



VIA EMAIL [[carol.quinn@jcope.ny.gov](mailto:carol.quinn@jcope.ny.gov)]

June 5, 2020

Carol Quinn, Deputy Director of Lobbying Guidance  
Joint Commission on Public Ethics  
540 Broadway  
Albany, New York 12207

**Re: Proposed Draft Revisions to Comprehensive Lobbying Regulations**

Dear Ms. Quinn:

The New York Public Interest Research Group Fund (NYPIRG) submits these comments to the Joint Commission on Public Ethics (“JCOPE”) with respect to proposed draft revisions to the regulations found in Title 19 NYCRR Part 943, Lobbying.

We appreciate this early opportunity to comment—before a proposal is advance in the formal regulatory process and look forward to an ongoing discussion on these important topics.

We confine our comments on the proposed draft revisions to 943.9 pertaining to reporting of coalition activities.

At the outset we note that we found the proposed draft revisions to lack clarity and be confusing. As a result we realize it is possible we have misread the proposal and misunderstand the intended effect. If so, at a minimum we urge that the language be clarified and explanatory materials be provided along with an opportunity to respond before moving forward in a formal regulatory proceeding. However, if we understand the proposed draft revisions correctly, while the changes may appear minor, they could have a significant and deleterious effect on the formation and functioning of coalitions by making associating burdensome and likely deter the creation of coalitions.

We set out below some comments and a number of questions with respect to the proposed draft revisions. If indeed our reading reflects the intended effect of the proposal, we urge JCOPE to withdraw the burdensome aspects of the proposed revisions as outlined below.

For more than 20 years, first established in an advisory opinion and largely carried through to the present, the various lobbying oversight agencies have respected the ability of groups to organize informally as coalitions to disseminate information and help amplify their message to legislative bodies, the executive and various agencies. Coalitions form for many reasons, including to amplify their voices through lobbying. They often come together informally, in some

cases spontaneously, and many have only the briefest of existence. Typically the groups that come together as a coalition are loosely organized as a “paper coalition,” with no or little formal structure or rules, no financial or resource commitment requirements.

Moreover, most coalitions typically bear none of the hallmarks of formal alliances. There typically is no agency, no durable right, authority or obligation to bind other members of the coalition and speak on their behalf. As a result our concerns are with regard to how the proposed draft revisions will impact the formation of coalitions to inform the public debate on the policy issues under consideration.

Proposed section 943.9(h)(3)(i) would provide the following revisions:

(a) *Coalition* means an unincorporated<sup>1</sup> group of otherwise-unaffiliated entities or members who pool funds or resources for the primary purpose of engaging in Lobbying Activities on behalf of the members of the Coalition.

(1) *Coalition* shall not include any organization qualified as exempt under sections 501(c)(3), (c)(5) or (c)(6) of the Internal Revenue Code.

(2) Member of a Coalition includes any persons or entities that make Contributions, as defined in subparagraph (c) of this section, to the Coalition, including fiscal sponsors.

(3) A member’s Contribution to a Coalition is considered a Lobbying expense which may be used to determine whether the members is considered a Beneficial Client.

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(c) Contribution to a Coalition means the provision of funds or resources to the Coalition, including, but not limited to, the donation of services, and the incurrence of expenses on behalf of the Coalition. [Proposed language underscored.]

The proposed draft regulations would also make certain coalition members a “beneficial client” of the coalition even in instances where the coalition did not register and file its own report and for some members contribute to meeting the threshold to trigger “source of funding” obligations. 943.9(h)(3)(v).

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<sup>1</sup> It is unclear to us as to why an “incorporated” coalition should exempt under the regulation as compared to one that has some other legal status.

Comment: The Proposed Draft Revision to the Coalition Disclosure Requirements are Confusing.

At a minimum we find the proposed changes confusing. We urge that there be clear definitions for key terms and explanatory materials to help affected parties understand the purpose and intent of the revisions *before a formal proposal is put out for comment*.

The proposed draft revisions would make several changes that appear to require all “paper” coalitions to track and disclose information not previously required, including when they “pool funds or resources.” 943.9(h)(3)(i)(a). [Underscore of proposed language.] Under current regulation, only pooled monies trigger coalition reporting, not “resources.”

The term “resources” is not defined on its own, but appears to be defined in the definition of “contribution” as “including, but not limited to, the donation of services and the incurrence of expenses on behalf of the Coalition.” 943(h)(3)(i)(c).

Our first question is what does it mean to “pool” resources in a coalition that collaborates but does not formally create a common “pool” of funds or other resources? The definition of “contribution” suggests that each group’s activities on a coalition issue would be considered a “pool resource” and therefore attributable to the coalition and subject to reporting. Coalitions often adopt an “each according to their own means” approach, meaning there is no “pooling” of resources. Rather each group devotes the resources to the group effort that it would otherwise devote to its advocacy were it acting alone, but with some level of coordination among the groups. Coalitions are often *ad hoc* and may come together as “one offs” for a single aspect of work on an issue.

Further, groups may come together to collaborate for many reasons, with lobbying being a tangential aspect of the coalition activities. In such case when would a pool of resources meet the threshold “for the primary purpose of Lobbying Activities on behalf of the members of the Coalition” under the proposed draft regulation? [Emphasis supplied.] When is the “primary purpose” threshold met? This becomes more important when sharing of “resources” would trigger coalition reporting obligations.

We also find the definition of “Contribution” in proposed 943.9(h)(3)(i)(c) to be confusing with respect to what the “donation of services and the incurrence of expenses on behalf of the Coalition” means when groups are expending resources for their own advocacy, not to further a “client” entity. How would a coalition member differentiate between the resources expended “on behalf of the Coalition” as opposed to what it is doing in furtherance of its own efforts?

Question 1: Is JCOPE Authorized to Regulate Coalition Disclosures?

As a threshold matter, we question whether the Legislature has authorized JCOPE to regulate in this area as it proposes to do. Executive Law section 94 establishes JCOPE and gives it various powers to implement and administer the lobby and ethics disclosure, oversight, training and enforcement activities.

The limited grants of regulatory authority raise questions about whether the Legislature has provided authority to JCOPE to make policy decisions with respect to the functioning and disclosures of coalitions. This is particularly the case in light of the fact that the proposed changes would be a departure from the longstanding policy of the state's lobbying oversight agencies, including policies in place when Executive Law section 94 was enacted and when it has been amended by the Legislature.

Question 2: Are the Proposed Draft Revisions Workable?

As drafted, we question whether requiring all paper coalitions that informally come together to in part engage in lobbying activities through expenditure of their own resources to track and disclose at this level of detail is workable. The amount of tracking of information and the level of reporting will be burdensome to groups. It will be difficult if not impossible to separate out organization from coalition activities. As pointed out, groups typically expend the same amount of resources whether or not they engage in coalition activities. These new requirements would appear to be a great burden to nonprofit groups and as written may be unworkable for many.

Question 3: Would the Proposed Coalition Reporting Requirements Reduce the Amount of Coalition Activity?

As we read the requirements of the proposed revised regulations, including disclosure of "pool[ed] resources," disclosure of purported "beneficial client" relationships and prospects of triggering "source of funding" requirements for some groups working in coalition, we are concerned that these requirements will discourage coalitions from forming and groups from participating in coalitions. If that foreseeable result comes to pass, it will diminish policy debates and deprive the public and lawmakers of valuable information, impacting important free speech and associational rights. We urge JCOPE to carefully consider whether and how proposed draft regulations will affect coalition activity.

Conclusion

At a minimum we believe the proposed draft revisions are confusing and need to be significantly clarified, including defining key terms and providing explanatory materials to make clear the intent and effect of the proposed regulations. We would urge that before JCOPE proceeds to a formal regulatory process, it provide a public forum to explain the proposed changes and respond to questions. If the proposed changes are as we interpret them, we believe they will be unworkable for many if not most groups that work in coalition from time to time and will discourage coalition formation, thereby diminishing the quality of public debate in the state.

Thank you for this opportunity to comment.

Sincerely,

Russ Haven, Esq.  
General Counsel