

December 5, 2016

Martin Levine,  
Director of Lobbying  
Joint Commission on Public Ethics  
540 Broadway  
Albany NY  
12207

Dear Mr. Levine,

I write on behalf of the American Council Of Engineering Companies of New York, a trade association made up of over 280 engineering firms, representing all disciplines, across New York State. We appreciate the opportunity to offer some comments regarding the Staff Draft of the comprehensive lobbying regulations.

1. Treatment of volunteers as lobbyists / designated lobbyist

The Staff Draft includes language that creates a category of lobbyist, known as a “designated lobbyist” which describes someone, such as a board member or volunteer, who lobbies on behalf of a client, but is not an employee or retained lobbyist. We have concerns that this regulatory structure could unnecessarily implicate occasional participants in “Capitol visit day” events as lobbyists. This would subject these volunteers to registration and disclosure requirements disproportionate to their actual lobbying activity.

Paraphrased, existing law states that any attempt by a person to influence legislation, regulation or executive action is lobbying, regardless of compensation. However, it also requires only those people who receives over \$5000 in compensation for lobbying to register and submit to disclosure and enhanced scrutiny. There is a material difference between a legislatively-active layperson and those who are professional, active lobbyists. This distinction and the corresponding disclosure requirements serve democracy by facilitating transparency with regard to documenting the spending and specific activity of the latter group – the “professional” lobbyists - while not overly burdening civic-minded citizens who seek to communicate their wishes to their duly elected representatives.

Trade association advocacy efforts often involve meetings arranged and attended by elected officials and their staffs and our internal government affairs employees and outside counsel who are registered lobbyists. These efforts are documented in the semi-annual and bi-monthly reports our government affairs team produces, and are publicly available.

This registration, tracking and reporting activity imposes a not-insignificant demand on our time and resources; however as compensated, professional lobbyists, this is an expected burden we knowingly assume as part of the job.

While this disclosure is constitutionally permissible and not *intended* to deter participation, the reality is that any increased bureaucratic compliance requirements can serve to chill the behavior being regulated.

Another aspect of our outreach activity is periodically facilitating meetings attended by legislators and their staffs, our government affairs team, and some of our volunteer membership. The association members who attend these meetings may be board or committee members, or rank and file members. They are present in the meeting primarily to serve as technical experts on their specific practice, and on the industry as a whole. In many cases, while they are supporting a specific measure, they are there to represent a “person in the field” perspective, to explain how their industry or individual discipline operates or would be affected.

It appears that under the proposed Staff Draft, an Association member firm that happens to permit employees to accompany Association staff on an advocacy day visit could be deemed to trigger their registration. The occasional, infrequent appearances of our volunteer members who participate in “Capitol Day” visits are materially different conduct than that of the professional lobbyists they accompany and are not the sort of activity that should trigger the same reporting and disclosure requirements.

If the eventual rule plays out as described above, compliance work will serve as deterrents to the member firm employees who seek to occasionally accompany their association’s representatives to offer clarifying details about how an existing or proposed law could impact his or her firm and the industry. Occasionally, lawmakers request that our association staff bring member firm employees as experts, who, under the proposed rules would be forced to register as lobbyists. We believe effective lawmaking flows from legislators being able to craft their efforts in response to true and reliable input from the constituents their work may affect. It seems counterintuitive to advancing democratic ideals to deter the very subject matter experts from participating in the process. When balancing the limited nature of their participation with increased paperwork, ongoing legal responsibilities, many outsiders will simply decide that it is not worth it to participate, and thus remove these learned voices from the room.

We submit that, for the purposes of their participation in association advocacy meetings, it should be clarified that an association volunteer or member who would otherwise be identified as a “designated lobbyist” be explicitly excluded from the group of people who must register and file the standard JCOPE disclosure under the regulations, and it be made clear that the time spent participating in Association related advocacy activity not trigger their registration as lobbyists, nor their employer as clients.

## 2. Social media in grassroots

The Staff Draft addresses the use of social media in grassroots lobbying. In particular, part 942.7 subparts d, e, and f collectively describe activities that will be deemed Grassroots Lobbying. The draft states that a person is engaged in grassroots lobbying if they deliver and shape the substantive message.



*American Council of Engineering Companies of New York*

In many cases, the person crafting the message to be delivered via social media is indeed a registered lobbyist. Following the creation of the message, it is handed off to a communications specialist who may not be a registered lobbyist. The communications specialist may correct grammar, polish the wording to enhance impact, choose the time and vehicle of delivery and ultimately hit send. We believe the intent is not to capture that person who is in the nature of a “copywriter” and transmission via social media by one not involved in the substance of the strategy should be explicitly excluded.

### 3. Coalitions

Part 942.9 (h)(iii) of the Staff Draft would define coalitions broadly as “a group of otherwise-unaffiliated entities or members [that] agree to engage in common activities,” and would provide that “[a] coalition shall file a Lobbying report with the Commission identifying itself as a Lobbyist and/or Client...” This definition is unclear with regards to what specific sorts of affiliations and joint activities it is intended to cover. Our members sometimes lend support under an umbrella name for a particular cause, but no common expenditures are made. In such situations, they should only be responsible for their own conduct. Should the “coalition”- even as an unincorporated association - expend funds, the rules would apply to it as an entity. Otherwise, burdensome, and potentially duplicative registration, designation and reporting could comprise our members rights of association.

Thank you ,

ACEC New York.