracks

But the requirements for disclosure is still confusing and its enforcement mechanisms are also vague: this is a statutory and regulatory problem. For example, 501(c)3 organizations such as Families for Excellent Schools (FES) are spending exorbitant amounts of money on lobbying. In 2014, FES spent \$9.6 million on

lobbying, yet has not disclosed any of its donors. In FES's New York State Registration Statement for Charitable Organizations, the organization's "purpose" was described as: "Families for Excellent Schools harnesses the power of families to advance policy and political changes that create and sustain excellent schools."

Additionally, FES reported in its IRS Form 1024 that "Families for Excellent Schools-Advocacy ("the Organization) works to advocate for specific legislative changes through campaigns. It intends to manage an issue campaign each year in the spring semester to coincide with the legislative calendar."

The Public Integrity Reform Act of 2011 ("PIRA") (Chapter 399, Laws of 2011) amended Legislative Law article one-A by enacting requirements, effective June 1, 2012, that lobbyists who lobby on their own behalf, and clients who devote substantial resources to lobbying activity in NYS, to make publicly available each "Source of Funding" over \$5,000 for such lobbying. The requirements to disclose Sources of Funding are found in Legislative Law §§1-h(c)(4) and 1-j(c)(4). These instructions clarify the Source of Funding reporting requirements.