

**Testimony by**  
**Prudence Katze, Research and Policy Manager of Common Cause/New York**

**Before the**  
**JCOPE Review Commission Hearing**

**Regarding**  
**Joint Commission on Public Ethics and the Legislative Ethics Commission**  
**October 14, 2015**

---

Good morning members of the Review Commission. Thank you for the opportunity to speak today. My name is Prudence Katze, and I am the Research and Policy Manager of Common Cause/New York. Common Cause/NY is a non-partisan, non-profit citizens' that fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve everyone's interest, and not simply the special interests. Common Cause has consistently spoken out on the need for greater government transparency, and has long advocated for ethics reform in the State of New York.

Evan Davis and Dan Karson of the New York City Bar Association outlined our concerns in regard to JCOPE's lack of independence and those concerns are described in more detail in the 2014 "Hope for JCOPE" that was written by Common Cause / NY and the New York City Bar Association.

We acknowledge that JCOPE's lack of resources and staffing has made it difficult to modify its data collection and reporting to keep up with 21<sup>st</sup> century standards. However, we feel that JCOPE has not fully utilized its rule-making authority to insure that the information which it gathers and makes available to the public is as useful and meaningful as it could be. We hope that the JCOPE Review Commission will take this opportunity to urge a more proactive rule-making posture by JCOPE to take full advantage of its ability to provide guidance and require standardized reporting. Such proactive rule-making will not only facilitate easier reporting by lobbying entities but make the data provided easier for the public to understand. In addition to this testimony, which will detail my experiences in both helping prepare Common Cause/NY's lobbying disclosures but also our extensive experience in utilizing the online lobbying data provided by JCOPE, I am also providing copies of Common Cause NY's 2013 report "It's All Politics: New York as a Case Study in the Evolution and Campaign Finance"

We are going to go into more detail regarding:

**Grassroots lobbying**

**Problem:** Political spending is now often done through a myriad of different streams, yet reporting requirements are uneven and confusing.

**Recommendation:** Common Cause/NY was pleased to see JCOPE begin to address this issue with proposed regulations dealing with grassroots lobbying earlier this year. We commented about changes

which we believe should be made in the proposed regulation within the comment time period. We believe that JCOPE should expand its regulatory guidance in this area to keep up with ever evolving lobbying activities. In particular, we believe that specific guidance should be given as to how grassroots lobbying expenditures, which in some cases total millions of dollars, should be reported in a standardized format that insures that JCOPE and the public are receiving information in its clearest and most useful form about this area where lobbying expenditures are growing exponentially. We refer the review commission to our "It's All Politics" report for a more detailed discussion of our analysis of changes in lobbying activities and recommendations for regulatory and statutory responses to this changing landscape.

## **Website**

**Problem:** Website is unwieldy and confusing

**Recommendation:** Utilize existing resources, such as the AG's NYOpenGovernment.com, to create a streamlined tool for disclosure. The website on which lobbying disclosures are made available to the public should present the information in a form that: a) is fully searchable, b) downloadable in formats used by common spreadsheet and data programs, c) permits cross-reference, and d) is user-friendly.

JCOPE's current website is clunky – to say the least, and it is difficult to utilize and fully evaluate the information that is there. We strongly recommend coordination between the different agencies which are reporting various types of political spending, so that ultimately a member of the public can get a clear total picture of how a particular entity or individual is using political money, including lobbying expenditures, to try and influence public policy. As our report makes clear, it is Common Cause/NY's position that the current reality takes advantage of historical legal and regulatory differentiations between campaign and lobbying expenditures to obscure the full scope of political spending to gain access and influence. While a full solution would take legislative action, there is much that JCOPE could do. To that end, we would like to see JCOPE working with the AG, the Comptroller and BoE to coordinate how individuals and entities are identified in the various disclosures and websites these entities maintain to facilitate cross-agency comparisons and aggregation.

JCOPE said they would have a website redesign in 2015 – what is the status on that? What process for involving the end users of the website – reporting entities and those who analyze and use the data presented? Processes designed without the input of end users tend to miss the mark and require costly changes after the fact. For instance, the current website does not aggregate the semi-monthly disclosure statements of entities which are both registered lobbyists and clients, requiring each entity so designated to re-key in all of the data previously entered in each bimonthly report. This introduces the regular possibility of human error causing an unnecessary and inadvertent discrepancy between the bimonthly reports and the bi-annual. Technology has a simple solution for such a common problem, yet the existing website does not provide it.

## **Source of Funding Disclosure**

**Problem:** JCOPE's current Funder Disclosure Mandate is unclear

**Recommendation:** Expand the reporting requirements to 501(c)3 organizations, eliminate the "pass-through" loophole by requiring all major entities involved in a multi-layered lobbying structure to report their spending.

Unless steps are taken to require proper disclosures and transparency of third-party coalition campaigns, voters will find themselves ever more confused, misled, and excluded from meaningful political participation. New York took an initial important step to mandate disclosure of the funders behind these veiled lobbying actors when a 2012 Lobbying Act amendment mandated 501(c)4 organizations who lobby on behalf of themselves and who spend more than \$50,000 on lobbying activity in New York State make publically available each source of funding that exceeds \$5,000 for such lobbying.

#### Families for Excellent Schools: An Example of Potential Disclosures Slipping Through the Cracks

But the requirements for disclosure is still confusing and its enforcement mechanisms are also vague: this is a statutory and regulatory problem. For example, 501(c)3 organizations such as Families for Excellent Schools (FES) are spending exorbitant amounts of money on lobbying. In 2014, FES spent \$9.6 million on lobbying, yet has not disclosed any of its donors. In FES's New York State Registration Statement for Charitable Organizations, the organization's "purpose" was described as: "Families for Excellent Schools harnesses the power of families to advance policy and political changes that create and sustain excellent schools."

Any organization that utilizes a well-funded war chest to sway the minds of the public at large needs to disclose these funders. We cannot pretend that this is simply a problem of 501(c)4

#### The Pass-Through Problem

Additionally, Disclosures which simply reveal what is known as a "Russian doll problem" – where the immediate source of the funding is an intermediary entity, or pass-through entity such as a committee or LLC, which is not the original source of the funds – should not be considered to satisfy the requirements of the law. The public has an interest in the disclosure of all major entities that may be involved in a layered organizational structure. Common Cause/NY urges the Commission to draft rules which will provide information regarding the original source of funding, which would treat each of the individual members of a coalition or association (and not the coalition or association) as the donating entity, so long as that individual member provided more than \$5,000 to the coalition or association. This can be done by requiring the lobbying entity to obtain the required information from its funders above \$5,000. Just as in the campaign contribution area, the reporting organization should be required to reject any contributions above \$5,000 designated for lobbying in New York State or which will be used for lobbying from entities or associations which do not provide the required information.

JCOPE has the power to shift the pattern of corruption in Albany by becoming a proactive force – but, only if everyone understands the rules and the consequences. Lobbying disclosures should provide relevant and meaningful information that is readily available to the public in order to track lobbyists' influence in our state policy decision making and to hold their elected officials accountable when they have ethically breached their duties as a public officer. Instead of having the appearance of obfuscation and shielding, JCOPE can become part of a solution of facilitating a government that works for the people. Thank you.