



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the Joint Commission on Public Ethics (JCOPE) on
Disclosure of Business Relationships and Sources of Income of Lobbyists and Clients
June 7, 2012

Good morning Commissioners. My name is Alex Camarda. I am the Director of Public Policy & Advocacy at Citizens Union. Citizens Union is a nonpartisan good government group based in New York City that seeks to advance political reform.

Citizens Union provided extensive commentary, which is attached to this testimony, in May for the promulgation of rules on disclosure of business relationships and sources of income of lobbyists and clients.

Given the five minute time limit for testimony today, I would like to highlight four of the twelve recommendations Citizens Union made pertaining to sources of funding by certain lobbyists and clients.

The overarching principle guiding our recommendations is that JCOPE should promulgate rules to promote transparency of those who fund lobbying activity particularly because the Public Integrity Reform Act (the Act) provides numerous exceptions to reporting sources of income for lobbying activity. A record \$220 million was spent on lobbying activity in 2011, more than three times the \$66 million spent in 2000 and more than seven times the \$31 million spent in 1991.¹ The press coverage this past week on the relationship between the Governor's Office and the Committee to Save New York highlights the need to robustly reveal sources of income of lobbying activity. Strong democracy and effective government require that actions by registered lobbyists that seek to influence our public officials be reported and made transparent so that the public can know and evaluate the impact that methods of advocacy and persuasion have on decision-making regarding public policy.

1. Disclosure of Names of Sources of Income

JCOPE should fully disclose the identity of sources of income to lobbyists and clients. JCOPE should, to the extent the law allows, seek information for donors beyond names like a source's employer and address (as reported to the Department of State) to distinguish sources of income from each other and reveal trends by certain employers or industries in funding lobbying activities. The disclosure of only a name will mean little if it is a common name such as "John Smith." It may

¹ Karlin, Rick. "Lobbying is recession proof, says JCOPE's Biben," *Capitol Confidential*. March 27, 2012. Available at: <http://blog.timesunion.com/capitol/archives/122539/lobbying-is-recession-proof-says-jcopes-biben/>

even be misleading or confusing if there are multiple identically named donors for the same lobbying entity or if multiple lobbying entities appear to have the same donor when in fact there are numerous donors with the same name. **JCOPE should also prescribe how names of sources of income should be disclosed.** Our experience in using databases related to campaign finance disclosure is that the inconsistent manner in which names are provided frustrates transparency. **JCOPE should require that official full names be reported rather than abbreviations or nicknames.**

2. Defining Sources of Income

JCOPE should also clarify what is meant in the Act by “sources of income” to ensure single sources of income are treated as such. The state’s porous campaign finance laws allow for entities to circumvent contribution limits by spinning off limited liability corporations (LLCs) and partnerships (LLPs). Affiliated unions engage in similar activity. Similar practices with regard to contributions to lobbying entities could be done to evade disclosure under the Act. For example, related business interests that are in reality a single source could donate \$4,999 through numerous LLCs to a particular lobbying entity and avoid disclosure. JCOPE should close this potential loophole.

3. Limiting Exemptions to Disclosure Due to Harm, Threats, Harassment and Reprisals

In promulgating rules and guidelines, JCOPE will also have to determine the scope of exemptions to disclosure for 501(c)(4) organizations whose primary activities are in an area of public concern that creates a substantial likelihood that disclosure of sources of income would result in harm, threats, harassment, or reprisals to a source of funding or to individuals or property. The law already provides a blanket exemption to one area of concern: civil rights and civil liberties. **Citizens Union recommends JCOPE narrowly interpret this provision and be exceptionally judicious in providing any further blanket exemptions for areas of public concern beyond civil rights and civil liberties.**

Citizens Union believes for the purposes of this provision JCOPE should define “harm”, “threats”, “harassment” or “reprisals” in a manner consistent with definitions in penal law so that frivolous claims do not serve as the basis for a wholesale exemption from disclosure of an entire issue area. **Likewise, “substantial likelihood” should be interpreted as a high threshold met only if there are a significant number of recently documented cases of harm, threats, harassment or reprisals to actual lobbyists or advocates or their funders working in the issue area.**

Blanket exemptions from donor disclosure should not be provided to entire issue areas simply because there is a perceived danger, but rather only when there is data to support such a perception. The location and date of those documented cases should also be taken into account. Any blanket exemptions that are granted should also be temporary in nature and subject to review and renewal because the danger of supporting particular positions on issues changes based upon the time and place in which advocacy is done.

Citizens Union supports a very narrow approach to exempting whole issue areas because the Act allows for lobbyists and clients to seek exemptions for groups of or individual donors, and appeal unfavorable decisions by the Commission. There is also nothing that precludes organizations from notifying their donors in advance that such disclosure will occur, and enabling donors to 501(c)(4) organizations to earmark funds for activities that do not fall under the definition of lobbying. Advance notice should provide adequate protection such that blanket exemptions for entire issue areas are used sparingly.

4. Prospective Implementation

The effective date in the Public Integrity Act for the implementation of disclosure of sources of income of lobbyists and clients is June 1st of this year, six days ago. However, the rules are obviously not completed yet and may not be for some time. It is important that this needed level of disclosure be implemented strongly, fairly, and equitably. Given the delay in adopting of these rules, **Citizens Union believes disclosure of lobbyists' and clients' funding sources should be prospective and not retroactive.** It would be unfair to lobbyists, clients and their donors to begin disclosure before these entities and individuals know the rules of the road. It may also result in unwanted legal challenges to the rules.

It is also troublesome that the donors must be reported one year prior to the date of the last filing, meaning that if the start date for disclosure is the December filing rather than the July filing, donors would need to be disclosed for all of 2012 according to a literal interpretation of the law. This interpretation would again include a period before the rules would be final and promulgated.

This should not be the case. To create rules that would require organizations who lobby to return to their larger donors and request permission to spend their money on lobbying that has already occurred would not be fair to the organization or the donors. **The law should be interpreted so that only donations provided after the rules are promulgated are disclosed.** This way donors would have advance notice regarding the manner in which their names will be made public, and should they not want to be known, could direct their money to other elements of a 501(c)(4)'s organization's work such as public education activities.

Thanks you for the opportunity to testify. I welcome any questions you may have on our testimony or more extensive commentary submitted in May.