



## STATEMENT ON JCOPE PROPOSED COMPREHENSIVE LOBBYING AND SOURCE OF FUNDING REGULATIONS

NYPIRG offers these comments on the Joint Commission on Public Ethics' proposed rulemaking on Part 943 (comprehensive lobbying).

NYPIRG commends the Commission for compiling the lobbying laws, requirements and policies in one set of regulations, defining “direct” and “grassroots” lobbying, seeking to update disclosure rules to capture current social media advocacy, and for providing ample opportunity for the public and affected community to comment.

**Effect of Codification.** While it is helpful to have a comprehensive set of regulations, additional explanatory materials would be useful. This could help save staff resources from fielding guidance questions and reduce the number of amended filings. The state Board of Elections, for example, has a 136-page handbook that amplifies and supplements understanding of the Election Law and regulations.<sup>1</sup>

**Website Filing.** According to JCOPE's patient and helpful staff, the website is undergoing an overhaul to make filing easier and reduce glitches. This is welcome news—the system is very old in technology years—it was set up to run best on the discontinued Internet Explorer platform. It is glitch prone, particularly during higher-use times close to filing deadlines. We hope that the system is soon made more user-friendly.

**Website Searches.** The JCOPE 2016 Annual Report Annual Report (p. 30) states that the website is being redesigned “to, among other things, provide enhanced search functionality as well as improved access to guidance, enforcement actions, and other information.” The website's search functions are clunky and require direct matches for search terms to return useful information. In comparison, the Attorney General's NY Open Government website (formerly known as “Project Sunlight”) provides an easier user experience, particularly for persons doing general searches. We hope that the upgraded system is in place soon and provides a user-friendly experience for finding public data.

**943.1(b).** The proposed Part 943 regulations “consider, reflect and, in part, are based upon and in many instances codify . . . earlier advisory opinions, guidelines, instructions and practices.” Part 943.1(b). Seeking greater clarity and establishing a compendium of rules is beneficial to the public, the regulated community and to regulators. The draft regulations caution, however, that

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<sup>1</sup> See <http://www.elections.ny.gov/NYSBOE/download/finance/hndbk2017.pdf>.

these previous opinions and guidelines should be considered “superseded by these regulations in the event any such prior guidelines, opinions, instructions or practices are inconsistent with this Part.”

Since lobbyists and clients have come to rely on these previous precedents, the effect of a blanket supersession raises concerns about what Advisory Opinions and practices are explicitly rejected. Since the Commission must have reviewed these previous precedents, the Commission should explicitly state which of these precedents is affected and how they are affected.

**943.1(d).** “Beneficial client” would be defined to mean “the specific individual or organization on whose behalf and at whose request or behest Lobbying Activity is conducted.”

- This definition should be clarified regarding the meaning and practical effect of the language “at whose request or behest Lobbying Activity is conducted.” Interest groups often request that others adopt their position; and the definition of “behest” can mean nothing more than “urgent prompting,”<sup>2</sup> which can be a near constant state in the advocacy world. A “beneficial client” relationship should require more than a “request” or “behest” prompting.

- LLCs, which have been at the center of scandals investigated by JCOPE as well as federal prosecutors, should be required to disclose their principals. By design these entities present significant transparency problems. JCOPE should require that LLCs identify the true interests behind their lobbying so that the public gets a full picture of the influencing activities of these interests.

**943.3(o).** “Municipality” is defined to be various local governments and entities of more than 5,000. Since there is no additional burden to local government—the reporting is done by lobbyists and clients—there is no policy basis for a population threshold and if a legislative change is required, JCOPE should advance this reform.<sup>3</sup>

**943.3(h)(2).** There appears to be a typo in the definition of “employed lobbyist,” should refer to “the criteria in paragraph (1) above,” not “the criteria in paragraph (i) above” as in the current draft.

**943.3(j).** The definition of “Lobby Day” refers to “when lay members of an organization meet with public officials. . . .” The term “members” is not defined. Not all lobby day organizers have “members” and often invite interested persons regardless of affiliation to join in these advocacy days. This should be clarified.

**943.4(c).** This section establishes an exception to the definition of “Lobbying Activities” by carving out “communications with a professional journalist, or newscaster . . . as those terms are defined in section seventy-nine-h of the civil rights law.” Section 79-h of the Civil Rights Law,

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<sup>2</sup> Definition of “behest,” Merriam-Webster online dictionary. Accessed at [www.merriam-webster.com/dictionary/behest](http://www.merriam-webster.com/dictionary/behest).

<sup>3</sup> Similarly, the “Unified Court System is defined under the provision on procurement lobbying to exempt “town and village justice courts in jurisdictions with a population under 50,000.” 943.8(a)(11). This would appear to be subject to the 5,000 population threshold for local lobbying. However, since the burden for this provision falls on lobbyists, not local governments, we urge that it apply regardless of population size.

however, covers more than professional journalists: The regulation should make it clear that the term “professional journalist” is broader than those who are “employed” in the field, with the broad definition including “one who, for gain or livelihood, is engaged in gathering, preparing, collecting, writing, editing, filming, taping or photographing of news. . . .” Thus, communicating with a reporter from the *Legislative Gazette*, *The Columbia Daily Spectator*, *The Daily Orange* (Syracuse University), *WFUV* (Fordham) or *WRPI* (RPI) radio station journalists, for example, should fall within the exception to “Lobbying Activity,” irrespective of whether the reporters and other staff are paid.

**943.4(f).** This section sets out the exception for excepting from reportable “Lobbying Activities” a response to requests for information from the Senate, Assembly, the governor, state agencies and municipal governments. It appears to represent a significant and unnecessary departure from longstanding reporting requirements by applying only if

- (i) The response is pursuant to an explicit request for the information;
- (ii) The information contained in the response is not more than what was sought in the request; and
- (iii) The person did not urge the requesting party to make the request.

Whether it is budget hearings, committee hearings, task forces or other public events, groups and advocates help lawmakers and agency staff better understand the issues under consideration, the ramifications and impacts of proposed policies and the public’s perspective by encouraging public comments. These committee and agency proceedings are in public and transparent; typically they are webcast, video is archived and in some instances stenographic transcripts are created and easily available. It’s noteworthy that under proposed 434.4(d), participants in other public agency proceedings “which is part of a public record thereof” is excepted from the definition of “Lobbying Activities.” Further, this goes beyond the exception contained in the Legislative Law. We do not believe the Commission should now consider this highly public petitioning of government on policy issues to be considered reportable “Lobbying Activity.”

**943.8.** This section sets out the rules for “procurement lobbying.” Proposed 943.8(c) excepts regulating or requiring disclosure of activities intended to lead to or shape a “Determination of Need” and product or project specifications. Since the earliest “pre-announcement” or pre-decision stages of influencing the procurement process can be determinative of who prevails or—at least has an edge—in being awarded a contract. Accordingly we urge the Commission to regulate and require disclosure pursuant to existing authority. If this is deemed to require a statutory remedy, then JCOPE should advance legislation on this issue.

**943.9(f).** This section addresses reporting of lobbyists’ compensation. It notes that reporting should include “year-end or other bonuses.” The prospect of lobbyist bonuses appears to be the equivalent of contingency payments for lobbyists and should be banned.

**943.9(h)(3).** This provision defines and sets forth the reporting requirements for coalitions that “pool funds.” This appears to be largely following the 2000 advisory opinion of the forerunner Lobby Commission regarding coalition reporting. *See* Opinion 42 (00-1).<sup>4</sup> Thus, under the 2000

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<sup>4</sup> This opinion accessed at <http://www.jcope.ny.gov/advice/lob/opinio42.htm>.

opinion and the proposed regulation, coalitions may report jointly, or report separately their lobbying expenditures if they are otherwise required to report.

-The term “pool funds” should be clarified and defined to mean creating a joint account or similar arrangement for the deposit of funds to be used for the Coalition’s lobbying activities as agreed to by Coalition members. It would be highly burdensome and unreasonable to include “paper coalitions,” which routinely advocate on an “each according to their own resource ability” basis.

- The regulations as proposed appear to provide a loophole for a coalition that pools funds in cases where each member contributes less than \$5,000 to the pool of coalition monies and none of the coalition members individually is required to file due to being under the reporting threshold. While this may seem an unlikely scenario, 100 LLCs under common control could group together in a coalition, each donating \$4,900 to a nearly \$500,000 campaign, with none of it reported.

**943.10** This section sets forth the requirements for lobbyist registration statements.

- 943.10(j)(9) requires lobbyists to identify “other parties to the Lobbying,” including “Coalitions” and 943.10(j)(i) “a list of all members of the Coalition who exceed \$5,000 in cumulative annual Lobbying compensation and expenses[.]” These requirements would be burdensome and impractical: At the time of registration it will be difficult if not impossible for filers to know their coalition partners. Moreover, requiring lobbyists to know the filing status and lobby expenditure levels of each of its coalition partners would be extremely time consuming and provide little benefit to the Commission, as the entities otherwise required to report will provide that information. Moreover, these requirements will have a chilling effect on the formation of coalitions, implicating protected free speech and associational rights.

- We recommend that instead the reporting requirement be that lobbyists and clients list each members of a coalition could be satisfied by allowing filers to either include a list of coalition members on each communication or provide a link to a website that lists current coalition partners.<sup>5</sup>

**943.12(d)(1)(i)** This section removes the requirement for clients who serve as organizational lobbyists to file semi-annual reports. Since this information is contained in the bi-monthly filings by the organization’s lobbyists, there will be no reduction in information provided on lobbying activities and it will eliminate duplicative reporting.

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<sup>5</sup> The same arguments apply to the coalition reporting requirements for clients in 943.11.