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October 2, 2019

Luke Dean Niforatos  
Chief of Staff and Senior Policy Advisor  
Smart Approaches to Marijuana  
400 N. Columbus Street, Suite 202  
Alexandria, VA 22314

Dear Mr. Niforatos:

On August 2, 2019, SAM Action submitted an application to the Joint Commission on Public Ethics (“Commission”) for an exemption from the Source of Funding Disclosure requirements contained in Legislative Law Article 1-A §§1-h(c)(4), 1-j(c)(4) and 19 NYCRR Part 938. The statute provides that the determination to grant an exemption is within the discretion of the Commission. The Commission considered SAM Action’s application at its September 10, 2019 public meeting. The Commissioners individually reviewed the application and supporting evidence prior to the meeting and thereafter discussed and evaluated the merits of the application under the relevant legal standard during the public session of the meeting, creating a full record of the basis for its decision. The Commission has denied SAM Action’s application for exemption. Pursuant to Part 938.5(d), the Commission hereby sets forth the reasons and basis for the denial.

By way of background, the source of funding disclosure provisions increase transparency by providing the public with information about the individuals or entities that attempt to influence government decision-making by funding lobbying activities. Specifically, the source of funding disclosure provisions require lobbyists who lobby on their own behalf and clients of lobbyists, who devote substantial resources to lobbying activity in New York State, to make publicly available each source of funding exceeding \$2,500 for such lobbying.<sup>1</sup>

Under both the statute and the related regulations, entities are permitted to apply for exemptions from disclosure. It should be noted that the Commission sought to effectuate the legislative intent seeking broad disclosure in promulgating its regulations governing the exemption process. (19 NYCRR 938.1). SAM Action applied for an exemption pursuant to Part 938.4(b), which applies to organizations that have exempt status under Section 501(c)(4) of the Internal Revenue Code of the United States. To qualify for an exemption, SAM Action is required to show that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its source(s) of

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<sup>1</sup> The source of funding disclosure requirements were first established by the Public Integrity Reform Act of 2011 (“PIRA”) (Chapter 399, Laws of 2011), and most recently amended by Part D of Chapter 286 of the Laws of 2016.

funding will cause harm, threats, harassment or reprisals to the source or individuals or property affiliated with the source. 19 NYCRR Part 938.4; *see* also Legislative Law §§1-h(c)(4), 1-j(c)(4).

Part 938.4 sets out a list of five nonexclusive factors the Commission must consider when determining whether an applicant has made a showing of substantial likelihood of harm, threats, harassment or reprisals to the applicant's source(s) of funding if disclosure were required. It is the Commission's view that unless an applicant makes a persuasive showing under multiple factors, it is unlikely to prevail.

The burden is on the applicant to establish a "substantial likelihood of harm." This standard is in keeping with the purpose, "...to better inform the public about efforts to influence governmental decision making through increased transparency." (19 NYCRR Part 938.1(4).) Thus, to be eligible for the exemption, SAM Action's application must contain evidence, by way of specific instances/examples, that disclosure of source(s) of funding would create a substantial likelihood of harm, threats, harassment or reprisals to the source(s) of funding or individuals or property affiliated with such source.

In support of its application, SAM Action relies on its claim that the group is subject of harassment in opinion pieces, podcasts and social media and that the staff receive harassing phone calls or communications at the SAM Action offices. Specifically, the application included an email that describes the individuals that criminalized marijuana as "republican Nazi thugs", and the subsequent criminalization was to "justify the unconstitutional arrest, incarceration and anal rape in prison of African Americans and Hispanics." The email also stated that the author(s) would legalize marijuana at the federal level and dismantle the "racism, bigotry and oppression of alcoholic republican Nazi thugs in new jersey and across America." The application states that this email is indicative of what donors will expect if their identities are made public.

The Commission considered the overall claim of harassment through various journalistic media against SAM Action in support of its application as well as the specific "harm, threats, harassment or reprisal" asserted in the email message included in the application. The Commission additionally read and weighed the five nonexclusive factors set out in 19 NYCRR Part 938.4(c) regarding the standard for review of an exemption application. For the reasons set forth below, the Commission concludes that the evidence does not meet the burden required for the Commission to award an exemption.

In the Commission's view, the information provided does not amount to specific and direct threats, nor has SAM Action presented any evidence of incidents of actual harm to anyone associated with SAM Action or property affiliated with such sources. First, the Commission considered the claim that SAM Action suffered harassment in various forums – because this claim was vague, and unsupported by evidence, the Commission did not find this sufficient to support the application. The Commission also considered the fact that the email evidence provided did not actually demonstrate a threat (other than the notion that the author(s) of the email would vote to "change" federal law, which seems to constitute constitutionally-protected political speech), nor was it specific to SAM Action.

SAM Action's application also fails to establish a nexus between any information it offered in support of its application and the likelihood that disclosure of its supporters, donors, or sources of funding will lead to harm, threats, harassment, or reprisals directed at them or property affiliated with such sources.

October 2, 2019

For the aforementioned reasons, the Commission has concluded that SAM Action failed to make a persuasive showing under any of the factors provided in Part 938.4 and thus has failed to meet the burden of establishing a “substantial likelihood of harm.” Therefore, the Commission denies SAM Action’s application for the exemption.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Rozen". The signature is stylized and cursive, with a large, sweeping flourish at the end.

Michael K. Rozen (on behalf of himself and the following Commissioners)

Robert Cohen  
Colleen C. DiPirro  
William P. Fisher  
Julie A. Garcia  
Marvin E. Jacob  
David J. McNamara  
George H. Weissman  
James A. Yates