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NEW YORK CITY LOBBYING COMMISSION

2

PUBLIC HEARING

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22 Reade Street

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New York, New York

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May 3, 2011

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5:30 p.m.

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12 B E F O R E: Hon. Herbert Berman, Chair

13 COMMISSION MEMBERS:

14 Margaret Morton

15 Jamila Ponton Bragg

16 Lesley Horton

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FIVE STAR REPORTING, INC.
90 JOHN STREET, SUITE 411
NEW YORK, NEW YORK 10038
631.224.5054

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2 MR. BERMAN: Good evening, ladies and
3 gentlemen. Can I have everybody's attention.
4 My name is Herbert Berman and I chair the
5 Lobbying Commission of the City of New York.
6 Welcome to this evening's fourth public
7 hearing on issues facing the non-for-profit
8 organizations.

9 Regulation of non-for-profit
10 organization represents unique challenge
11 under our City's lobbying laws. We have
12 already learned that the first City lobbying
13 law exempted non-for-profits, and in part,
14 because of that exemption, that went into
15 effect until it was rewritten to preclude
16 them.

17 Not-for-profits play an important role
18 in our City. In New York, most social
19 services are provided through not-for-
20 profits. They are sometimes referred to as
21 "partners in government." This raises two
22 issues that may seem contradictory in terms
23 of how we regulate them.

24 First, given the important work that
25 they do, we want to encourage their

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2 activities and maximize their efficiency.
3 Secondly, given their role as "partners in
4 government," we must ensure that they operate
5 transparently.

6 So, once again, we are here today to
7 work towards making sure that balance is
8 properly struck. We must look at the
9 permutations -- which is a great word, I was
10 glad that I was able to read it.

11 (Laughter)

12 MR. BURMAN: We must look at the
13 permutations on lobbying by not-for-profits.
14 Some hire outside lobbying firms just by
15 for-profit businesses, others have large
16 government relation departments and spend
17 much time advocating for funding and policy
18 changes, and still others may have an
19 executive director who oversees an
20 organization, conducts fundraising, runs
21 programs and once in a while shows up at City
22 Hall to ask for money or advocate for
23 specific policy which probably is indicative
24 of most of the not-for-profits that we have.

25 We must make certain that not-for-

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2 profits conduct their business dealings with
3 government transparently and ethically, while
4 at the same time ensuring that the burdens of
5 compliance do not unduly interfere with their
6 work. We have invited the Human Services
7 Council which represents over 165 human
8 services not-for-profit organizations
9 including some large associations that in
10 turn have significant numbers of constituent
11 organizations. After hearing from them, we
12 invite any other not-for-profit to address
13 us, and then any other organization or
14 members of the public who wish to speak on
15 lobbying law issues relating to not-for-
16 profits.

17 Before we hear from the Human Services
18 Council, I would like to now introduce my
19 colleagues on the Commission and maybe to
20 have them introduce themselves. First,
21 Jamila Ponton Bragg.

22 MS. BRAGG: Good evening. I'm happy to
23 hear from the non-profits. We've been going
24 around and around about what the non-profits
25 are going to do, so I'm glad to finally get

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2 the chance to hear from them.

3 MR. BURMAN: Lesley Horton.

4 MS. HORTON: Hi. Good evening. Again,
5 just to reiterate, we look forward to hearing
6 from those of you who will be offering
7 testimony this evening. Thank you.

8 MR. BURMAN: Margaret Morton.

9 MS. MORTON: We welcome your testimony.
10 Thank you.

11 MR. BURMAN: Elisa Velazquez is absent
12 due to a family emergency. Her son became
13 ill and we certainly hope that he's well.

14 Our staff here assembled; Bill Heinzen
15 of the Mayor's Office, Joey Koch of the
16 Mayor's Office, Michael Gibbick (ph) of the
17 Mayor's Office, Jim Carris (ph) and Lamonte
18 Brand (ph) of the City Council. And Matt
19 Gorton unfortunately couldn't be here tonight
20 because of the death of his grandfather, and
21 our wishes and sentiments are certainly with
22 him.

23 Alright, our first witness then will be
24 Human Services Council, Michelle Jackson.
25 Hi. Good evening.

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2 MS. JACKSON: Good evening. So, I also
3 have with me Elizabeth Perez from Lawyers
4 Alliance. We partner on these issues so we
5 figure just do this together, get it all out
6 of the way at one time.

7 MR. BERMAN: Sure.

8 MS. JACKSON: There are copies of our
9 testimony.

10 MR. BURMAN: Would you please identify
11 yourselves, though, separately.

12 MS. PEREZ: so, my name is Elizabeth
13 Perez. I'm a staff attorney for Lawyers
14 Alliance New York, another organization that
15 works with hundreds of non-profits serving
16 low income communities in New York City.

17 MS. JACKSON: Hi. I'm Michelle Jackson,
18 general counsel with the Human Services
19 Council, and we represent over 200
20 non-profits in New York City who are human
21 service providers in New York City and New
22 York State.

23 So, we'd like to thank the Commission
24 for having a special session on not-for-
25 profits in complying with the lobbying laws,

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2 this an issue that Lawyers Alliance and HSC
3 have worked on for many years at the City and
4 State level, not only to inform our members
5 about lobbying laws but also to try to break
6 down some of the complexities and get more
7 understanding about the law.

8 MR. BERMAN: Before you start, Michelle,
9 I want to say that, you know, when this
10 commission was first being organized, I'm
11 sure each and every one of the commissioners
12 and myself actually were besieged by various
13 not-for-profits complaining about the
14 process. So, this is your opportunity, and
15 we invited people that couldn't come here to
16 submit comment about how they believe the law
17 should be changed.

18 MS. JACKSON: Great.

19 MR. BURMAN: So, please go ahead.

20 MS. JACKSON: And I would say I get a
21 lot of those phone calls from our members
22 letting us know about lobby laws, an so we
23 tried to consolidate them down for you and to
24 have them stream them through us. We'll let
25 them know that they can submit comments to

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2 you as well.

3 So, the first issue we'd like to cover
4 is increasing the reporting threshold. Many
5 non-profits have difficulty complying with
6 lobby laws because of a lack of resources.
7 Most non-profits barely meet the \$2,000
8 threshold and also are not -- don't have
9 full-time lobbying staff, they have people
10 who are working part-time who are program
11 managers who attempt to meet with City
12 Councils twice a year, they're not really set
13 up to deal and have staff and administrative
14 costs associated with complying. Obviously
15 they know if they meet the threshold they
16 need to comply, but we would strongly
17 encourage you to raise the threshold. At one
18 of the last hearings the State presented, the
19 Commission on Public Integrity suggested that
20 they were going to raise their limit to
21 \$10,000 and would eliminate about 20 percent
22 I believed they said.

23 MR. BERMAN: It was by comparatively a
24 small amount.

25 MS. JACKSON: Right, yeah, very small

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2 amount of money would not be captured but a
3 number of groups would fall out of the
4 system, so, we encourage you to also raise
5 the threshold to \$10,00 or even 25,000 which
6 is what the New York Charities Bureau
7 requires before you can either file with the
8 Charities Bureau, and this would knock out a
9 lot of small non-profits who really do barely
10 meet the threshold who are the ones we talk
11 about when we say that they meet with a few
12 Council members, maybe a commissioner, give
13 one set of testimony a year, and because
14 they're executive director, meet that
15 threshold so early. So, we would encourage
16 you to raise the threshold.

17 MS. HORTON: Michelle, could you give us
18 some idea you have this information as to how
19 that would affect your constituents in terms
20 of the groups within an organization?

21 MS. JACKSON: Yeah, so, a lot of the
22 small ones -- we don't have members. We
23 represent 200 groups, but there are 5,000
24 non-profits in New York City, so I couldn't
25 give you an accurate number of how many it

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2 would knock out, but I know that a lot of
3 the -- I mean, I have an organization that
4 has two staff people and they're registered,
5 and they sometimes every year don't always
6 meet those \$2,000 thresholds or register
7 because they don't want to deal with the
8 fines, which we'll talk about in a second,
9 and are afraid that this will be the year
10 that they, you know, go over, one year they
11 go over a little; and so be able to knock
12 someone like that out, who really I don't
13 think is the intent behind this lobby law for
14 those people to be captured, would be a great
15 help and would honestly also ease the burden
16 on the City Clerk's Office, because those
17 small guys are also the people who are
18 calling and emailing a lot with questions,
19 asking for extensions and needing more time.
20 So, raising the threshold would help that a
21 lot.

22 So, the next thing we would suggest is
23 eliminate unnecessary double-reporting. We
24 encourage the City to work with the State to
25 have one system. For example, the City

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2 information is captured in State lobbying and
3 we know that there are differences in the law
4 as well as policy around reporting but we
5 would encourage you to come up with one
6 system that captures all of the information
7 for -- again, for small non-profits and even
8 for large ones. Having to keep separate
9 records and do reporting on two different
10 levels and two systems that require the
11 information differently so it's the same
12 information but has to be imported different
13 ways can be very burdensome and it's really
14 unnecessary.

15 MR. BERMAN: We've been very sympathetic
16 to that and we've been looking at that issue.
17 Interestingly enough, though, one of the
18 first to testify, Citizens Union, indicated
19 that they thought that our system was better
20 than the State's, and kind of urged the State
21 to roll their system into ours.

22 MS. JACKSON: Right.

23 MS. PEREZ: We were at that hearing and
24 we're curious about that statement as well,
25 just because it hasn't been the experience of

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2 the clients that we're dealing with, so, they
3 may be coming at it from a different
4 perspective because they're a good governance
5 organization and they're looking for
6 something -- maybe not so much worried about
7 the burden of organizations so much as
8 capturing every piece of information that
9 they can. So, I think there's a way that we
10 could capture what you need to capture and
11 what we want to capture as a community in
12 terms of good governance and transparency
13 that wouldn't have the burden that the
14 current system entails.

15 And I think from a good governance
16 perspective, there are definitely aspects of
17 the City system that are more detailed, but
18 there are kind of technical aspects of the
19 City's system that are really burdensome.
20 For example, the State allows you to
21 pre-populate lists and keep those lists
22 populated. But for example, if I put in my
23 City lobbying report that I lobbied the Mayor
24 on an issue, I have to go through about five
25 or six screens just to click that I lobbied

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2 directly to the Mayor, so I have to put in,
3 you know, the issue, and then I have to put
4 in a contact person which is the Mayor, go to
5 the Office of the Mayor, go to the Mayor and
6 put in his name. So, it takes -- well, it
7 takes a lot of prep time to put together the
8 reports that you can go in and register for
9 both the City and State, it takes probably
10 three times as long to complete just from the
11 moment I enter the City's website until the
12 time I exit as does the State's. So, you
13 know, a happy medium would be great. If
14 there's information the State is not
15 capturing.

16 MR. BERMAN. Have you arrived at a happy
17 medium or you're asking us to?

18 MS. JACKSON: I ask you to. I know
19 there's different policies that make it
20 different, that the City is much more
21 concerned with having a specific contact
22 person than the State is. The State wants to
23 know more about subject matter and the
24 elected official that you're lobbying.

25 MR. BURMAN: You see, it's a much

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2 different system, I don't have to tell you,
3 you know that. There, they deal primarily
4 with initiation of legislation. Here, some
5 of it involves the initiation of legislation,
6 others involve physical fiscal policy. So,
7 it's somewhat different but we're certainly
8 looking at it.

9 MS. JACKSON: Yeah.

10 MR. BURMAN: And any recommendations
11 that you may have, you know, we'd welcome an
12 opportunity to look at it.

13 MS. JACKSON: Great, and we have
14 submitted documents in the past but we'll
15 submit them again, the detailed part so you
16 can see what our suggestions are in much more
17 detail. So, we'll get those to you as well.

18 MS. PEREZ: So, the third topic,
19 everyone, to raise with you, is the idea of
20 mitigating factors for penalties that are
21 assessed by organizations that are registered
22 as lobbyists.

23 MR. BERMAN: Are you referring to
24 mandated penalties?

25 MS. PEREZ: Mandated -- primarily late

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2 penalties, honestly, is what comes up the
3 most on a regular basis for the clients that
4 we deal with.

5 MR. BERMAN: That seems to be a
6 recurring --

7 MS. PEREZ: Unfortunately, yes. And the
8 problem is for an organization that's
9 registered both as the client and the
10 lobbyist; so, they haven't hired an outside
11 lobbyist, they're doing everything in-house,
12 especially in that third category of
13 non-profits as you described where two or
14 three staff people, an executive director
15 who's really the one responsible for doing
16 all the lobbying, if they're doing work at
17 the State and the City level, they're
18 reporting 14 times a year, and that's a lot
19 for a small organization, especially when
20 they have all these other hats that they're
21 wearing. They're not professional lobbyists,
22 that's not what they do. And the problem for
23 these small organizations, on top of the
24 staffing issues is that the penalties that
25 are a couple thousand dollars can have a

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2 really deep impact on their ability to
3 provide services, and we're talking in many
4 things about a group that's receiving funding
5 from New York City to provide crucial
6 services, so.

7 MR. BURMAN: Is it your primary
8 complaint, therefore, that you don't believe
9 that the penalties -- your position that
10 penalties shouldn't be mandated but rather
11 discretionary on the part of the person who
12 levels the --

13 MS. PEREZ: We have a few suggestions,
14 because we were here at the first meeting and
15 the City Clerk expressed some concern about
16 the administrative burden and that would be
17 involved in making a decision on a case-by-
18 case basis. We think first you should create
19 a presumption that first-time filers who are
20 self-identifying to the system can enter the
21 system and enter it clean without fear of
22 penalties for past years, and making -- you
23 know, they may need to go back and file those
24 past years as a matter of public policy, you
25 want to have that information out there but

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2 you don't want to create a disincentive.

3 MR. BURMAN: So, you're objectively
4 advocating an amnesty.

5 MS. PEREZ: For anybody who self-
6 identifies. I think you understand that
7 situation where you want to go after somebody
8 who is purposely avoiding the law and
9 knowingly violating the lobbying --

10 MR. BURMAN: Well, if they purposefully
11 violate the law, knowingly violate the law,
12 then there are different penalties that
13 apply.

14 MS. PEREZ: Right, but I think there is
15 a little bit of a -- it takes longer than it
16 should for people who self-identify to think
17 through what it means and to register and
18 whether they're going to come out with the
19 back-filings and have a fear of late
20 penalties.

21 The other thing, the second thing that
22 we could do is allow for specific
23 pre-determined mitigating factors that would
24 not be discretionary in the sense that, you
25 know, they either are present or not. The

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2 frequency of late filings, whether this is a
3 regular offender or not, whether the entity
4 filing is acting as both the client and the
5 lobbyist, and we think that would be an
6 indication of whether this is a small
7 in-house lobbyist who hasn't hired an outside
8 lobbyist or --

9 MR. BERMAN: Are you recommending that
10 mitigating service instance that you just
11 referred to be written into a new law?

12 MS. PEREZ: Or into policy, whatever.
13 The State I think mentioned that they have a
14 schedule that tells -- that helps them
15 identify what penalties should be charged, so
16 I think you could take the fee factors, and
17 there are a few more, and work that into a
18 schedule of penalties that is less burdensome
19 on the City Clerk but also more just in terms
20 of what we're looking for for non-profits,

21 On the issue with the annual budget of
22 the lobbying client, you should consider
23 whether the entity of services made any
24 effort --

25 MS. BRAGG: What about the budget?

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2 Sorry. What about the budget if it's small?

3 MS. PEREZ: If it's small and if the
4 \$2,000 budget is 10 percent of the agency's
5 budget, that should be a factor, it's a
6 disproportionate impact on smaller
7 organizations to have the same penalties, and
8 whether the entity asserts it has made an
9 effort to report its lobbying activity. So,
10 in some cases, our clients have received
11 penalties in cases where they really believe
12 they have filed, and so they clicked, you
13 know, "file" or "submit" and the computer
14 system is slow enough that it shut down
15 before it actually was filed, so that can
16 generate a \$2,000 flat penalty or it has in
17 the past.

18 So, finally, you should consider whether
19 any lobbying activity has actually gone
20 unreported or misreported in the period in
21 question. So, if there's a period where
22 you're above the threshold for the year but
23 in that two-month period you actually didn't
24 do much lobbying, it seems unnecessary to
25 penalize a group for that period

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2 unnecessarily.

3 So, I think you can take those factors
4 and create a schedule of late fee assessments
5 that reflect these factors and have it be
6 something analogous to what the State uses
7 and I think that that would find some sort of
8 balance between taking into account what non-
9 profits need in terms of -- and still
10 preserving the transparency and
11 accountability that we all want to have.

12 So, that's the definition of lobbying I
13 think we have talked about and has been
14 talked about a few times at these meetings;
15 we think it's pretty vague, it generates a
16 lot of confusion, a lot of calls to the City
17 Clerk, a lot of the calls to Michelle and I
18 about what counts as lobbying, when lobbying
19 starts, whether, for example, City Council
20 member item funding now requires quite a lot
21 of paperwork and it's publicly available
22 paperwork. But we are telling our clients
23 because of the way that we read in the law
24 that the time that's spent filling out that
25 paperwork for discretionary money is

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2 technically lobbying because they're
3 influencing the budget, therefore, they're
4 influencing legislation.

5 MS. HORTON: I have a quick question for
6 you. With the help, the late fees and the
7 first-time filers, are you finding that those
8 who are having some of -- the bulk of those
9 who are having issues with late fees are
10 those who are first-time filers simply don't
11 know, or you find that there are some
12 organizations that have registered but they
13 continue here and there to still have issues
14 with the --

15 MS. PEREZ: I think it's both but I
16 think the first-time filers issue comes up
17 when somebody realizes that they should have
18 been registered and we want them to register,
19 you want them to register, and that isn't a
20 good mechanism now for the City Clerk to go
21 out and find out whether -- identify them
22 outside the system.

23 MS. HORTON: I guess what I'm getting at
24 is that, you know, if we were to address sort
25 of the first-time filer issue and that, you

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2 know, let's say you were granted amnesty for
3 that, would that in and of itself sort of
4 eliminate the bulk of the problem for those
5 who are having to sort of late file or is
6 there still significant --

7 MS. PEREZ: I think there would still be
8 an issue. I think there are just
9 circumstances where somebody gets sick and
10 they missed the filing deadline and they're
11 not on top of the filing, it becomes
12 necessarily punitive.

13 MS. JACKSON: I think the first-time
14 filers is also an issue because it keeps
15 people out of the system, and so I think it's
16 twofold: One, I think it would increase --
17 you know, I think it does help the bulk of
18 problems, because things always come up, you
19 know, people are sick, and those are
20 definitely issues. I think for first-time
21 filers it is a bigger issue because we do
22 have people come to us saying that they want
23 to register, and sometimes it's because they
24 never -- this is because -- particularly at
25 Common Climate (ph,) they're increasing their

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2 lobbying activity, where they're worried it's
3 the middle of the year or will they wonder
4 why they hadn't registered before, and even
5 though they know they have a reason, they're
6 going to be subjected to all that paperwork
7 to prove that this is the first year they
8 even came close to the threshold or things
9 like that. Or, people wanted a meeting from
10 us that they need to register and they
11 haven't really thought about lobbying in that
12 way or maybe had never even heard of the
13 law. And so, I think that -- you know, and
14 it keeps people out of the system when you
15 really want people in.

16 MS. PEREZ: On the definition of
17 lobbying, there are a lot of procurement and
18 contract administration issues that are
19 confusing to clients. You know, I think any
20 procurement lobbying should be reported, I'm
21 not arguing that there shouldn't be
22 accountability there, but I think just having
23 clear policies on when something should be
24 reported or not would be really helpful to
25 everyone.

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2 Another issue, testimony at public
3 hearings, right now we're lobbying, no matter
4 you know, if you make a public record of what
5 we're saying and you all have testimony of
6 our statement here, but it's still going to
7 go back and be reported as lobbying and
8 that's I think a little bit burdensome.

9 MS. JACKSON: Especially, as
10 Commissioner Berman noted at the beginning,
11 that non-profits are the government's partner
12 in services, and will a lot of times have
13 general welfare hearings or other hearings
14 that are open to the public or they're
15 invited, they still wonder if it's lobbying
16 even though they're, you know, there has to
17 be an ask at some point, but even just saying
18 "there should be an increase in funding for
19 this homeless shelter," even if it's not
20 "increase the funding to my homeless
21 shelter," is that lobbying? And it's very
22 unclear and creates a problem, for
23 non-profits who want to file and obviously
24 hope to err off that caution, and again,
25 that's something that makes the meter run,

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2 you know, that the dollars click, and if
3 that's what's going to put them over the
4 edge --

5 MR. BERMAN: You know, in our first
6 session when the City Clerk, who's here,
7 again, the senior staff testified they
8 basically felt uncomfortable with these same
9 issues and basically were looking for
10 guidance as well.

11 MS. JACKSON: Right.

12 MR. BERMAN: So, I think those are
13 issues that have to be looked at and we
14 intend to look at.

15 MS. JACKSON: And I think again, a lot
16 of clarity would be helpful, whether you
17 agree with us that public testimony is
18 lobbying or not, we would like clarity so
19 that our non-profits know so that they're not
20 always wondering, they're not calling us,
21 they're not calling the City Clerk's office,
22 and so there's just some clarity in the law
23 and there's a decisive way that our
24 non-profits know that they are complying
25 correctly with the law.

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2 MS. PEREZ: Also, just to go back, these
3 things are all interlinked. If we are clear
4 on what counts as lobbying, we'll know
5 whether or not we've exceeded the lobbying
6 threshold and need to report and that will
7 help quite a bit too.

8 Finally, the definition of lobbyist,
9 there isn't anywhere that we have found in
10 writing a statement that non-profit board
11 members who are volunteers must be registered
12 as lobbyists, but that is our understanding
13 of the current reading of the law by the City
14 Clerk and that is a problem for non-profits
15 who are trying to recruit volunteer board
16 members.

17 MR. BERMAN: I would imagine so, sure.

18 MS. PEREZ: Because once you're
19 registered as a lobbyist, you have
20 limitations on campaign contributions, you
21 are not part of the matching system for the
22 State, you're going to have to report any
23 political fundraising or consulting that you
24 do, so, there are, you know, I think fair
25 requirements of lobbyists but I think that it

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2 is a burden on non-profit volunteers who are
3 really -- you know, they don't have a time
4 value to their work, they're volunteers not
5 being compensated, so I don't think that that
6 should count towards a non-profit's lobbying
7 activity and be reported.

8 MS. JACKSON: And it's also another
9 administrative burden. You know, you're
10 asking a board member to not only submit, you
11 know, to the "pay to play" legislation and
12 those issues but also to track when, you
13 know, when they're meeting with legislators
14 and to convey that information to you as a
15 practice of reporting and if you have -- or
16 you know, more likely you have to track them
17 down and find out what meetings they had, and
18 so it's very burdensome to try to comply with
19 this piece of the law because voluntary board
20 members don't have a financial stake to be at
21 meetings for at least five things at one time
22 when they go up to Albany or, you know,
23 meeting with City Council members, and it is
24 harder for them to keep track of that
25 information and for us to report it as well

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2 when we have a volunteer board.

3 MS. HORTON: So, are you saying that as
4 it stands now, there are some non-profits
5 that you know of that are actually reporting
6 their volunteer board members?

7 MS. JACKSON: Yes.

8 MS. HORTON: Okay.

9 MS. PEREZ: Yes, you could say that.

10 MR. BERMAN: I would like to add to the
11 need to file for financial disclosure. I was
12 in the Council when the law requiring that
13 was passed, and initially it had a tremendous
14 impact upon the not-for-profits, the board
15 members who were just doing voluntary work
16 resented the fact and did not want to file
17 those forms.

18 MS. JACKSON: Yes. And there's other
19 ways that our board members are captured,
20 through 990s, through VENDEX, through the
21 State. There's a number of other ways that
22 particularly volunteer board members for non-
23 profits are forced to disclose, you know,
24 conflicts of interest, and that they're on
25 the board, it's not new information.

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2 MS. MORTON: Because they're covered now
3 through the Doing Business Form and/or the --

4 MS. JACKSON: And VENDEX, yes, for your
5 top representative --

6 MS. MORTON: For any organization that
7 is getting City money.

8 MS. JACKSON: Yes.

9 MS. MORTON: This is somewhat due to --
10 somewhat overlapping actually.

11 MS. JACKSON: Right, yes.

12 MS. MORTON: And that's a real big
13 factor. My question about the Charities
14 Bureau, now all non-profit organizations are
15 required to sort of certify once a year with
16 the Attorney General's Charities Bureau, and
17 I know that the City requires for giving
18 funding over certain amount that all
19 organizations be in good standing and that's
20 once a year. There are no penalties, though,
21 for not filing, but what happens is you lose
22 your status, correct?

23 MS. PEREZ: (Nodding.)

24 MS. JACKSON: Which carries implications
25 for public funding and taxes and other

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2 things, but there are no penalties. However,
3 the incentive, I would imagine, and I know
4 certainly for cultural organizations that the
5 City funds, is sort of pretty grave because
6 you will not qualify for public money. So, I
7 just think that example is a helpful example
8 here as opposed to penalties which again are
9 a great burden for the Clerk's Office to
10 impose across the board for individual
11 lobbyists for non-profits.

12 Again, you know, we all want everyone to
13 comply and so, I just think that that's an
14 interesting model to look at is the Charities
15 Bureau and the fact that there aren't
16 necessarily penalties but that there is
17 nonetheless -- there is nonetheless
18 incentive.

19 MS. MORTON: Couple questions about the
20 size of your organizations in the Council.
21 What's the average budget just of your
22 organizations and staff size?

23 MS. JACKSON: We have a huge range. I
24 mean, we have organizations that are
25 corporation size.

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2 MS. MORTON: But below \$100,000 budget
3 for example?

4 MS. JACKSON: We have a few below
5 100,000, a number below 1,000,000. And I'd
6 say a good portion of our organizations are,
7 you know, 20 staff people or less and those
8 are people, you know, who are running -- and
9 most of those employees are running programs,
10 so, are not equipped and under most contacts
11 are not paid to do lobby reporting and kind
12 of other administrative tasks, they're being
13 paid to work on programs.

14 And then, you know, we have a good chunk
15 of the big guys and most of them fall
16 somewhere in the middle range. But in
17 particular, groups that do advocacy like
18 ourselves, like HSC, we're a six-person
19 group.

20 MS. PEREZ: And that's been my
21 experience, too, is that advocacy
22 organizations are small, you know, they're
23 not million-dollar organizations, they are
24 \$300,000 organizations in many cases.

25 MS. JACKSON: Yeah.

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2 MS. BRAGG: I have a couple questions.
3 What's your sense -- you had mentioned this
4 before. What's your sense of organizations --
5 this is something that Margarate has brought
6 up in the past -- that aren't reporting, and
7 what do you think can be done to encourage
8 those who are scared of the late fees or
9 anything; what could be done to capture them?

10 MS. PEREZ: I mean, a lot of it is the
11 kind of work that we are doing. We have
12 workshops twice a year at least on lobbying
13 compliance and we encourage groups to get
14 into the system.

15 I think paying attention to who -- you
16 know, a lot of it is spread through the
17 non-profit community itself and I think that
18 the City Clerk sent out a letter in December
19 or January to everybody who had a City
20 contract saying, "Look, these are the
21 lobbying laws," and I think that's the kind
22 of thing that's really helpful, because those
23 are the groups probably that -- at least
24 they're doing procurement lobbying.

25 MS. JACKSON: And having amnesty for

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2 currently entering the system would be huge,
3 because there's a number of organizations who
4 do wonder and then are scared off and also
5 scared off by the duplication of reporting
6 and those kinds of things that are involved
7 in trying to make a decision whether being
8 meet the threshold because they meet the
9 threshold or just encourage them to enter the
10 system and they will do that.

11 But I think amnesty for letting people
12 enter the system and see if they need to be
13 in the system would be very helpful to a lot
14 of organizations who are just unclear, as
15 well as clarity in the law, because people
16 are trying to figure out, "Am I doing
17 lobbying?" And then if it's between filing
18 into a burdensome system and maybe being, you
19 know, subject to penalties versus maybe "it's
20 not lobbying," you know. So, having real
21 clarity so that they know what they're doing
22 is lobbying and a way to enter the system
23 without being penalized would be very
24 helpful.

25 MS. PEREZ: I think there is a little

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2 bit of a misconception that educational work
3 or advocacy work is not lobbying, you know,
4 maybe it is and maybe it's not. But no
5 matter what you call it, if you're
6 influencing legislation, it's lobbying, and I
7 think that that's the piece that's missing
8 sometimes in the community.

9 MS. BRAGG: Thank you. Also, this is
10 something that we've talked about and no one
11 has kind of brought it up yet in terms of the
12 frequency of the filings, and we're reviewing
13 everything from start to finish, is, you
14 know, do you like reporting this many times
15 of year? Probably a dumb question -- but
16 would it be helpful to reduce? You know,
17 just your thoughts on that would be helpful.

18 MS. JACKSON: Yeah.

19 MS. MORTON: Would it encourage more
20 organizations to come forward and file?

21 MS. JACKSON: I think it would. I mean,
22 I definitely think it would be helpful. I
23 file the lobby reports for our organization
24 and I set aside a day to do it for both the
25 City and the State maybe four times a year.

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2 MS. PEREZ: Six.

3 MS. JACKSON: Six times a year, and that
4 we do it for the City and State and we have
5 four staff people and we have a very good
6 advanced system of Excel spreadsheets that
7 they fill out, but it still takes a lot of my
8 time to do it. And to be able to do that
9 twice a year would be amazing, especially
10 since we then also file client annual
11 reports, client semiannual reports and this
12 involves City and State together, so, you
13 know, when I do it, it all mixes up in my
14 head, but you know, and then figuring out if
15 you have to file the client annual report
16 after you file the six reports, which up
17 until a few years ago you had to do the
18 client annual report even if you were your
19 own lobbyist and you filed those six reports,
20 so I think making it twice a year or
21 something like that would be very helpful and
22 encourage more compliance, because it would
23 just be easier to have less administrative
24 burden.

25 MS. BRAGG: Right, but wouldn't it be

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2 more burdensome because you're capturing so
3 much more data, or it's just the frequency,
4 the actual going through and everything is a
5 problem?

6 MS. JACKSON: To be honest, I fill out
7 the same information every time. So, we do a
8 lot of budget lobbying so I write the same
9 thing to the same targets every time because
10 those are the same meetings that we have
11 during budget season and on the off season.
12 For example, lobbying about lobbying is on my
13 report every time. So, to be able to fill
14 that information once just put in all the
15 context, the time I met with who, just put in
16 all four at once, would really cut down on
17 the administrative burden.

18 MR. BURMAN: So, any time there's a
19 budget modification, you would effectively
20 have to revisit your lobbying efforts?

21 MS. JACKSON: Yeah. I mean, we have to
22 look back and see if we, you know, if
23 something we prepared for one reason has
24 become now lobbying for another reason, and
25 we don't have to do a lot of our own budget

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2 modifications because it's usually just a
3 continual effort, but that is something that
4 some groups would have to look at.

5 MR. BURMAN: Do you have an opinion or
6 have you found any problems or are you
7 content with the E-lobbying system?

8 MS. JACKSON: Well, I think what I said
9 before about the not allowing you to
10 pre-populate lists is very burdensome. We
11 know -- I mean, of course there's additions,
12 sometimes they have a name that we didn't
13 know about. Six months ago we weren't
14 putting this Commission on our report. But
15 for the most part most non-profits lobby the
16 same people; their local Council member; if
17 they're a homeless services person, you know,
18 it's the DHS Commissioner. And to every time
19 have to put in the same information and then
20 put in the main contact person, you are
21 literally going through six or seven screens
22 for one contact, it is very burdensome. And
23 I know, again, the State and the City have
24 different kinds of purposes behind what
25 they're doing, but the State allows you to

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2 save information so that the next time you go
3 through I don't check everything. If I
4 didn't do it as of the next time and I add
5 people, I have to add them. But to be able
6 to check off repeated things would also be
7 very helpful. So, the E-lobbying system is
8 tedious in that way.

9 MR. BERMAN: Do you have any thoughts on
10 the educational outreach program by the City
11 Clerk; has that been helpful?

12 MS. PEREZ: I think our understanding is
13 that it's a little bit oversubscribed, the
14 trainings that have been offered. So, I
15 think more of them, I know there is a lean
16 staff there, but I think, you know --

17 MR. BURMAN: They should be held more
18 often.

19 MS. PEREZ: They should be held more
20 often and there should be somebody who's able
21 to get consistent answers at each meeting or
22 at each training.

23 MS. JACKSON: I think a lack of clarity
24 again affects those trainings because people
25 have a lot of questions and they want to know

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2 how the E-lobbying system works and they also
3 have a lot of questions about, "Is this
4 meeting I had yesterday lobbying?" and
5 there's not always consistent answers since
6 they're unable to answer those questions.
7 So, again, having clarity, this might help
8 them be better able to do outreach and
9 educational training as well as for us to do
10 educational trainings to our members.

11 MR. BERMAN: Any other questions?

12 MS. MORTON: Do you account for lobbying
13 when you or your members go to information
14 sessions that agencies give about funding
15 programs, for example? I know that many City
16 agencies will have prepped information
17 sessions about grant programs or funding.

18 MS. PEREZ: Unless they're trying to
19 influence the administration of the RFP or
20 something, that would not be counted.

21 MS. MORTON: Okay. That's good.

22 MS. PEREZ: That would be my answer when
23 called to that question.

24 MS. JACKSON: Yeah, purely educational
25 until they ask for something or engage in the

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2 process, we wouldn't consider it lobbying.

3 MS. MORTON: Okay.

4 MR. BERMAN: Any other questions?

5 (No response)

6 MR. BERMAN: I want to thank both of you
7 for your testimony. It's been
8 extraordinarily helpful and obviously we will
9 consider what you've submitted. And again
10 thank you for your interest and for your
11 efforts.

12 MS. JACKSON: And thank you all. We
13 really appreciate you taking on this mission
14 and for specifically highlighting
15 non-profits, because it's been a problem for
16 many years. We appreciate your --

17 MR. BURMAN: It was this or playing
18 punch ball on the streets.

19 (Laughter)

20 MS. JACKSON: Maybe you made the wrong
21 decision.

22 (Laughter)

23 MS. JACKSON: Thank you.

24 MR. BERMAN: Is there anybody in the
25 audience who wishes to testify? Ms. Marcus?

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2 MS. MARCUS: I'm not in my lobbying
3 garb. I'm Aileen Marcus.

4 MR. BERMAN: Which leads to a question
5 as to what constitutes --

6 MS. MARCUS: Lobbying garb. I'm Aileen
7 Marcus. I'm the chief of staff at
8 Metropolitan Council on Jewish Poverty.
9 We're a large social service agency that
10 serves everyone, especially focusing on the
11 near poor, people who aren't eligible for
12 government benefits, to help alleviate the
13 amount of poverty. We serve everyone of
14 every faith, breed, color, religion,
15 anything.

16 We are probably the poster child for
17 what's been wrong with the lobbying laws.
18 You know, if I was Elisa Velazquez today, if
19 you look at the last two pages that I
20 attached there, you would see that she would
21 get a penalty for not showing up today for
22 something that was out of her control.

23 I have a clear calendar. I am a very
24 busy person. I say I'm going fill out my
25 lobbying reports today, I leave two days to

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2 do it because it's so complicated and, you
3 know, I'm not sure who did what, and even
4 though we have a system, and this isn't how
5 we do our work as a non-profit. I get sick.
6 I then write to the Commission and say, "Can
7 I have an extension?" and I hear back, "No.
8 You should have told me two days prior to
9 when you needed the extension that you needed
10 the extension." I didn't know two days ago I
11 wasn't going to meet the deadline. I thought
12 I'd be in on Friday and Monday, I'd file. I
13 was home sick.

14 "Will a doctor's note help?" I actually
15 went to a doctor, that does no good, "No.
16 Just pay the penalties or call your client."
17 I am the client and the lobbyist. I do not
18 have a billing unit, I do not have a unit of
19 people who do this for me. We are a large
20 non-profit, and accounts will have \$100
21 million-plus budget but only \$3 million out
22 of that is non-restricted. And as you heard
23 before, we serve people who are near poor,
24 working poor, there are very limited
25 government funds for that. That is private

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1
2 money that we raised that goes to our
3 clients; to a single mother of domestic
4 violence, an elderly person who doesn't
5 qualify for Medicaid, you know, food
6 pantries, on and on and on. So, you know, to
7 take my time and my money to pay the fees
8 because I was sick for two days seems really
9 irrational to us.

10 I think, you know, you mentioned it in
11 the beginning and I really appreciate how you
12 talked about my Council member -- I waived to
13 her -- oh, no, I lobbied.

14 (Laughter)

15 MR. BURMAN: May I interrupt one moment.
16 We are joined by an old friend of mine,
17 someone who I served for many years in
18 government with, Council Member Gail Brewer.

19 MS. BREWER: Thank you very much.

20 MR. BERMAN: Good seeing you.

21 MS. MARCUS: So, I really appreciate the
22 way you acknowledged in the beginning that
23 non-profits are different. You know, we're
24 recognized differently in the tax code, we're
25 recognized differently in the New York City

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2 Procurement Policy Rules, right? Because we
3 have different understandings. Why should
4 lobbying be any different? You know, why we
5 are different.

6 We are not paid on outcomes for the most
7 part, meaning outcomes that "I got this
8 permit," "I got this building code," "I got
9 you registered here," "I got you more land
10 rights," "I got you -- " you know, " -- this
11 contract."

12 We're not paid on our clients' rosters,
13 we're not paid on billable hours. We are not
14 set up for payment on those things. We do not
15 have quarterly billing systems that most
16 lobbying firms that are in the business to
17 influence government and that is their only
18 business. We are in the business to help
19 people to be compassionate, to help the frail
20 elderly, the homeless, those who can't feed
21 themselves, those who are just stuck in
22 situations that they never thought they'd get
23 stuck in that need our help. And very often,
24 that might mean calling my Council member and
25 saying, "Hey, do you know of an apartment?"

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2 "Hey, do you think you can write a letter to
3 the police?" "Hey, can you intervene" you
4 know "with the school board, because we have
5 this problem with this family?" Is that
6 lobbying? I don't know. We're trying to
7 serve our constituents. But I'm asking her
8 to influence those things, I'm asking her to
9 do something to help someone in need. That
10 wouldn't happen if we weren't there
11 intervening.

12 I think that because we are so different
13 and because we don't have units that do this,
14 and, you know, it really put a very undue
15 burden on us. I was kind of shocked when I
16 heard that Citizens Union thinks that the
17 City system is better. The State system is
18 so much more easy to navigate. I had an
19 example right after we were trying to file on
20 time, and right after the new City Council
21 class came in, the City Lobbying Bureau
22 hadn't put in David Greenfield's name. You
23 know, they just hadn't changed the new
24 members.

25 You know, we have a lot of business with

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2 David Greenfield. We have a local office
3 there and we do a lot of things there. We
4 reached out to David right away. I did not
5 have a way to do it, they were like, "You
6 have to wait. Do the best you can." You
7 know, it was fixed the next day but I had
8 call them and say, "There's a new City
9 Council member that's not on your list" after
10 I had to look through four or five screens.

11 I also think that -- you know it was
12 said that in most of us -- and once again,
13 we're a big organization, but we really fit
14 into, you know, what was said by prior people
15 testifying that it is not someone's job, it's
16 a piece of a job and we do it several times a
17 year; around budget time, around a big change
18 in some kind of law or around the people we
19 need to help.

20 I will tell you that we are currently
21 being fined by the Commission. We have
22 \$37,255 in fines. Let me give you a few data
23 points just from one of my programs: I could
24 make 6,209 prepared meals in my soup kitchen
25 for \$37,000; I can feed 2,070 people for six

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2 days on that amount of money; I can provide
3 745 families with food vouchers; I can give
4 103 elderly people Friday-night meals for an
5 entire year. Why am I being fined? Exactly
6 the situation that you said before, by the
7 time we realized that we had reached the
8 threshold, mostly because our executive
9 director is one of our highest-paid people at
10 our agency, and we realized that during
11 budget season in '08 he had threshold. By
12 the time we registered it was December. We
13 weren't sure how to do it; you know, the
14 forms were complicated, or are we a client or
15 are we a lobbyist, which one do we fill out?

16 We registered. We didn't realize we had
17 fines. We registered, and moving forward we
18 started to put everything in on time.

19 MR. BERMAN: Was the fines that were
20 leveled as a consequence of mandated fines or
21 was that the discretionary?

22 MS. MARCUS: Well, that's a perfect
23 question, Commissioner.

24 MR. BERMAN: Thank you, I appreciate
25 your --

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2 MS. MARCUS: You will also see in the
3 front of my handout there's some yellow
4 highlighted things. As I understand it, and
5 I'm a lay person, I trust the Lawyers
6 Alliance, you know, they have been our lawyer
7 on this, that the New York City law was
8 supposed to be -- what's the word -- modeled
9 on the New York State law. And what you can
10 see in this chart that goes on two pages,
11 taken both apart from the New York City law
12 and the New York State law, what you can see
13 on the lobbying rules for late filing --
14 that's the last -- do you see it's the last
15 box on that topic of the second page? That
16 language that I have in yellow, everywhere
17 else in quotes, "not to exceed" was left out.
18 The City Clerk and the Lobbying Commission
19 says that's what gives them no discretion in
20 levying the fines.

21 In the State, they have that
22 discretion. The first time that we had the
23 same situation, we filed at the same time,
24 they said, "Hey, you didn't file these back-
25 reports." We said, "Oh, my god, we thought

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2 it was from the time we went forward. We
3 just realized we reached the threshold, we
4 self-elected, no one found us." "Okay, do
5 this online tutorial, next time do it
6 better. Thank you very much."

7 We assumed the same thing would happen
8 with the City. That's not what happened.
9 First of all, we were first told that is was
10 only 2,000 in fines, it wasn't until we got
11 the lawyers involved and months after the
12 lawyers were involved that we understood the
13 magnitude of the fines. It was three or four
14 months into having a lawyer, because me and
15 my staff were constantly being called down
16 for meetings, we were held in an office and
17 had done what we said before, you know, "Why
18 didn't you file the prior year?" So, it
19 wasn't even yet about what we had filed late,
20 it was, "Did you file the year prior to that;
21 did you meet the threshold?"

22 So, we were in a position of defending
23 ourselves taking time away from the business
24 that I do. I'm not a full-time lobbyist,
25 right? I'm a full-time administrator. I

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2 allocate resources, I troubleshoot programs,
3 I write grants, you know, I make the agency
4 hum.

5 MR. BURMAN: I met you once with the
6 agency, you were commissioner for Social
7 Services, right?

8 MS. MARCUS: Yes, I worked at HRA, yes.
9 Thank you, Commissioner.

10 But, so, you know, we really try to
11 adhere to these rules; we understand them, we
12 understand why they're there, we appreciate
13 the sunshine. We had no idea that we were
14 that much in default. We assume we came in,
15 we realize we met the threshold, we
16 registered, and now going forward we be
17 squeaky clean.

18 I will point out one thing that's
19 interesting to me. In the email I showed you
20 about me filing for late penalties, the
21 person Jaimie (ph,) -- who is lovely -- who I
22 had to write to is the same person who signs
23 the petition against me. So, I'm writing to
24 the person who was suing me to ask for, you
25 know -- what's it called -- a waiver, or you

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2 know, "Can I have a -- " so, I think that's
3 also a little --

4 MR. BURMAN: It's called a mercy plea.

5 MS. MARCUS: Yeah, a mercy plea. That's
6 what I'm looking for.

7 So, I really do think -- so, the
8 implementation of late filing penalties in
9 this issue that there is no flexibility, we
10 do not understand that. We think it was
11 either a legislative drafting error -- there
12 has to be some flexibility. If we are
13 modeled on the State rules and the State
14 allows it, it should be the same thing.
15 There is no way that I was willful in not
16 complying with this, I just didn't understand
17 it. I still to this day don't understand the
18 six different reports. I've been to four
19 trainings -- oh, hence, my lobbying garb,
20 because in the pocket I have some business
21 cards from people I met at the lobbying
22 trainings, one is from Lobby and Election Law
23 Compliance Center, the other is Gotham
24 Government Relations, I could go on and on.
25 You know, when I go to those trainings,

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2 I'm one of the only non-profits there.
3 Everybody there is, you know, a government
4 relations professional, a partner, a
5 supervisor, a billing -- a quality
6 assurance. There is a whole unit, their
7 whole business is built around "I am taking
8 money from someone to influence policy
9 makers." That is not my business model.

10 My business model is I'm going to save
11 people who need help, I'm going to provide
12 them food, I'm going to help their children,
13 I'm going to help them out of horrible
14 situations. So, I'm just not equipped to
15 deal with these kind of laws, rules and
16 regulations. And when I have any
17 discretionary money, the way I want to spend
18 it is by doing more food, clothing, shelter
19 and home care. That is why I'm in business,
20 that's my mission. So, that's what I have to
21 say. But any questions?

22 MS. HORTON: Just a quick question of
23 clarification, I just want to make sure I was
24 following you correctly. Are you saying when
25 you incurred the large fine, that was the

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2 organization's first time?

3 MS. MARCUS: First time filing. Just to
4 be clear, 17,000 is late and then they're
5 hitting up with a 20,000 civil penalty which
6 means they think I was willful in not filing
7 this report.

8 MR. BURMAN: Yes, ma'am?

9 MS. BRAGG: Your recommendation to raise
10 the threshold, your preference is 25,000?

11 MS. MARCUS: Yes.

12 MS. BRAGG: Why? Just curious.

13 MS. MARCUS: I think it was said before,
14 but most of the people that do the lobbying
15 are the higher-paid staff, right? You know,
16 the executive director. And you know, within
17 10, 15, 20 hours time, four times a year,
18 you've met that threshold. I think that it's
19 a balancing act, right? The threshold and the
20 reporting is if it could be four times a year
21 the reporting and the threshold lower, I
22 think they have to go together and you have
23 to think about it.

24 I also think that, you know, once again,
25 this question that doesn't really apply to

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2 non-profits who aren't hiring lobbyists; I'm
3 the client, I'm the lobbyist, I have to file
4 both reports even though they're not
5 different, you know, all of this is a little
6 confusing to us.

7 MR. BERMAN: Any other questions?

8 (No response)

9 MR. BURMAN: Aileen, I recommend that
10 you switch to decaffeinated coffee.

11 (Laughter)

12 MS. MARCUS: I am already decaf. I am
13 just passionate about this because I like to
14 be passionate about my clients.

15 MR. BERMAN: I understand and I
16 appreciate your testimony.

17 MS. MARCUS: Thank you very much.

18 MS. BRAGG: Very helpful. Thank you.

19 MR. BERMAN: Any other person? Yes,
20 ma'am, come up. Would you identify yourself
21 please.

22 MS. LERNER: Yes. I'm Susan Lerner.
23 I'm the executive director of Common Cause
24 New York, and I apologize I didn't bring
25 written testimony because I actually wasn't

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2 planning to testify. I was just interested
3 in what was said, and there are a couple of
4 things that have been said that have caused
5 me to feel -- that I'd like to express some
6 opinions on behalf of Common Cause New York.

7 We are an advocacy organization, I am a
8 registered lobbyist. That means while I
9 advocate for improved lobbying disclosures at
10 the City and the State level, I and my
11 organization file the forms the way we have
12 to. Unfortunately, at one point my
13 predecessor ran afoul and had a problem, an
14 illness or some technical glitch, and she
15 filed the State form late and heard about it
16 from the press and for a long time
17 thereafter. So, we understand this from both
18 sides of the coin.

19 I think we may also be one of the few
20 groups that actually has another experience
21 which is we also go through the reports and
22 the disclosures and we report and we comment
23 on what we've learned.

24 MR. BURMAN: So, when you say you go
25 through, you're talking about others?

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2 MS. LERNER: Yes. Yes, we analyze
3 lobbying disclosures and we issue reports
4 based on what we see in the lobbying
5 disclosures and we make suggestions about
6 changes on the law based on changes in
7 patterns of lobbying. And so I think we have
8 somewhat of a unique perspective, we're not
9 purely theoretical, we live in this world
10 every single day, we both file and we use the
11 filings.

12 So, we see the situation with the City
13 website from both sides, and while it is
14 tedious and I think it could be easier to use
15 and I agree that it could populate in
16 advance, the uniformity of the reporting for
17 those of us who are trying to figure out who
18 was lobbying and what they are lobbying on
19 compared to what we have to go through when
20 we are analyzing the State forms where there
21 is no uniformity whatsoever is very, very
22 different. So, this is a reason to have the
23 uniformity, to have the pull-down menus.

24 MR. BERMAN: That was the testimony at
25 the first hearing we had, as a matter of

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2 fact.

3 MS. LERNER: Yeah. But I'd also like to
4 point out that when we're dealing with
5 non-profit organizations, we're dealing with
6 the people who need to file lobbying reports
7 that there are really three clarifications;
8 there are the professional lobbyists and I
9 think they are in a class by themselves;
10 there are the service organizations, some of
11 which are quite large and some of which in
12 order to maintain their budgets actually do a
13 fair amount of lobbying; and then there is
14 now beginning to be a third aspect that we
15 are seeing at all levels of government
16 increasingly, and those are what we call
17 veiled political actors, those are often non-
18 profit organizations or associations who are
19 founded specifically to try and influence
20 public policy, sometimes to influence public
21 policy through public opinion, who will pick
22 up a wonderful and bland name that does not
23 indicate who is actually backing this effort,
24 it could be a union, it could be large donors
25 who have a particular ideological bend, it

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2 could be the business community who formed
3 the committee to do wonderful things for the
4 City -- quote, unquote -- and then who go out
5 and spend a substantial amount for lobbying
6 and a substantial amount of grassroots
7 lobbying money, i.e, perhaps hundreds,
8 sometimes millions of dollars, in advertising
9 directly to the public to support a
10 particular public policy or change in the law
11 they would like to see.

12 And unfortunately I think in order to
13 serve the public policy interest of the
14 lobbying law, we need to start to think about
15 how do we differentiate between these three
16 different categories and how do we deal with
17 the expansion in the use of non-profit
18 advocacy organizations to influence the
19 public, influence public policy but not
20 really make it clear who the actor is. And
21 so, I just wanted to flag that.

22 At the next hearing we hope to have some
23 specific recommendations.

24 MR. BURMAN: I understand what you're
25 saying. I mean, we're basically looking at

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2 this law de novo.

3 MS. LERNER: Right.

4 MR. BURMAN: So, you know, we welcome
5 recommendations. That doesn't -- we may not
6 necessarily adopt them.

7 MS. LERNER: Right.

8 MR. BURMAN: But we welcome them because
9 we're anxious to consider them. I mean,
10 truth in the matter is that we're in business
11 several -- couple of months, and it really is
12 daunting.

13 MS. LERNER: It is. And it's a very
14 confusing system, no question about it. The
15 first few times I had to file for my
16 organization as a newbie coming in from
17 California, I couldn't make head or tails out
18 with it. So, there's no question that the
19 training needs to be better and that there
20 needs to be clarity, but I think uniformity
21 is something that we're looking for and I
22 think unfortunately a bit more nuance in the
23 law in terms of how we deal with different
24 types of filers and the threshold for
25 information.

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2 So, a general threshold of \$25,000 would
3 make me uncomfortable. On the other hand, a
4 much higher threshold for grassroots
5 advertising, we would be very comfortable
6 with. So, a group that is talking to their
7 own members might spend, I don't know, a few
8 thousand dollars doing leaflets and flyers,
9 it isn't necessarily one that we think should
10 be required to report their grassroots
11 lobbying activities. But an organization
12 that has spent 50,000 or 100,000 or maybe
13 even half a million in buying broadcast time
14 to influence the public to oppose or to
15 support a particular change in public policy,
16 then perhaps we need the hide the threshold
17 to say that that should very specifically be
18 reported.

19 MR. BERMAN: But you will be submitting
20 written recommendations?

21 MS. LERNER: Yes, we will.

22 MR. BERMAN: Any questions.

23 (No response)

24 MR. BURMAN: Thank you very much. I
25 appreciate it.

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2 MS. LERNER: Thank you.

3 MR. BURMAN: Does anybody else wish to
4 testify? Yes, come up front please.

5 MS. CAMARDA: Written testimony
6 (handing.)

7 MR. BERMAN: Thank you.

8 MR. CAMARDA: My name is Alex Camarda.
9 I'm the director of public policy and
10 advocacy for Citizens Union.

11 MS. BRAGG: Are you the one who said you
12 liked the City?

13 MR. CAMARDA: Yes. I'm the one who
14 believes the City's database is better. I'd
15 actually just like comment on that quickly
16 before I read some of the testimony.

17 MR. BERMAN: There's no punishment
18 involved.

19 MR. CAMARDA: From my own opinion, I
20 think as HSC pointed out, I mean, it depends
21 on your vantage point, and you know, from our
22 perspective the reason that we thought it was
23 "easier to use" is because there are prompts
24 that guide you through the reporting of the
25 information. Whereas, at the State level,

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2 you know, there are categories for a subject
3 that are you are lobbying, the person that
4 you're lobbying, on a bill number, but at the
5 very end when you actually bring all the
6 information together, it just jumbles
7 everything you submit into, you know, one
8 entry on the computer, and so there's no
9 connection between the person you lobbied,
10 the subject and the bill number. And as far
11 as disclosure goes, that's not very helpful
12 to groups like Citizens Union, Common Cause,
13 who actually analyzes material and make it
14 available to the public so they can know
15 which groups are lobbying what individuals or
16 entities.

17 So, I think from the user perspective
18 it's much easier to use a program that guides
19 you through what you have to enter than just
20 shows you kind of a blank slate that you have
21 to then put information into and you're not
22 sure exactly where it should go.

23 So, with regard to non-profit
24 organizations and lobbying at the previous
25 hearing, the first one that we testified at,

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2 we did provide some information related to
3 reporting requirements and State/City
4 coordination that we think would alleviate
5 burdens for all lobbyists including
6 non-profit organizations. But I wanted to
7 touch today on three additional ones and
8 reiterate the ones from the last hearing as
9 well.

10 So, the first thing that we thought
11 would be especially beneficial to non-profit
12 organizations that have been unaware of the
13 reporting requirements and that as we saw
14 somebody report today, you know, had to pay
15 the heavy consequence in terms of late fees
16 for coming out of the shadows and actually
17 reporting their activity, we think an amnesty
18 program would be helpful. We know the City
19 Clerk's Office has at least contemplated that
20 at different times, we think that should
21 happen in 2012, the work of this Commission
22 since the Commission has raised lobbying --

23 MR. BURMAN: That would not be a
24 legislative change. That would be a policy
25 change, wouldn't it?

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2 MR. CAMARDA: I mean, I think you could
3 do it legislatively or administratively or
4 direct the Clerk's Office to set the
5 parameters for it. But we think that would
6 be helpful, given the attention that the
7 Commission has drawn to lobbying, to leverage
8 that and put into place an amnesty program in
9 2012. And much like a tax amnesty program,
10 this would be something that would allow any
11 lobbyist to come forth for one time during a
12 particular time period and declare any
13 lobbying that they should have declared in
14 the past. And we think they shouldn't get
15 off the hook entirely, they should probably
16 have reduced late fees, I think that's only
17 fair to those organizations that have come
18 forth in the past and have had to pay full
19 fines. But, you know, some will say that
20 this would be unfair and that organizations
21 who come forth during the amnesty period will
22 have fewer penalties than those who came
23 forth in previous years.

24 But we think the more important interest
25 is that all actors involved in lobbying the

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2 government are known and that that outweighs
3 the concern of any inequity that's related to
4 every belated filer that has ever come forth
5 being assessed the same level of penalties.

6 I would stress that with the amnesty
7 program, it's very important that it just be
8 done once or very infrequently. Otherwise,
9 states that have done tax amnesty, for
10 example, and do it too frequently, people
11 start to gain the system and actually wait
12 for the amnesty rather than come forth on
13 their own.

14 I think a lot of the concerns raised
15 today from different groups that testified
16 shows the need for mandated training. I do
17 want to give some credit to the City Clerk's
18 Office, they do quite a bit of training
19 already. When we met with them, they
20 reported to us that they've done since 2006
21 11 large conference-style trainings, they
22 have a lengthy user guide on their website,
23 they deal with thousands of calls per year
24 and they do make available a computer kiosk
25 to do filings at their office. I know

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2 they're in the process now with DeWitt
3 creating online modules for training, we
4 fully support that, and I know they're
5 seeking a full-time trainer, which we also
6 back.

7 All that being said, training is
8 voluntary, it is required in law that they do
9 some training but as far as attendees coming,
10 it's voluntary. So, we think a reasonable
11 thing would be for first-time registrants who
12 are lobbyists be required to come to some
13 form of training or complete some form of
14 training whether it be online or a large-
15 style conference training. I realize there
16 are issues here with the capacity of the
17 Clerk's Office and the costs associated with
18 that but I think you can design a program
19 that minimizes costs. For example, you can
20 have everyone come to a large
21 conference-style training and then have those
22 who need additional help do one-on-ones. You
23 could limit this to lobbyists and not
24 clients.

25 You could have people sign a waiver

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2 saying they understand the full requirements
3 of lobbying and if they sign that, they can
4 opt out of training.

5 All those things could be done to limit
6 costs and if there is the capacity within the
7 Clerk's Office. But I do think training
8 ought to be mandated for first-time lobbying
9 registrants.

10 Advertising is another thing that we
11 think is really important. The City -- this
12 actually is a proposal that comes from the
13 New York Public Interest Group. NYPIRG and
14 Common Cause are two government colleagues
15 that we support. You know, the City has its
16 own advertising capacity that they can tap
17 into to make better known the lobbying filing
18 requirements. This includes things like
19 advertising on WNYC Television, materials
20 provided to public servants with policy
21 making discretion and even periodically be
22 given a prominence on NYC.gov. Use of these
23 outlets would encourage non-profit
24 organizations and other lobbyists to check
25 into whether they need to register as a

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2 lobbyist.

3 So, beyond those three, just allow me to
4 touch quickly on some of the things that we
5 mentioned at the first hearing. At the first
6 hearing, it seemed this Commission was going
7 to coordinate extensively with the State's
8 Commission on Public Integrity. And so, we
9 think if that does happen, ideally there
10 should be a single electronic form to report
11 all lobbying activity through the State and
12 City, this would be online. Short of that,
13 we think the State and City's websites ought
14 to be made as similar in design and
15 appearance as possible and users ought to be
16 able to upload and download information in
17 between each.

18 You know, again, coming back to the City
19 online reporting system, we think that the
20 drop-down menus there that are used and the
21 prompts ought to be replicated by the State
22 and we think the City ought to replicate the
23 pre-population features of the State. We
24 also think the State ought to eliminate the
25 two semiannual client reports for those who

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2 lobby or anticipate lobbying on their own
3 behalf.

4 Finally, I was asked at the first
5 hearing whether Citizens Union reported
6 raising a threshold from \$2,000 in
7 anticipated or actual reportable lobbying
8 compensation for expenses. At that time, I
9 indicated we would like to look at the
10 numbers and see how many clients and
11 lobbyists would be impacted by that who would
12 no longer have to disclose. In our meeting
13 with the Clerk's Office, they indicated that
14 number would be about 40, 40-fewer lobbyists
15 disclosing. And so, given that there are
16 3,228 lobbyists and clients as of the latest
17 Clerk's annual report, reportable 1.2 percent
18 would be 40, we think that it would be
19 appropriate that the threshold be raised to
20 5,000. I know others have put forth
21 different thresholds, I'm not sure we'd go
22 much beyond that.

23 MS. BRAGG: Excuse me. Why not?

24 MR. CAMARDA: I think the reason is, you
25 know, our good government organization is in

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1
2 the interest of disclosure and transparency,
3 particularly when it comes to lobbying and
4 who is trying to influence decision makers in
5 government, and so, you know, we're very
6 hesitant to take organizations off the table
7 who are doing that kind of work.

8 And I think, you know, the threshold was
9 2,000 in 1986, now, it's five, I think it's a
10 long time to go without increasing it. I
11 don't think that's diminishing transparency
12 from the original law that was created, but
13 to go to a level higher than that, we would
14 want to see how many clients and lobbyists
15 that would then not be required to report.

16 And I also would note that I think the
17 Commission ought to carefully consider any
18 increase in the threshold along with some of
19 the proposals recommended by the Advocacy
20 Association, Ken Fisher, in that he pointed
21 out that there's an inconsistency when
22 lobbyist report -- of firms -- who have many
23 clients, if the clients are below the
24 threshold, in some instances they don't have
25 to report those clients because the

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2 determining factor in that is the lobbyist
3 overall, lobbying expenditures.

4 MR. BURMAN: It's easier to just report
5 them, though, right?

6 MR. CAMARDA: Well, what I heard from
7 him was that he was pointing out in cases
8 where it's pro bono they shouldn't be
9 reported, but you know, he gave the example
10 of you could have 10 clients, all of whom are
11 under the threshold and you wouldn't
12 necessarily be required to report them and it
13 would depend on the lobbyist who is doing the
14 work on their behalf and what their
15 compensations and expenses are.

16 But I do think that in considering that,
17 we also have to look at the threshold. I
18 mean, there is an interest in determining
19 firms, which clients they're lobbying for
20 year to year even if they fall slightly below
21 the threshold.

22 So, with that, I'll conclude and I'm
23 open to any questions you may have on these
24 topics or others.

25 MR. BERMAN: Anybody have any question?

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2 (No response)

3 MR. BURMAN: Thank you once again for
4 your testimony. Appreciate it, and we will
5 certainly be looking at it.

6 Is there anybody else who would like to
7 testify?

8 (No response)

9 MR. BERMAN: Alright. Our next hearing
10 is the evening of May 11th. I want to thank
11 everybody for showing up tonight, and we are
12 adjourned. Thank you.

13 (Time noted: 6:52 p.m.)

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1 C E R T I F I C A T I O N

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3 STATE OF NEW YORK)
4 COUNTY OF NEW YORK) : SS.:

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7 I, CASEY MARTIN, a Stenotype Reporter and
8 Notary Public for the State of New York, do hereby
9 certify:

10 THAT this is a true and accurate
11 transcription of the City of New York Lobbying
12 Commission public hearing held on May 3, 2011.

13 I further certify that I am not related
14 either by blood or marriage to any of the parties
15 in this matter; and

16 I am not in any way interested in the
17 outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 3rd day of May 2011.

20

21 _____
22 CASEY MARTIN

23

24

25

