

**Testimony on Proposed Rulemaking
New York Codes, Rules and Regulations, Title 19, Parts 938 and 943**

October 30, 2017

Good afternoon Commissioners. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany advocates for open and accountable government. To that end, we often focus on evaluating and improving the many databases which make state government more transparent.

We released last week a report on JCOPE's lobbying database, more formerly known as the JCOPE Online Filing System. My testimony today is limited to Reinvent Albany's evaluation of the JCOPE database; the rules adopted as a result of this hearing today will ultimately determine the data reported into JCOPE's database. We have also provided testimony on the rules themselves, both earlier this year when they were in draft form, and in the Appendix of this testimony today.

Any transparency in law or rules is only as effective as the database which makes it available to the public. While Governor Cuomo and the legislature can genuinely take credit for being leaders nationwide in making lobbying activity more transparent in law, JCOPE's database disclosing the activity has lagged behind the statutory reforms. Our report examining 52,703 client semi-annual lobbying filings from 2007 to January 2017 concluded lobbying activity is not nearly as transparent as it should be. JCOPE's Online Filing System is antiquated and outdated. Clients often report similar lobbying activity differently from each other, making comparisons across clients very challenging if not impossible. Certain filings raised questions about whether activity was accurately and completely reported.

Reinvent Albany believes JCOPE's online filing system should be modernized by using web forms and drop down menus, as New York City's E-Lobbyist system does, to guide filers in entering specific lobbying activity. This will standardize lobbying activity data, and enable analyses across lobbyists, subjects, targets and bills. It will also make individual client filings more revealing.

Reinvent Albany identified the following lobbying activity reporting and disclosure issues in its report:

1. Organizations that use lobbyists (aka clients) use a wide variety of words, phrases and syntax for similar lobbying activity. This makes it very difficult for the public to analyze lobbying activity.

- For example, lobbying clients reported advocating on the “budget” in 336 filings, the most commonly reported lobbying subject. However, the 3rd, 4th, 22nd, 24th, 28th, 29th and 30th most frequently reported subjects lobbied also appear to be related to the budget, (“Funding” (234 times); “NYC Budget” (173 times); “Funding Issues” (65 times); “Budget Issues” (59 times); “New York City Budget” (55 times); “Budget Funding” (52 times); and “Budget, Regulatory and Legislative Issues Pertaining to Healthcare and Hospitals” (52 times).
- Reinvent Albany tallied an extraordinary 5,132 different descriptions of lobbying activity that use the word “budget”, and 3,115 different descriptions of lobbying activity using the word “funding.”
- It is therefore extremely laborious and nearly impossible to even determine all the clients which have lobbied on the state’s budget.

2. Reported lobbying targets are often vague and too broad to be informative.

- Because state law only requires the “name of the person, organization or legislative body” to be reported as a lobbying target, reported lobbying targets are often unrevealing. Below are the top 10 reported lobbying targets.

Rank	Persons or Organizations Lobbied as Reported by Clients	Number of Semi-Annual Filings
1	NULL / Nothing recorded	6,200
2	ADMINISTRATIVE, EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT	1,226
3	NEW YORK STATE EXECUTIVE AND LEGISLATIVE BRANCHES	727
4	NYC COUNCIL	405

5	SENATE, ASSEMBLY, EXECUTIVE BRANCH	287
6	NYS ASSEMBLY, SENATE, EXECUTIVE CHAMBER, EXECUTIVE BRANCH	283
7	ADMINISTRATIVE, EXECUTIVE & LEGISLATIVE BRANCHES OF GOVERNMENT	275
8	ASSEMBLY, SENATE, EXECUTIVE	274
9	SENATE, ASSEMBLY	262
10	SENATE, ASSEMBLY, EXECUTIVE CHAMBER	241

3. Crucial information is missing from clients’ filings, and the reasons for those omissions are unclear.

- Of 52,703 filings, 5,998 filings (11.38%) did not include the subject lobbied on. 6,200 filings (11.76%) did not contain the persons or organizations lobbied. 25,255 filings (47.92%) did not include the bill or other numbers associated with lobbying activity.
- Unreported lobbying subjects may simply reflect there was no lobbying activity during the period (lobbyists often monitor government matters for clients) or it may indicate underreporting by clients. Unreported bill numbers may indicate the client did not lobby on legislation, rules, executive orders, or procurement with associated numbers or it may reflect underreporting.

4. The reported lobbying activity by each client is typically mashed together in JCOPE’s online filing system, making it difficult to determine which persons were lobbied on a particular subject or bills or do broader analyses of many clients’ lobbying activity.

5. Some filers report lobbying activity on autopilot, reporting the same large set of bill numbers lobbied year after year even while the numbers reset with every new legislature.

Reinvent Albany believes many of the irregular reporting issues highlighted in our report can be addressed through modernizing The Joint Commission on Public Ethics' (JCOPE) online filing system. New York City's E-lobbyist application requires filers to select specific agencies and individual lawmakers lobbied from drop down menus, while staff members and government employees are entered manually. JCOPE's database should be structured similarly.

The city's system also requires filers to enter data so for each specific governmental determination lobbied on, there is a clear connection between the persons lobbied, the subject matter, and any bill or other numbers affiliated with the subject. JCOPE's online filing system should be similarly structured, and also enable clients to select designations which reflect "no activity" or information requests that are "not applicable."

We also strongly recommend JCOPE upgrade its search function to allow the public to search by bill number, subject, lobbying targets and other variables so more revealing analyses can easily be done.

We also believe JCOPE should integrate reportable business relationships and sources of income disclosure in the electronic disclosure reporting system for filing Statements of Registration and Bi-Monthly reports. This information should also be included as part of the downloadable, machine readable spreadsheet on JCOPE's website of lobbyists' and clients' Bi-Monthly and Semi-Annual filings.

In conclusion, New York's lobbying disclosure requirements are strong, but the way data is gathered, organized and presented online vastly reduces their practical usefulness. Modernizing the JCOPE online filing system can address this shortcoming and increase transparency.

Appendix A: Reinvent Albany Recommendations Regarding Proposed Rulemaking New York Codes, Rules and Regulations, Title 19, Parts 938 and 942

We commend JCOPE for putting forth these proposed rules for comment by stakeholders, and for seeking to consolidate previously issued rules and opinions that span a variety of subjects and issues that have arisen over the years. We further support JCOPE's efforts to increase disclosure by addressing in its draft rules disclosure of grassroots lobbying, direct lobbying through social media, lobbying via coalitions, designated lobbyists, and affiliated relationships.

Below are comments on the rules and recommendations to further strengthen the proposed rules:

Part 943

- 1. We support JCOPE's revised definition of "Designated Lobbyists" as those who lobby on behalf of clients as an internal board member, officer or director.** We note this requirement only applies to organizations that are already exceeding \$5,000 worth of lobbying in a given year and exempts ad hoc volunteers who participate in Lobby Days or call elected officials' office from time to time as a member of an organization.

- 2. We support JCOPE's revised definition of "Beneficial Client" to "the specific individual or organization on whose behalf and at whose request or behest Lobbying Activity is conducted"** from "an individual or organization on whose behalf Lobbying Activity is conducted" as it creates a clearer demarcation. This is particularly important given Beneficial Clients would also have to disclose their Sources of Funding, as referenced in Part 938 of the Rules. Reinvent Albany recommended "Beneficial Client" be more clearly defined in our commentary on the draft rules.

- 3. We support the rule requiring reporting of lobbying activity of coalitions of unaffiliated groups.** In our commentary on the draft regulations, we criticized JCOPE's suggested definition "coalition" for being too broad and vague. We suggested concrete criteria that would clearly identify unaffiliated groups as coalitions. By defining coalitions as groups of otherwise unaffiliated entities that pool funds for lobbying activity, JCOPE in this version of the rules has established a more specific and measurable criterion and wisely

given coalition members the option to report coalition lobbying contributions in their own filings or to have the coalition entity report expenditures and a listing of its coalition members in its lobbying filing.

- 4. We support revealing specific individuals lobbied in lobbyist and client Bi-Monthly reports** to the extent JCOPE has the authority to do this in the rules.¹

We further recommend JCOPE:

- 5. clarify how the definition of “Affiliated” would apply to unions and local affiliates, associations and their members, corporations and their affiliated limited liability companies (LLCs), and public benefit corporations and their affiliated not-for-profits.**² JCOPE changed the definition in its draft rules from “two or more entities that are related by common shareholders, officers, or other means of ownership or control. Affiliations may be formed among parent, subsidiary, and sibling corporations” to “two or more corporations, partnerships, organizations, or other entities that have any of the following relationships: parent/subsidiary; subsidiaries with the same parent entity; or national or regional organization.” We believe the revised definition still lacks clarity. For example, if an employed lobbyist lobbies for a real estate company, are they also considered lobbyists for any of its LLCs? If a retained lobbyist is hired by a client, and the client is a statewide union, is the retained lobbyist now also representing all of the union’s local affiliates?
- 6. require lobbyists and clients to disclose affiliated political committees.**
- 7. require lobbyists disclose whether they provide political consulting services in the “Additional services” section of the lobbying registration form to the extent JCOPE has the authority to add this through rules.**
- 8. include as Direct Lobbying through Social Media lobbying activity pages created on Facebook LinkedIn or other social media applications that are exclusively used for issue-based campaigns which a Public Official is permanently connected to as a friend,**

¹ 943.11(f)(7)(i) and and 942.12(f)(9)(i)

² 943.3(b)

follower or other status even if communications do not specifically tag the Public Official.³

- 9. increase late filing fees from those specified in the rules. Late filing fees should be significantly larger than \$1,000 if a filer doesn't report for more than 6 months and should be proportionate to the unreported amount spent on lobbying activity.⁴** The same holds true for a reportable business relationship which is subject to the same fee regime.
- 10. include presence on a phone call with a Public Official as lobbying activity even when the Public Official is unaware of the lobbyist's presence on the call.** Exempting from lobbying a phone call when the Public Official is not aware a lobbyist is on the line creates too much ambiguity. Many conference call companies provide participant information after a call has occurred. If a phone number is provided but not the name for a Lobbyist on such a call log, would that be considered awareness if the Public Official receives the call log?⁵

Part 938

- 14. We strongly support the Sources of Income Disclosure which requires the name of the real source of funds to a Client be disclosed (provided the Client meets the \$15,000 annual expenditure and 3 percent of total expenditures thresholds).** The amendment states, "a disclosure that identifies an intermediary or any other entity that obscures the name of the person, corporation, partnership, organization, or entity actually making the Contribution, does not qualify as the Source." This is very important as we have seen in the past Sources of Income Disclosed were intentionally veiled by disclosing LLCs rather than the actual donors to the client lobbyist.⁶

We further recommend JCOPE:

³ 943.6(c)

⁴ 943.10(g) and 943.12(b)

⁵ 943.6(a)(i)(1)(E)

⁶ Veilkind, Jimmy. "Drumroll: Common Sense Principles lists its donor," *Albany Times Union, Capitol Confidential Blog*. February 6, 2013. See: <http://blog.timesunion.com/capitol/archives/177691/drumroll-common-sense-principles-lists-ts-donor/>

15. raise the standard for exempting Sources of Income from disclosure to a “significant potential” for harm, threats, harassment or reprisals.

⁷ The draft rules reduce the threshold for exemption from reporting individual donors to “may cause harm, threats, harassment or reprisals” from “the Client Filer shows by clear and convincing evidence that disclosure of the Source may cause a substantial likelihood of harm, threats, harassment or reprisals.”

Exemptions for a particular source of funding should not diminish the standard for exemption to the degree it does in the draft rules.

⁷ 938.4(a)