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Senator Daniel Squadron
Ranking Member
Senate Investigations and Government Operations Committee
515 Legislative Office Building
Albany, NY 12247

June 11, 2012

Dear Senator Squadron:

The Brennan Center for Justice respectfully submits this letter in support of New York State's system of lobbyist registration and reporting, and to encourage fair and even-handed enforcement of that system. This letter, submitted in response to your call for a public forum on these issues, does not address whether the activities of any individual or organization might have violated these laws.

The Brennan Center works with New York State policymakers to help encourage political participation and the integrity of the democratic process in our state. And, along with many other public-oriented individuals and institutions, we are a registered lobbying organization. Lobbying laws typically mandate periodic disclosure of amounts expended by lobbyists in the course of their work, the identity of the individuals responsible for lobbying activities, the clients of the lobbyists, if any, the matters worked on and the targets of lobbying efforts.[1]

Laws requiring the registration of paid lobbyists and the periodic reporting of their activities have long been a part of the political process in the United States: based on the example of several states, Congress passed the first federal lobbying law, the Federal Regulation of Lobbying Act, in 1946 and within a few years such laws were to be found in nearly every state. The federal law was upheld by the Supreme Court in *United States v. Harriss*, 347 U.S. 612 (1954). The Court found that, rather than limiting lobbying, the law "merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act-to maintain the integrity of a basic governmental process."[2] Lobbying laws—much like laws requiring disclosure of political spending—have been consistently upheld by

the courts as a valid way to preserve the integrity of government through greater transparency.

New York State first instituted laws requiring the registration of lobbyists and reporting of their activities in 1906.[3] In 1977, this law was revamped with the enactment of the New York State Lobbying Act.[4] The law was further strengthened in 1999 following a scandalous disclosure of internal Philip Morris documents showing that at least 115 current and former lawmakers of the 211-member Legislature had accepted gifts from the company; Philip Morris was fined for failing to disclose all of its spending, while news reports reinforced the public's impression that the New York State government was beholden to the tobacco industry and that the laws in place did not provide adequate disclosure.[5] Most recently, the Public Ethics Reform Act of 2011 was enacted to require additional disclosure of the sources of funds for certain lobbying organizations[6] and the reporting of certain business relationships lobbyists and clients might have with public officials.[7]

Today, thousands of organizations register and report to the New York State Joint Commission on Public Ethics in compliance with these laws: during calendar year 2011, 6,099 lobbyists registered and filed bi-monthly reports, representing 3,535 clients. Clients of these lobbyists spent a record $220 million in 2011 to influence state and local decision makers in New York.[8] The reports are utilized by the media, the public and lawmakers to discern who is working to influence public policy. Without these laws, long accepted as a minimal burden on those to whom they apply, suspicion and misunderstanding would be the likely backdrop to many aspects of the legislative process.

Given the scale of lobbying today, it is critical that all organizations participating in lobbying efforts adhere to the minimal administrative procedures necessary to register and report their activity. There should be few exceptions to this important rule, followed each year by thousands of others. In New York, lobbying registration and reporting is done online, utilizing an easily accessed system overseen by a helpful and professional staff at the Joint Commission on Public Ethics. Compliance is inexpensive, simple and there are few if any complaints from users of this system – in short, no reason not to comply.

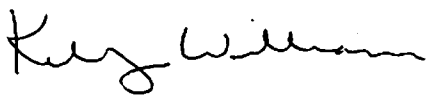
Robust disclosure is fully consistent with the First Amendment's protections of political speech and democratic self-governance and we should make every effort to ensure that we have a professional and even-handed (that is, apolitical) system of disclosure of lobbying expenditures. As the Supreme Court explained in *Citizens United*, when discussing the related question of the constitutionality of disclosing campaign spending, "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[9] Disclosure of lobbying information is similarly needed to ensure that voters can make informed decisions when evaluating the decisions of their elected government. Disclosure does not restrict lobbying; it simply

ensures that lobbying, like other forms of political speech, is subject to appropriate public scrutiny.

We recognize that there are situations in which some flexibility in enforcement is needed: it is important to ensure that organizations and individuals new to the legislative process in Albany and elsewhere but with sincere concerns are not discouraged from participating by unexpected regulations. But these few instances should be the rare exception, not the rule. Compliance with the current lobbying rules is vital to public trust in our state government, and should be appropriately enforced in a fair and apolitical manner.

Thank you for the opportunity to submit these comments,

Sincerely,



Kelly Williams
Corporate General Counsel

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[1] *See* N.Y. LEGIS. LAW § 1-l (McKinney), N.Y. LEGIS. LAW § 1-m (McKinney), and NEW YORK CITY, N.Y., ADMIN. CODE § 3-216.1.

[2] *United States v. Harriss*, 347 U.S. 612, 625 (1954).

[3] *THE REAL LOBBYISTS NOT ON STATE'S LIST; Registration Law Hasn't Brought Them Into the Open. ONLY 14 LISTED THIS YEAR Those Mostly from Unions and Reform Societies -- "Third House" Members Will Be on Hand*, N.Y. TIMES, Jan. 20, 1907, at 2.

[4] Clifford J. Levy, *Albany Approves Bill to Toughen the Law on Lobbying*, N.Y. TIMES, Dec. 29, 1999, http://www.nytimes.com/1999/12/29/nyregion/albany-approves-bill-to-toughen-the-law-on-lobbying.html.

[5] Id.

[6] *See* N.Y. LEGIS. LAW §§ 1-h (c) (4) and 1-j (c) (4) (McKinney)

[7] *See* N.Y. LEGIS. LAW §§ 1-c (w); 1-e (c) (8) and 1-j (b) (6) (McKinney)

[8] NYS JOINT COMMISSION ON PUBLIC ETHICS, 2011 Annual Report, *available at* http://www.jcope.ny.gov/pubs/annualreport2011/2011%20Annual%20Report%20Final%201.pdf.

[9] *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 916 (2010).