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Testimony of Lawyers Alliance for New York, Human Services
Council and Nonprofit Coordinating Committee of New York
to The New York Ethics Review Commission

by Laura Abel, Senior Policy Counsel

I provide this testimony on behalf of Human Services Council (“HSC”), Lawyers Alliance for New York, and Nonprofit Coordinating Committee (“NPCC”). We are concerned that the Public Integrity Reform Act of 2011, and the interpretation of the Act by the Joint Commission on Public Ethics (“JCOPE”), create inefficiencies that divert JCOPE from its core enforcement mission and, at the same time, unnecessarily impede compliance by nonprofit organizations without improving lobbying disclosure. We recommend that JCOPE stop requiring organizations to file the same information with both New York City and JCOPE and stop requiring separate JCOPE lobbyist and client reports from organizations using their own staff to lobby. We also recommend that the expenditure threshold triggering an obligation to register and report as a lobbyist or client be raised to \$10,000.

HSC is a coalition of nearly 200 nonprofits strengthening the human services sector’s ability to serve New Yorkers in need. As a non-partisan intermediary between government agencies and member organizations, we passionately champion the sector. We proactively negotiate with State and City government for mutually beneficial, solutions-based budget, policy, and legislative reform that improve our constituents’ work and the lives of the individuals they serve.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers. We frequently provide advice and assistance to nonprofit organizations seeking to comply with the Lobbying Act.

NPCC is the voice and information source for New York nonprofits. NPCC is an umbrella organization representing and serving some 1,500 member nonprofit 501(c)(3) organizations throughout New York City, Long Island and Westchester. As the largest such organization in our area, we represent all types of nonprofits on sector-wide issues.

Regulatory Inefficiencies

As we describe below, too much of JCOPE’s enforcement and compliance resources are spent ensuring that small organizations file duplicate reports regarding a single meeting with a government official. This reduces JCOPE’s ability to ensure that all lobbyists and clients fully

disclose their activities and expenditures in a meaningful way. At the same time, the unnecessary compliance burdens divert nonprofit staff from serving their communities and discourage them from educating government officials about the needs of those communities.

Nonprofit organizations seeking to ensure that NYC government responds to community needs must report that lobbying activity once to the NYC Clerk and again to JCOPE. Additionally, JCOPE requires organizations using their own staff for advocacy to report the same activity to JCOPE once as a lobbyist and again as a client. Thus, a single meeting with a NYC government official must be reported to JCOPE in an organization's Bi-Monthly Lobbyist Report and again in its Client Semi-Annual Report; it would also be reported to the NYC Clerk in a Lobbyist Periodic Report.

These registration and reporting burdens are considerable and can be overwhelming for an organization with just one or two staff people. An organization using its own staff to lobby NYC government must:

- register with JCOPE as a lobbyist every two years and with NYC every year,
- enroll in JCOPE's online filing system as a lobbyist and again as a client, and also enroll in NYC's online filing system as a client/lobbyist (with each enrollment requiring a separate user ID and password),
- file six Bi-Monthly Lobbyist Reports with JCOPE and six Lobbyist Periodic Reports with the NYC Clerk each year, and
- file two Client Semi-Annual Reports with JCOPE each year.

Even after a nonprofit has reported information multiple times, it may still be fined for reporting that same information late on yet another form. Nonprofits are underfunded and understaffed. Time spent drafting multiple mandatory filings for government agencies could be better spent serving the community. Many small nonprofits lack in-house counsel and find complicated reporting schemes baffling. The result: some nonprofits avoid advocating on behalf of their communities in order to avoid excessive paperwork. This frustrates the Lobbying Act's goal of affording "the fullest opportunity...to the people to petition their government for the redress of grievances." Lobbying Act § 1-a.

Eliminating duplicate reporting would increase compliance by reducing confusion among regulated organizations. Nonprofit organizations find it hard to believe that the law really requires them to report the same meeting on two different forms, both of which are submitted to JCOPE, and then again to the NYC Clerk. As a result, some nonprofits unintentionally fail to file one set of reports or the other, increasing the enforcement burden on JCOPE.

Additionally, the Lobbying Act unnecessarily requires reporting by small organizations that engage in only a minimal amount of lobbying. The Commission on Public Integrity (JCOPE's predecessor) recommended raising the expenditure threshold to \$10,000 for all filers, in order to "reduc[e] our workload, ... and allow us to focus on that population that may be poses a higher risk of violations while still providing information of almost all the lobbying activity that's currently being done."¹ In 2013, the NYC Lobbying Commission likewise stated that there is "a

¹ Testimony of Barry Ginsberg before the NYC Lobbying Commission, March 30, 2011, pp. 37-41, <http://www.nyc.gov/html/lobby/downloads/pdf/033011lobbying.pdf>.

strong basis to recommend raising the [NYC] threshold to \$10,000 for all filers.”² Members of both commissions noted that doing so would still capture at least 98% of state and city lobbying expenditures.³

At the same time, this unnecessary reporting burden consumes the time of JCOPE staff who must administer an unwieldy system. Rather than monitoring whether multiple, duplicative reports have been filed by nonprofits engaged in a modest amount of lobbying activity, JCOPE’s staff time would be more effectively devoted to investigating the unreported lobbying activities of major actors and enforcing the reporting obligations of elected officials. JCOPE’s workload is due to increase dramatically, as it is now required to oversee the reporting of lobbying activities directed at small municipalities. The need to focus its resources on its highest priorities is greater than ever.

Our recommendations

In order to focus JCOPE’s resources more efficiently and ameliorate the unnecessary burdens imposed on small organizations, we recommend the following measures:

1. Stop requiring organizations to file the same information with both NYC & JCOPE
Organizations should be able to report information about their advocacy just once, to JCOPE, which has the broadest jurisdiction. JCOPE would share with the City Clerk all information submitted by clients and lobbyists regarding lobbying of New York City officials. The information should be shared promptly and in a data format allowing the City Clerk to fulfill its enforcement obligations. Organizations that want to take advantage of this streamlined procedure would simply file one report containing all of the information required by both the state Lobbying Act and the NYC Lobbying Law.

JCOPE and the NYC Clerk have the authority to adopt this procedure. JCOPE and the City Clerk both have the authority to design forms for the submission of lobbyist and client reports.⁴ The City Clerk could simply deem the requirement to file a Lobbyist Periodic Report to be satisfied by the filing of a JCOPE Lobbyist Bi-Monthly Report containing all of the information required by city Lobbying Law for the relevant reporting period. Likewise, the City Clerk could deem the requirement to file a Client Annual Report to be satisfied by the filing of a two JCOPE Client Semi-Annual Reports covering the relevant reporting period. JCOPE should be required to make every effort to persuade the NYC Clerk to adopt this procedure, and the Lobbying Act should be amended to require JCOPE and the NYC Clerk to cooperate in this fashion.

2. Stop requiring separate JCOPE lobbyist & client reports from organizations using their own staff to lobby: JCOPE should allow organizations using their own staff for lobbying on behalf of the organization to register and report as a lobbyist/client filer. JCOPE has the authority to adopt this procedure. The City Clerk has appropriately interpreted the city

² Final Report of the NYC Lobbying Commission (2013), p. 30.

³ See Final Report of the NYC Lobbying Commission (2013), p. 29 (quoting testimony of Barry Ginsberg, Commission on Public Integrity), <http://www.nyc.gov/html/lobby/downloads/pdf/033011lobbying.pdf>; Tr. of Public Meeting of the NYC Lobbying Commission (June 24, 2011), p. 5 (statement of Hon. Herbert Berman, Chair), <http://www.nyc.gov/html/lobby/downloads/pdf/062411lobbying.pdf>.

⁴ NYS Legis. Law § 1-d(d); NYC Admin. Code §§ 3-212.

Lobbying Law (which has provisions regarding registration and reporting that are extremely similar to those in the state Lobbying Act) as allowing it to: a) permit an organization using its own staff for lobbying on behalf of the organization to register as a lobbyist/client filer, and b) deem the submission of a the final Lobbyist Periodic Report in a calendar year to constitute satisfaction of the requirement to file a Client Annual Report.⁵ JCOPE should interpret the Lobbying Act in a similar manner.

3. Raise the expenditure threshold to \$10,000: As we note above, JCOPE's predecessor and the NYC Lobbying Commission have each recommended raising the expenditure threshold to \$10,000. Doing so would allow JCOPE to focus on higher spenders, who pose the greatest risk of lobbying violations, while still capturing the vast majority of state and city lobbying expenditures.

Thank you for considering these recommendations.

⁵ NYC Clerk, Lobbying Bureau, FAQs # 26, <http://www.cityclerk.nyc.gov/html/lobbying/general%20topics.shtml>.