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NEW YORK CITY LOBBYING COMMISSION  
PUBLIC MEETING

250 Broadway  
New York, New York

September 15, 2011  
5:30 p.m.

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

COMMISSION MEMBERS:

Elisa Velazquez

Margaret Morton

Jamila Ponton Bragg

Lesley Horton

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2 MR. BERMAN: Good evening, ladies and  
3 gentlemen. May I have your attention.

4 My name is Herbert Berman. I have the  
5 honor of chairing the Lobbying Commission of  
6 the City of New York. I join my fellow  
7 commissioners who are, right to left, Jamila  
8 Ponton Bragg.

9 MS. BRAGG: Good evening.

10 MR. BERMAN: Leslie Horton, Margaret  
11 Morton, and Elisa Velazquez.

12 MS. VELAZQUEZ: Hello.

13 MR. BERMAN: I have a short statement  
14 and than we'll start with the meeting, but  
15 before we start, Lesley, go ahead please.

16 MS. HORTON: Just in the vein of full  
17 disclosure, I should say that I recently  
18 switched jobs. So, just for the record, I am  
19 no longer an associate at Paul, White,  
20 Rifkind, Wharton and Garrison. I am now  
21 in-house at L + M Development Partners  
22 Company. So, just for, again, in the effort  
23 of full disclosure, we are a registered  
24 client. We do hire outside lobbyists, none  
25 of which I am personally involved in. So, I

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2 just wanted to put that out there for the  
3 record. Thank you.

4 MR. BERMAN: Thank you. Good luck with  
5 your job.

6 MS. HORTON: Thank you.

7 MR. BERMAN: Before I read the opening  
8 statement, I want to indicate that we are  
9 joined by Council Member Gale Brewer over  
10 there who is a long-time colleague of mine in  
11 government and an old friend and a dear  
12 friend.

13 She is also the chair of the Government  
14 Operations Committee and she's been  
15 monitoring this process very closely since  
16 the very beginning, and ultimately when this  
17 is submitted to the City Council it will bear  
18 before Ms. Brewer's committee. Welcome and  
19 thank you.

20 Okay, welcome to tonight's public  
21 hearing of the New York City Lobbying  
22 Commission. At tonight's session we will  
23 hear testimony on the Commission's  
24 preliminary report, hopefully you've all seen  
25 it, and recommendations related to

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2 strengthening the laws regulating lobbying in  
3 New York City.

4 This report was prepared after the sixth  
5 public meeting and hearing held and a review  
6 of all the submissions received by the  
7 Commission from March through June of this  
8 year. The report's recommendations fall into  
9 four broad areas: First, to expand, and when  
10 necessary, clarify the definition of lobbying  
11 activities, to cover additional types of  
12 advocacy activities and at the same time  
13 increase the dollar threshold so that small  
14 organizations who engage in limited amounts  
15 of lobbying on their own behalf will no  
16 longer have to be registered and have to be  
17 burdened by that process.

18 Second, to enhance enforcement efforts,  
19 target unregistered and non-compliant  
20 lobbying and bring unregistered lobbyists  
21 into the City's system.

22 Third, to enhance the education and  
23 outreach activities by the Clerk so that  
24 those engaged in those activities covered by  
25 the expanded scope of the law and those

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2 currently operating outside of the system are  
3 aware of their filing obligations.

4 Finally, fourth, to require  
5 technological changes and increase the  
6 availability of the public information to  
7 make the filing process more easier and  
8 efficient and increase transparency  
9 surrounding lobbying activities in New York  
10 City.

11 Finally, two to four years after  
12 legislation is enacted, making any or all the  
13 changes to the lobbying laws, we recommend  
14 that another Lobbying Commission be created  
15 to review the operations of the revised laws  
16 and the Clerk's administration of the  
17 lobbying law.

18 The report's executive summary on Pages  
19 1 through 5 entail a list of the 15 proposed  
20 recommendations and the body of the report  
21 explains the reasoning for these  
22 recommendations and lays the testimony  
23 received by the Commission on these subjects.

24 I also want to note that we have  
25 received some very thoughtful comments on our

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2 preliminary report from our City's Department  
3 of Investigation which works closely with the  
4 Clerk's Lobbying Bureau in enforcement,  
5 training and auditing. I would like to thank  
6 the department for its thorough review of our  
7 report and we will be working to incorporate  
8 their recommendations into our final  
9 proposal. We hope to hear today from people  
10 on what they think of DOI's comments as  
11 well. But I think that proposals such as  
12 requiring a written determination pointing to  
13 documentary evidence that a lobbyist has  
14 status for the criteria for reduction or  
15 waiver of a late penalty and anti-corruption  
16 component for further education and training  
17 will further our goals of strengthening the  
18 laws.

19 We have also received advanced copies of  
20 submissions from organizations who have been  
21 participating throughout this process,  
22 including Citizens Union, NYPIRG, Common  
23 Cause and many advocacy groups. I want to  
24 thank them and all those who have taken so  
25 much time to attend these hearings, meet the

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2 Commission staff, meet the commissioners,  
3 prepare testimony and comment on our report.  
4 We expect our final report early this fall  
5 and could not have accomplished this without  
6 the participation of all of you. So, I thank  
7 you. And we will now commence the meeting.

8 Okay, as a panel, the Advocacy  
9 Association. Are you the whole panel,  
10 Mr. Goldstein?

11 MR. GOLDSTEIN: If Denise wants to come  
12 up, that will be fine.

13 MR. BERMAN: Would you be good enough to  
14 state your names for the record and who you  
15 are representing.

16 MR. GOLDSTEIN: Arthur Goldstein, New  
17 York Advocacy Association.

18 MS. WAGNER: Denise Wagner for New York  
19 Advocacy Association.

20 MR. GOLDSTEIN: First, it is a pleasure  
21 to see you, Mr. Chair, again chairing the  
22 meeting, and Commissioners, we appreciate all  
23 the work that the staff did on this report.

24 We are pleased that many of the  
25 recommendations that we have made to the

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2 Commission were included in the preliminary  
3 report, however, there remain just a few that  
4 we'd like to comment on.

5 No. 1: Applying lobbying threshold to  
6 each client relevant to each lobbyist. The  
7 report contends that applying the threshold  
8 to each client would allow significant  
9 amounts of advocacy to go unreported. The  
10 association respectfully disagrees with this  
11 assessment, because the rule change would  
12 only affect the reporting of clients whose  
13 lobbying expenditure is below the threshold  
14 amount, the monetary value of advocacy that  
15 would go unreported would not be a material  
16 amount. More importantly, applying the  
17 threshold to clients rather than lobbyists  
18 would give pro bono and below-the-threshold  
19 clients the opportunity of retaining a  
20 lobbying firm without having to register and  
21 file lobbying reports. This change is  
22 entirely consistent with the proposal to  
23 raise the threshold from \$2,000 to \$5,000.  
24 If not adopted, a below-the-threshold client  
25 might be forced to enroll and report solely



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2 because they act through an above-the-  
3 threshold representative.

4 With respect to the reporting trigger,  
5 the association maintains that the Commission  
6 should maintain replacing the reasonably  
7 anticipated standard with the requirement  
8 that all the lobbyists should register prior  
9 to the commencement of lobbying activity.  
10 Under the current standard, lobbyists  
11 occasionally encounter a situation where they  
12 register a client who could anticipate  
13 lobbying in the future but ultimately never  
14 perform any lobbying activities. In such an  
15 instance, both the lobbyist and the client  
16 are subject to unnecessary filing.

17 MR. BERMAN: Arthur, let me understand,  
18 you're saying that every person who  
19 anticipates in lobbying should register even  
20 before there is something to register for?

21 MR. GOLDSTEIN: Under the present  
22 standard, a client walks in, through the  
23 years I've registered, on Day 1, even though  
24 he wasn't absolutely sure that we're going to  
25 take the lobbying strategy, under the

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2 lobbying law.

3 You could argue about what's reasonable,  
4 so my firm, as an example, which is, take the  
5 easy way out and register. So, you know, my  
6 firm came to me the other day with an item  
7 that will be lobbying, but it's a land use  
8 matter and the actual lobbying may not start  
9 for 12 or 13 months because of all the other  
10 work that has to be done just preparing  
11 plans.

12 So, can someone in the 11th month say,  
13 "I was wrong, I should have registered  
14 January 1st instead of December because I  
15 should have reasonably anticipated it? But  
16 it's just that I know I'm going to start  
17 lobbying tomorrow, I've got 10 days to  
18 register."

19 MR. BERMAN: Okay, thank you. Go  
20 ahead.

21 MR. GOLDSTEIN: Number 3 out of 5:  
22 Clients who only have one lobbyist should not  
23 have to file the client annually or be forced  
24 to disclose normal information that serves no  
25 public purpose. Additionally, clients often

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2 have difficulty completing these reports and  
3 the burden falls on the lobbyist to ensure  
4 that the clients file them correctly and  
5 timely.

6 No. 4: The association is encouraged  
7 that the Commission will be recommending that  
8 the firm has discretion in levying late fees  
9 and penalties. However, we disagree with the  
10 notion that it should be very difficult for a  
11 large for-profit outside lobbying firm to  
12 have a late penalty waived or reduced. Even  
13 those these firms typically are better  
14 equipped to comply with the reporting  
15 process, they are not immune to an occasional  
16 ill-timed error, printing error or sick day.

17 The state Commission takes experience  
18 into account but has no blanket  
19 discrimination policy. Also, the association  
20 would like to see a distinction made between  
21 late registering and late reporting. The  
22 registering process is dependant on clients  
23 and vague reasonably-anticipated standards,  
24 whereas the reporting is more within the  
25 lobbyist's control.

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2 I myself actually made I think what was  
3 my first mistake in 20 years in the last year  
4 and it was because of the way I was reading  
5 the screen, I turned out to be a day late in  
6 reporting. So, it was \$25, but the point  
7 was, when I explained the mistake, they  
8 really didn't have the discretion to look  
9 at --

10 MR. BERMAN: We understood that. That  
11 would be a matter of continuous examination  
12 anyway, and that's a process. But I wouldn't  
13 make that mistake.

14 MR. GOLDSTEIN: Lastly, the Commission  
15 should recommend that the filing fees be  
16 consistent for all clients. Currently the  
17 costs are 150 for the first client and \$50  
18 for each additional clients. This system  
19 serves no public purpose and puts the  
20 lobbyist in the awkward position to having to  
21 choose which of the clients may pay the large  
22 first fee.

23 The association would again like to  
24 express its gratitude to the Commission for  
25 all it's worth. And as always, we are

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2 available to meet with you and discuss  
3 anything that we raised here or any questions  
4 you may have.

5 MR. BERMAN: Thank you. Ms. Wagner,  
6 would you identify yourself?

7 MS. WAGNER: I did but I'd be happy to  
8 do it again. Denise Wagner for NYAA.

9 MR. BERMAN: Do you have anything to add  
10 to what Arthur was saying?

11 MS. WAGNER: On behalf of the NYAA, I do  
12 not. As a person who prepares a tremendous  
13 amount of these reports, I'd like to note  
14 that today is a filing deadline for both the  
15 City and the State, and so for all of my  
16 colleagues who couldn't make it here today  
17 because they're still back there --  
18 (Laughter)

19 MS. WAGNER: There's a lot of small  
20 groups that just aren't equipped to do it,  
21 and unfortunately they're getting hit with  
22 large fines and penalties when their business  
23 is not fond of filling out the course of  
24 providing these services.

25 MR. BERMAN: We of course have attempted

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2 to bring some semblance of reason to the  
3 process. But this is an ongoing process and  
4 I think that it's a process -- my personal  
5 perception is there has to be rulemaking on  
6 part of the Clerk so that there is an  
7 expectation or at least a set of rules that  
8 can be easily followed. Hopefully in time,  
9 and it may not be immediately, but hopefully  
10 in a timely process.

11 MS. WAGNER: And I think I can speak for  
12 the Advocacy Association in saying that if  
13 the Clerk's Office or anyone else wants to  
14 set up a practitioner's working group so that  
15 as changes are made we can work with them to  
16 see how they really flesh out in real-time, I  
17 think we'd be more than happy to help with  
18 that.

19 MR. BERMAN: Good. Thank you.

20 MR. GOLDSTEIN: We look forward to doing  
21 this again in a couple of years.

22 MR. BERMAN: Arthur, do you have your  
23 testimony?

24 MR. GOLDSTEIN: It's all marked up, so,  
25 (handing.)

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2 MR. BERMAN: Okay. NYPIRG, Citizens  
3 Union and Common Cause, good seeing you.  
4 Everybody, would you each be good enough to  
5 identify yourselves and the organization that  
6 you represent.

7 MS. BITETTI: I'm Deanna Bitetti, the  
8 associate director for Common Cause New  
9 York.

10 MR. RUSSIANOV: I'm Gene Russianov with  
11 the New York Public Interest Research Group.

12 MR. CAMARDA: Alex Camarda, director of  
13 public policy, Citizens Union.

14 MR. BERMAN: Who wants to go first?  
15 Gene has seniority on everybody.

16 MR. RUSSIANOV: Good evening, Chairman  
17 Berman and members of the Commission. I have  
18 written testimony which you have a copy of,  
19 and I tried to make comments on things that I  
20 think were quote, "still in play." One thing  
21 I want to say at the outset is that the  
22 preliminary report is filled with very  
23 thoughtful recommendations, and it's been a  
24 model process from our point of view and we  
25 congratulate the Commission on being so open

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2 and accessible.

3 MR. BERMAN: Thank you.

4 MR. RUSSIANOV: So, I'll deal with a  
5 couple of points. We agree with the  
6 Commission's recommendation about another  
7 Commission down the road. We'd pick 2015, a  
8 year in which there's very little electoral  
9 activity -- that's where we are.

10 We support raising the threshold,  
11 triggering lobbying registration from \$2,000  
12 to \$5,000.

13 We don't have a strong feeling about the  
14 issue of creating a new category for 5,000 to  
15 \$10,000, but it's not entirely clear to me  
16 what the benefits of doing that are, whether  
17 people will see that it's a real advantage.

18 MR. BERMAN: Gene, what we were  
19 basically trying to do at that time is just  
20 make it a little easier for some of the  
21 smaller organizations who have to file or  
22 possibly not have to file State and City and  
23 be burdened by. So, we're just looking into  
24 it. That was something that has to be  
25 considered.



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2 MR. RUSSIANOV: Not surprisingly, we  
3 support the Commission's proposal to ensure  
4 that lobbying on legislation does not require  
5 the existence of formally-introduced pieces  
6 of legislation.

7 We'd also believe that lobbying law  
8 should be amended to subjects, pension  
9 lobbying, to the law. Right now it's dealt  
10 with in opinion by the Corporation Counsel  
11 and we think it should be codified.

12 I want to offer a word of praise to the  
13 Commission about recommending a creation of a  
14 dedicated education and outreach officer in  
15 the City's Lobbying Bureau. As the  
16 Commission notes, you understand that  
17 resources are scarce, but the Commission  
18 believes the position would greatly enhance  
19 the ability of the City Clerk's Lobbying  
20 Bureau to achieve compliance with  
21 registration requirements, and I think having  
22 education staff has worked well for our  
23 agencies, similar, like the Conflicts of  
24 Interest Board, and they really reduced their  
25 caseload.

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2 We agree with the City Department of  
3 Investigations' recommendation that training  
4 include DOI's Corruption Prevention  
5 competent.

6 On the issue of -- the Commission says  
7 the City will be able to increase the  
8 transparency and searchability of the  
9 lobbyists' data so that people can search by  
10 topic or government entity. On this one,  
11 we're just going to have to wait, the devil  
12 is in the details, and we'll see what the  
13 City is able to come up with, and our groups  
14 are committed to watching that process to see  
15 that it's fully achieved.

16 Just a couple more. NYPIRG supports the  
17 Commission's proposal to focus some of the  
18 Lobbying Bureau's resources on, "those  
19 organizations who are not registered but  
20 whose dealings with City government may  
21 subject them to the lobbying law." This was  
22 a big issue for us, the State, as Executive  
23 Law 166 that requires rulemaking agencies to  
24 have notices turned in by people who are  
25 appearing before it and those notices are

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2 then turned over to the State Commissioner on  
3 Public Integrity. The Commission staff felt  
4 that that actually did not produce a lot of  
5 quality information. So, we're committed to  
6 working with the Council and the Mayor's  
7 Office in making sure that a wide number of  
8 agencies are included in outreach efforts by  
9 the City's Lobbying Bureau.

10 You know, as Chairman Berman said, we  
11 strongly support the DOI recommendation that  
12 the City Clerk collect, maintain and rely on  
13 documentation sufficient to justify each  
14 waiver or penalty. There's got to be some  
15 written record to make sure that there isn't  
16 an abusive discretion. And that's my  
17 testimony.

18 MR. BERMAN: Thank you very much. Any  
19 questions?

20 (No response)

21 MR. BERMAN: Next?

22 MS. BITETTI: Thank you so much,  
23 Chairman Berman, members of the Commission.  
24 I also of course want to thank members of the  
25 Mayor's Office as well as the City Council,

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2 your supporting staff, you guys honestly were  
3 great, the two of them -- a shoutout over  
4 there -- for meeting with us, adopting many  
5 of our recommendations. I'll try to be brief  
6 since Gene said most of them.

7 On the first one, threshold: We would  
8 support raising the threshold to 5,000,  
9 create uniformity with the State so that  
10 people actually know when they have to file  
11 and it's uniform across City and State.

12 We agree with definition of a "lobbyist"  
13 of course, in that making sure that we know  
14 that people are having to register as  
15 lobbying even when legislation currently  
16 isn't in place.

17 We also believe, you know, as Gene  
18 already stated, that it should be codified  
19 that any time you're lobbying the  
20 Comptroller, the staff or the Board of  
21 Trustees, it should be lobbying and you  
22 should have to register that.

23 Something short on amnesty. While we do  
24 support a short amnesty period, we actually  
25 do not support the idea that it should be a

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2 blanket amnesty. One of the recommendations  
3 we put forward, we're saying that if you have  
4 registered in the last 10 years, it shouldn't  
5 be a blanket amnesty. You know, kind of just  
6 thinking about this conceptually, and I can't  
7 really see this happening in many instances,  
8 but if you have registered in the last 10  
9 years, the fact that you knew you had to  
10 register and haven't shouldn't kind of  
11 preclude you from any filing fees.

12 MR. BERMAN: We agonized over that issue  
13 for quite a while and the Commissioners were  
14 all very deeply involved this the  
15 discussion. And in the past whenever we in  
16 the City granted an amnesty, for the most  
17 part it's a blanket amnesty. It effectively,  
18 and on a specific issue, what was troubling  
19 us, because you'll say to somebody who never  
20 filed, "Okay, you'll have a blanket amnesty.  
21 But if you filed and then failed to file,  
22 we're going to punish you and you can't have  
23 amnesty." You know, it is 6 to 1; half a  
24 dozen the other -- I don't know what the  
25 right answer is. So, I think in that result

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2 is that a blanket amnesty is probably the  
3 best bet. That's our opinion. City Council  
4 may feel otherwise obviously.

5 MS. BITETTI: You know, we have thought  
6 about that also. I understand that it's a  
7 difficult, kind of weighing of the options.  
8 So, another suggestion that I would put  
9 forward, as we were saying in regards to the  
10 DOI recommendation for late filing, late  
11 penalties or fees, that, in the same way we  
12 would support the DOI recommendation that you  
13 should have to document it, if you are giving  
14 blanket amnesty to groups and that they have  
15 registered in the past, there should be some  
16 documentation at least explaining or on  
17 record as to why they have failed to comply  
18 with this in the last 10 years or why they  
19 have failed to comply in general.

20 I think the whole idea, at least in the  
21 effort of the transparency to understand why  
22 organizations have failed to comply is  
23 important.

24 Moving right along, to be very quick,  
25 for your suggestions for improving the

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2 E-Lobbyist system, I do want to thank you for  
3 making the recommendation to have more  
4 standardization, especially with the dropdown  
5 menus. This also will help us when we do  
6 searches for information. Pre-population of  
7 fields of course really does help us in  
8 cutting back time.

9 We're also a small organization and I  
10 also have to fill out all of these forms. In  
11 regards to the ability of groups to analyze  
12 lobbying data, we do appreciate the  
13 recommendations put forward to make it more  
14 or similar to the State database. Of course  
15 we continue to urge the Commission and DOITT  
16 as well to think creatively and continue  
17 zipping as to how to make the process easier  
18 for us to analyze, do searches. As Gene has  
19 already said, the devil is in the detail.

20 In terms of your recommendations for  
21 education, outreach and training, the whole  
22 idea of a dedicated staffer, of course we  
23 completely support that and hope that funds  
24 will be made available to have somebody there  
25 to actually do this work.

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2 We also support the DOI's recommendation  
3 that mandated training include the Corruption  
4 Prevention component.

5 One of the suggestions that we also had  
6 that was not in the recommendations but  
7 could add some added value of course, in  
8 addition to working with DOITT for online  
9 training, we think social media is a tool to  
10 advance some of the issues that the Lobbying  
11 Bureau works on to advance the visibility.  
12 So, you know, doing things such as Facebook  
13 pages, Twitter, accounts that could be added  
14 to the City of New York social media site  
15 pages, the Campaign Finance Board has done  
16 that and we have seen that, you know, it's  
17 been very good at reaching people and giving  
18 visibility.

19 In terms of timeline, it's not in our  
20 testimony, we are pretty flexible in that  
21 case, but we do also echo many of the other  
22 good government groups who also say not to do  
23 it in an election year or the time where  
24 there is going to be a lot of pressure or  
25 different things going on around election



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2 time. Thank you very much again.

3 MR. BERMAN: Sir?

4 MR. CAMARDA: So, I would echo what my  
5 colleague said regarding the process. We  
6 were very pleased with the process and  
7 thought it was very open and inclusive and  
8 provided a lot of opportunities to give our  
9 thoughts. We also thought it was very good  
10 on substance, in part because many of our  
11 recommendations were adopted, but also we  
12 thought the Commission as a whole struck the  
13 right balance between increasing transparency  
14 and also making reporting more efficient.

15 Allow me to comment on a couple of  
16 outstanding issues that were raised in the  
17 report. With regard to the threshold, we  
18 also support an increase to 5,000. We  
19 understand that for certain filers between  
20 5,000 and 10,000, it might be beneficial to  
21 have them report fewer times per year. They  
22 would still be reporting all of their  
23 lobbying activity, just with less frequency.  
24 I actually did our reports today, and doing  
25 the State reports as compared to the City,

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2 the State reports do take less time, so I can  
3 understand the logic behind that.

4 With regard to the pension fund, as was  
5 mentioned by my colleagues here, we believe  
6 that should be codified in law so that the  
7 Legal Department's opinion has standing in  
8 law.

9 The Department of Investigation  
10 recommendations, we support all of those,  
11 particularly the documentation related to  
12 waiving or reducing penalties. We have some  
13 concerns with the criteria that were laid out  
14 in the report that they may still be too  
15 subjective, and that's why we're seeking the  
16 documentation.

17 With the amnesty, we also support that.  
18 We're a little bit wary of the broadness of  
19 it, but we understand the tensions there.

20 With regards to the next Commission, we  
21 think it should meet within the next four  
22 years. As much as we like to examine  
23 lobbying issues, we think two years is too  
24 soon and we also think it's beneficial again  
25 to do it mid-cycle.

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2 And we also think that if the Council  
3 has not comprehensively taken up campaign  
4 finance-related issues pertaining to lobbying  
5 by that time that a Commission should be  
6 paneled to do so as part of this process.

7 Relating to databases, we really believe  
8 that the success of the Commission's  
9 recommendations hinges on the databases. All  
10 of this additional transparency that's being  
11 created, if there isn't an adequate database  
12 to show it, it will be compromised. So, we  
13 really think that this is something important  
14 to focus on. There has to be uniform entry  
15 of data on the front end as is done with the  
16 City database, to make sure that there can be  
17 a targeted search on the back end. So, we  
18 hope that DOITT is able to produce a quality  
19 database that allows for that.

20 With regards to outreach and government  
21 resources, we support the new position in  
22 Clerk's Office, the new education and  
23 outreach position, and we would encourage  
24 whomever occupies that post to utilize City  
25 resources including the City Record and PSAs

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2 to notify folks of the amnesty, of filing  
3 deadlines and the need for technical experts  
4 to register if the Commission goes in that  
5 direction.

6 MR. BERMAN: Thank you. Any questions?

7 (No response)

8 MR. BERMAN: I want to thank again the  
9 participation in the process, it was well  
10 received and it was all thought out and very  
11 helpful and we're deeply appreciative of your  
12 efforts. Thank you very much.

13 Alright, of the representatives of the  
14 Architects Association?

15 MS. PERLMUTTER: Good evening. My name  
16 is Margery Perlmutter. I'm the legislative  
17 director of the American Institute of  
18 Architects New York Chapter.

19 MR. BERMAN: Are you all part of one  
20 organization?

21 MS. PERLMUTTER: All but one is part of  
22 the same organization. We're all going to  
23 speak on different topics though.

24 MR. BERMAN: First identify yourselves  
25 and the organization.

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2 MS. PERLMUTTER: So, I'm the legislative  
3 director of the American Institute of  
4 Architects New York Chapter and we're here to  
5 speak about the preliminary report's  
6 interpretation of the law with respect to  
7 architects and engineers and whether what  
8 they do is actually lobbying.

9 I have with me Rick Bell who is the  
10 executive director of the AIA New York  
11 Chapter. I have also Ed Applebaum who is the  
12 president and CEO of AKRF.

13 MR. BERMAN: Is that an architectural  
14 company?

15 MS. PERLMUTTER: That's an engineering  
16 company.

17 I have Mark Strauss who is a senior  
18 partner at FX Fowle which is an architecture  
19 firm, and William Stein who is the partner at  
20 Dattner Architects, and each one will speak,  
21 and I'll ask Mr. Stein to speak first about  
22 the rule of architects.

23 MR. STEIN: Good evening, Commissioners.  
24 My name is Bill Stein, I'm a principal at  
25 Dattner Architects in New York City.

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2 Architects are retained to design  
3 buildings that fulfill clients' program  
4 requirements as well as their aspirations for  
5 a project. Applying relevant zoning and  
6 building codes, the architect designs a  
7 building to ensure that the building complies  
8 with these codes while at the same time  
9 fulfilling the client's needs and design  
10 goals.

11 Significant aspect of the design process  
12 is the presentation of the design to  
13 interested members of the community.  
14 Architects make such presentations using  
15 visual medias such as drawings models, and  
16 renderings produced by the architects. These  
17 presentations are intended to inform the  
18 community about the project that will be  
19 built in their neighborhood. The information  
20 speaks to the building's size, area, height,  
21 materials and so on. Such presentations are  
22 informational based on the technical special  
23 knowledge and skills possessed by the  
24 architect and other design professionals on  
25 the development team -- does not constitute

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2 advocacy in our view.

3 Where a client desires or a project  
4 requires a discretionary approval from a City  
5 agency such as a Uniform Land Use Review  
6 Process or ULURP action, the architect  
7 reviews and studies how existing zoning  
8 shapes the project and limits what that  
9 existing zoning places upon a building's  
10 design. So, for example, where a client  
11 desires to construct a residential building  
12 in a zoning district that only permits  
13 manufacturing, the architect will advise the  
14 client that such use will only be permitted  
15 in a change in the zoning map. When the  
16 client meets with the Department of City  
17 Planning to begin the ULURP process, the  
18 architect attends meetings with City Planning  
19 to explain to staff what a residential  
20 building on the site would look like, how  
21 many residents would live there, what sort of  
22 amenities would be provided and so on. The  
23 architect would also provide City Planning  
24 with a description of surrounding  
25 neighborhood conditions and impacts. This

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2 information represents technical special  
3 knowledge based on the architect's  
4 professional training in architecture, urban  
5 planning and urban design and his or her  
6 special knowledge about the specific project  
7 that is proposed.

8 An architect that appears before a  
9 public body or agency to present a project is  
10 not advocating for a zoning change in this  
11 example, he or she is presenting the project  
12 and providing information about the project  
13 that would be constructed if the zoning  
14 change were to be approved.

15 I respectfully request that the  
16 Commission reconsider the recommendation that  
17 architects and engineers send similar  
18 technical experts be required to register as  
19 lobbyists. Thank you.

20 MR. BERMAN: Mr. Stein, if I may, and  
21 this would be applicable to everybody in  
22 connection with your advocacy, in the course  
23 of discussing this issue, it became apparent  
24 that there was a great deal of confusion  
25 concerning at what point does someone like an



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2 architect become a lobbyist and be subject to  
3 the law. As a consequence, right now no one  
4 knows what the answer is. There is no set  
5 rules, and it would appear to me, and I think  
6 it would appear to the Commissioners here  
7 that the individual architects are more in  
8 jeopardy of running afoul of the lobbying  
9 laws because there are no requirements, set  
10 rules, etcetera.

11 I mean, one of the things that we feel  
12 necessary is that the Clerk's Office, in  
13 furtherance of their undertakings, start  
14 setting down rules together with the Law  
15 Department so that there would be a  
16 comprehensive understanding of when if at all  
17 a lobbyist would have to register.

18 And the fact still remains that there  
19 are instances where architects are lobbyists.  
20 For example, I remember when I was in the  
21 City Council and I would attend the Board of  
22 Standards and Appeals meetings, very often it  
23 was the lobbyist who was the one who would  
24 appear before the Board and created -- and  
25 you know, proffered the advocacy.

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2 So, there is a concern, and my opinion  
3 is that in the long run, the organization and  
4 the members are better off with the rules  
5 that would apply so they would know when they  
6 would have to register.

7 Now, that doesn't mean that you would  
8 not have the opportunity to appear and to  
9 submit to the Law Department or to City  
10 Clerk's Office on behalf of the different  
11 opinion, but I think there is the jeopardy  
12 that currently applies that hopefully this  
13 process would eradicate.

14 MS. PERLMUTTER: Just to be clear,  
15 appearances before the Board of Standards and  
16 Appeals are not lobbying under the  
17 Administrative Code, only appearances --

18 MR. BERMAN: I said that to be in  
19 constitute of advocacy, what I saw.

20 MS. PERLMUTTER: It's not under the law.

21 MR. BERMAN: I didn't say that it's a  
22 matter of law, I said that it was advocacy.  
23 So, there is confusion.

24 MS. PERLMUTTER: So, I think part of  
25 what we're trying to do here is, we have

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2 another architect and an engineer will speak,  
3 and I'm a land use lawyer as well as an  
4 architect, and we're going to compare the  
5 different kinds of work that the two groups  
6 do so that we can see who is advocating and  
7 who is not advocating.

8 MS. VELAZQUEZ: Can I just ask a  
9 clarified question just about more what you  
10 -- the example that you gave. So, if you  
11 were going in front of the City Planning on a  
12 zoning change, going from commercial to  
13 residential or vice versa, and what you laid  
14 out was that as the architect you would come  
15 in and you would give, just based on your  
16 professional training, you know, as to what a  
17 residential building is, whatever, so at that  
18 point, and I wasn't clear about this, are you  
19 going into City Planning and saying, "Okay,  
20 so this is the commercial space and this is  
21 what it means to have commercial space and we  
22 want to change it to residential space and  
23 this is what it means to have residential  
24 space"? So, what I'm trying to get at or  
25 what I'm trying to ask is, at that moment

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2 when you go in and you give that sort of  
3 presentation where you're saying, "This is  
4 what this is, now we want to change it to  
5 what this is", to me, at that point, if maybe  
6 you're asking to go from one to the other --  
7 and I realize that you're putting out facts  
8 based on training, I'm trying to kind of  
9 understand I guess from your perspective,  
10 maybe it will come through in the rest of the  
11 testimony, how that isn't advocacy, or how it  
12 isn't kind of going and pushing in one  
13 direction as opposed to the other, just by  
14 virtue of you saying, "This is commercial,  
15 and this is what it would look like if it's  
16 residential," and I'm not in any way, shape  
17 or form trying to say that you're going and  
18 saying that it should be, and I realize that  
19 you present it in a very orderly fashion.  
20 But I'm just kind of trying to understand.

21 MR. STEIN: I think it's a very good  
22 question and it also reflects the comments  
23 that Chairman Berman made previously in an  
24 ascent it goes to what's the definition of  
25 advocacy, and I do agree, sir, that greater

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2 clarity would be important to understand what  
3 advocacy means and I think it all depends on  
4 how you look at it. This is what it comes  
5 down to, but I think that most architects  
6 feel that while they're certainly  
7 representing a client or hired and paid by a  
8 client, there's no argument about that,  
9 architects are licensed professionals,  
10 licensed by the State of New York and also  
11 have a public responsibility to present a  
12 particular project or a particular situation  
13 in a balanced, professional way based on  
14 professional judgment and analysis. So, how  
15 that gets sliced as advocacy versus  
16 informational presentation is a question. We  
17 as the architects like to think that, while  
18 we do represent our clients, we're presenting  
19 fairly and dispassionately in the public  
20 interest as licensed professionals.

21 MS. BRAGG: But just to point out a  
22 little bit, you're only there to persuade  
23 someone of how something should be.

24 MR. STEIN: Respectfully, I don't agree.  
25 We're there to present information and

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2 present analysis.

3 MS. VELAZQUEZ: I'm sorry. Would you  
4 concede that you're hired by a client to  
5 achieve a result?

6 MR. STEIN: Yes. Yes, I would.

7 MS. PERLMUTTER: Just to follow-up on  
8 that really quickly. Part of the process  
9 that I would like actually Mark Strauss to  
10 speak about more is what actually goes on  
11 when an architect, for example, is making  
12 these proposals.

13 MS. VELAZQUEZ: That would be great.

14 MS. PERLMUTTER: The client says, "Okay,  
15 I would really like to develop a residential  
16 building in this neighborhood," and the  
17 architect says, "I'm sorry, it's not  
18 possible. It's a manufacturing district," or  
19 "We need to have a talk with City Planning to  
20 see what they think about this." And so when  
21 the architect goes with their client to City  
22 Planning, and it's part of a very, very long  
23 process, City Planning is made up of the same  
24 exact type of professionals as architects;  
25 they have urban planners and designers and

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2 architects who sit there as staff. So, the  
3 architect who is hired by the client is the  
4 same type of professional and they speak the  
5 same language. And without the architect  
6 there to explain to the City Planning  
7 professionals, it would be impossible for the  
8 agency to understand what the ramifications  
9 are of the proposal and to process those  
10 proposed changes through the agency. So,  
11 it's essential that it's professionals  
12 speaking to professionals where you would  
13 have -- not conversation, but maybe we should  
14 have more people --

15 MR. BERMAN: Just before you start, let  
16 me just make one comment. And I'm not saying  
17 this by the way of being contrary or anything  
18 else, but it seems to me that the Board of  
19 Standards and Appeals, notwithstanding, that  
20 if we did nothing and there was no mention  
21 whatsoever of the architects or engineers in  
22 this report, it would still be covered by the  
23 law and the time could come whereby the Law  
24 Department or the Clerk or somebody could  
25 turn around and say "You should have filed."

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2 It seems to me that you're probably better  
3 off codifying the necessity to file and when  
4 to file than leaving it open and not knowing  
5 when it's going to hit you.

6 MS. PERLMUTTER: We could get into  
7 advisory opinions, for example, from the Law  
8 Department.

9 MR. BERMAN: Well, an advisory opinion  
10 would tell you that you have to file. I  
11 mean, we inquired that.

12 MR. STRAUSS: Thank you. As was  
13 previously stated, I'm Mark Strauss, I'm an  
14 architect as well as a planner and I'm past  
15 president of AIA New York. Additionally, my  
16 work with the organization and my work  
17 professionally, in many cases we're not the  
18 representing a private client, oftentimes  
19 we're working with the public agencies in  
20 order to try to advocate for good planning,  
21 good design and changes that contribute to  
22 the betterment of the City as a whole. One  
23 of the concerns that we have is the fact that  
24 this sort of broad based description of who a  
25 lobbyist is might affect the ability of the



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2 organization to participate and the ability  
3 of our professionals to participate in the  
4 dialogue of what makes a better city. And  
5 one of the things we want to make sure and we  
6 want to encourage is the idea of recognizing  
7 that we are professionals, we are advocates  
8 for a better city, and it's not necessarily  
9 lobbying, it's a process of understanding  
10 what the intent is with regard to the City,  
11 why the zoning was put in place the way it  
12 was and to have discussion to see what can be  
13 done to improve the quality of life in  
14 communities around the City.

15 And our work is often about reaching an  
16 understanding so that we can better serve our  
17 organization and better serve the City but  
18 also as well as some of our clients.

19 MR. BERMAN: Any questions?

20 (No response)

21 MR. BERMAN: Thank you, sir.

22 MS. MORTON: Sorry. This is very  
23 helpful. I've been troubled by this issue  
24 because I am familiar with design issues on  
25 City projects, on City-funded capital

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2 projects, just seeing the process,  
3 recognizing that it is a very long process.  
4 And I'm just talking about capital funding  
5 process, when the City actually funds and  
6 where architects and engineers are part of a  
7 team, and I guess even for private  
8 development there is always a client that you  
9 are working for and that you represent. And  
10 what troubles me about this is that there's a  
11 client that obviously will hire a lawyer or a  
12 lobbyist to help them navigate through  
13 whatever the process is, but in this case  
14 it's some kind of building-related or  
15 infrastructure project, and it concerns me  
16 and I do think this deserves much more  
17 careful thought and I think maybe  
18 precipitously because we are earnestly trying  
19 to deal with the fact that you are  
20 professionals with expertise, just as  
21 lobbyists are professionals with expertise, I  
22 think we're missing efficiency of the  
23 reporting because we're basically now asking  
24 a group of various professionals that are all  
25 working for one client on one project to

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2 report now.

3 There are a couple of dynamics; that's  
4 going to be costs that are going to be passed  
5 on to the client that in many instances are  
6 going to be the City, and should the City  
7 somehow be exempt? I don't know. I don't  
8 know if that's fair. I haven't thought about  
9 it long enough. But that's one issue.

10 But then the other issue is, all of this  
11 reporting that is happening from these  
12 individual professionals, are we certain that  
13 it's going to be examined in a comprehensive  
14 and efficient way by the Clerk's Office?  
15 It's just a new aspect of what we're taking  
16 on here by being so careful that we must be  
17 fair under the law, the letter of this law,  
18 but that maybe will result in not really  
19 serving the purpose that we want to which is  
20 to obviously make sure that the client, for  
21 the purpose of transparency, actually makes  
22 clear and files with the City about what  
23 professionals are helping them lobby.

24 So, that's my two cents. Not sure if it  
25 was a question, but.

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2 MR. BELL: I'm Rick Bell, the executive  
3 director of AIA New York. It's good to see  
4 you and hear these comments with respect to  
5 everything that's been said so far, and I  
6 will defer to the sequence that we  
7 predetermined when I get to my testimony if  
8 this doesn't count.

9 I very much want to talk about magnitude  
10 and impact, not the sort of question of what  
11 constitutes advocacy or technical information  
12 but really the real world and how it would  
13 work, and I can say that as both a registered  
14 lobbyist and a registered architect.

15 MR. APPLEBAUM: I'm Edward Applebaum,  
16 I'm the president of AKRF, an environmental  
17 planning and engineering firm. So, we wear a  
18 slightly different cap than these folks but  
19 we do work alongside of them. I'm not a  
20 lawyer, and admittedly until now -- and even  
21 now -- am not knowledgeable about the  
22 procedures of the lobbying requirements.

23 So, we're a firm of environmental  
24 planners and engineers. A substantial part  
25 of our work is preparing regulatory and

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2 environmental documents. These can be  
3 Environmental Assessment Statements,  
4 Environmental Impact Statements that are by  
5 utilized public agencies, typically the  
6 Department of the City Planning in reaching  
7 their decision. We represent public  
8 agencies, hospitals, museums, universities,  
9 private developers, basically you name it,  
10 anybody who needs to enter into this land use  
11 review process.

12 So, what we typically prepare our  
13 disclosure documents -- and that's what  
14 they're called, they're not advocacy  
15 documents, they're not making an argument one  
16 way or another, they're disclosing  
17 information, it's a mandated process to  
18 inform decision makers, it is to provide them  
19 with information so they satisfy their  
20 obligation of being knowledgeable about the  
21 environmental implications of the decision  
22 before they proceed with the decision.

23 So, again, these documents do not call  
24 for a specific outcome, they would be in  
25 failure, they would not have satisfied the

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2 regulatory requirements if they did. They  
3 are prepared by technical people; engineers  
4 planners, scientists, architectural  
5 historians. At times, they require  
6 clarifying testimony at a public hearing at a  
7 community board, at the Department of City  
8 Planning, at the City Council.

9 A large submission, a large EIS, may  
10 have 30, may have 40 people work on it. It's  
11 a very collaborative process, so if you just  
12 think about the number of people who are sort  
13 of doing different parts of this regulatory  
14 submission, what do we do? For example, we  
15 might count cars on the street and report on  
16 that; we might take soil samples, we send  
17 them to a lab and have them measured; we  
18 might measure noise levels; we might say how  
19 tall the buildings are; we might say what  
20 type of fuel the building would use; we might  
21 say where parks are located and what  
22 conditions the equipment is on; there's a  
23 whole variety of information we provide.  
24 They are technical studies and they follow  
25 the forms and guidelines established by the

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2 City. In fact, and this is really important  
3 to me in differentiating us from lobbyists,  
4 all of our material goes into the City  
5 agencies. They review it with their  
6 technical people and it becomes their  
7 document. They're the ones who are using it  
8 in their decision making. If it's  
9 challenged, they're the ones who have to  
10 defend it. So, it's being prepared on their  
11 behalf but it becomes their document, it's  
12 got their name on it. So, it's an important  
13 distinction to me.

14 We're concerned that the proposal -- and  
15 again I don't know, I feel I don't understand  
16 it and so I would welcome the clarity a  
17 lot -- would arguably put us in the position  
18 inappropriately being categorized as  
19 lobbyists. It's very important to us --  
20 especially in this economy, really just in  
21 terms of common sense -- that we avoid the  
22 burdensome and expensive filing requirements  
23 that, to me, serve no public purpose. I  
24 don't see how it would protect the public  
25 welfare. I don't see how it would enhance

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2 our business operations. So, it really gets  
3 to the point we're making I think, if all  
4 this information gets submitted, what is  
5 anybody going to do with it?

6 So, for us, for our firm and our  
7 industry, to me, our inclusion on this  
8 list -- so, we welcome clarifying what this  
9 list represents -- it would seem to be a very  
10 bad outcome and we would like to get clarity  
11 and hopefully have work that is done in terms  
12 of environmental submissions and ULURP  
13 applications, the technical part of the  
14 application be clarified and to be excluded  
15 from categorization as lobbying.

16 MS. VELAZQUEZ: EISs are sometimes part  
17 of a whole ULURP process that an architect  
18 could be involved with, correct?

19 MR. APPLEBAUM: Yes.

20 MS. VELAZQUEZ: And you're a step in the  
21 process?

22 MR. APPLEBAUM: A component.

23 MS. PERLMUTTER: And there's always an  
24 architect involved.

25 MS. VELAZQUEZ: Yes, but that's a



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2 component, and I appreciate and am thankful  
3 for the description. But in my mind, to me,  
4 understanding a little bit about  
5 Environmental Impact Statements and how the  
6 agencies use them, I can make, at least in my  
7 mind, a distinction between that, doing that,  
8 that exercise, that component piece, and then  
9 maybe as opposed to saying to City Planning  
10 or going in to City Planning with the notion  
11 of going from a residential to -- you have to  
12 do an impact statement to get there, I get  
13 it, and that's part of, like I said, decision  
14 making process, and that's easier for me to  
15 kind of excise out of this -- it's part of a  
16 presentation package I guess -- than saying,  
17 "You should go from here to there." I mean,  
18 I can see that, I can see how you might  
19 excise that, but what I'm getting is that  
20 you're up there together saying kind of the  
21 process should be not included maybe up to a  
22 certain point. When there's really advocacy  
23 starting, then there's lobbying. But all  
24 this stuff before isn't lobbying. I can  
25 understand that piece but I don't know if I'm

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2 sold on the rest of it I guess.

3 MS. PERLMUTTER: I'd just like to speak  
4 quickly to that. So, actually what happens  
5 with the EIS, or an EAS which is kind of sort  
6 of the lower body where you don't have an  
7 environmental impact, you only provide an  
8 EAS, the architect's drawings that are  
9 prepared during the entire earlier part of  
10 the process are components of the EAS and the  
11 EIS. The EAS and the EIS study what the  
12 proposed building, what it's potential impact  
13 is on the environment and so on.

14 During the entire process, at City  
15 Planning for example, the architect is  
16 meeting with the planners at City Planning  
17 and they're not saying, "This what you should  
18 do." On the contrary, "This is what we would  
19 like to do. You're the discretionary agency,  
20 and we work with you together to see whether  
21 this idea, this proposal is something that  
22 fits within the urban planning and urban  
23 design context." Because again, you're  
24 talking about planners and the planners are  
25 talking to planners and designers. It's not

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2 the same as, you know, "Change this  
3 legislation because" whatever, "more people  
4 will have more jobs" or whatever it is, it's  
5 not about that.

6 Now, I'm going to put on my hat. I just  
7 want to now compare what architects do and  
8 what land use lawyers do. I'm a land use  
9 lawyer for 20 years, before I did that I was  
10 an architect. I actually know what both are  
11 doing and I want to explain really the  
12 difference.

13 I'm a registered lobbyist. I work for  
14 the office of Bryan Cave, we have a land use  
15 firm with about ten people and an  
16 environmental practice as well. When we  
17 register for a project, we have to guess in  
18 advance with what kind of lobbying we're  
19 going to do and how many people in our team  
20 are going to work on it and we have register  
21 every one of those members of the team in  
22 advance. Sometimes it's three years in  
23 advance and we actually haven't done any  
24 lobbying; we've just started to talk and so  
25 on, we're still figuring things out. So, for

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2 three years we're filing reports and so on.

3 We have a full-time lobbyist report  
4 preparer in our office, and every two months,  
5 he comes to each one of us and makes us look  
6 at all of our time sheets and mark them up.  
7 So, every two months I spend about three  
8 hours going through time sheets and so do the  
9 other 12 people on my team. It's an  
10 incredibly time consuming process.

11 Every one of our clients also has to  
12 register, and so, that's hard. Sometimes  
13 it's a client who needs a little bit of a  
14 nothing done. I understand, but I just sent  
15 them a scary letter, and the scary letter  
16 says, "You are a lobbyist. You are a client  
17 who hired a lobbyist and you're going to be  
18 mounted up there forevermore on that  
19 E-Lobbyist page."

20 So, to put this into perspective now,  
21 what it is that a lobbyist does is every time  
22 in the land use context we appear at a  
23 community board, we're lobbying. So,  
24 therefore, the BSA, even though appearing  
25 before the BSA isn't lobbying, before the

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2 community board is, and before the Landmarks  
3 Commission isn't lobbying but the community  
4 board is.

5 So, now, if we were to talk about with  
6 architects, there are, and I'll let Rick go  
7 into the count, almost every architect in New  
8 York has a moment where they will have a  
9 client who has a house in the historic  
10 district or an apartment in the historic  
11 district and they want to change their  
12 windows, and changing the windows requires  
13 going to the community board. So, what  
14 you're talking about is a magnitude that's  
15 pretty wild.

16 And I just want to put that into context  
17 against lawyers. There are 29 law firms that  
18 are registered as lobbyists in the land use  
19 context in 7,783 law firms in this city. So,  
20 to just give you an idea, it's a tiny, tiny  
21 fraction of law firms who are registered as  
22 lobbyists and you'll see that the answer is  
23 going to be different in the context of  
24 architects.

25 I would also just ask you to think about

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2 what the purpose of the lobbying law really  
3 is, what is it really trying to do? I mean,  
4 why do you want two dozen architects in a  
5 firm to register? I mean, teams, I mean they  
6 have 40 people working on a team, any one of  
7 them might appear. So, if they work the way  
8 we do, they'll all register, because you got  
9 to be careful right?

10 MR. BERMAN: Go ahead, sir.

11 MR. BELL: Thank you. Again, my name is  
12 Rick Bell, executive director of the American  
13 Institute of Architects, New York Chapter.  
14 As I said, I am a registered architect in the  
15 City of New York and I'm also very happy to  
16 be a registered lobbyist, I try to fill out  
17 the forms on time and I don't always succeed.

18 You know, there are a thousand  
19 architectural firms who are members of AIA  
20 New York Chapter here in Manhattan, maybe  
21 double that number citywide. We have just  
22 about 5,000 members, individual members of  
23 our chapter, which means that on average,  
24 firms are five people, a great majority,  
25 almost three quarters of the architectural

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2 firms in New York City and in Manhattan  
3 specifically are ten people or less.

4 Putting that in perspective, as Margery  
5 was saying, the context of who does lobbying,  
6 maybe it's only a small fraction of lawyers  
7 who have special types of expertise and  
8 clients and tasks to do who come before  
9 regulatory commissions such as Landmarks,  
10 such as City Planning, maybe even Public  
11 Design Commission with projects.

12 But just every architect at some point  
13 or another, whether they work for a  
14 200-person firm or a ten-person firm or a  
15 sole practitioner, goes before a community  
16 board. The projects can be large or small,  
17 some are very, very small, it could be window  
18 replacement, as Margery was implying, before  
19 the Landmarks Preservation Commission, it  
20 could be a deck or a porch in a small house  
21 in Staten Island. The requirement that every  
22 single one of our members at some point  
23 coming before a commission to try to explain,  
24 as was said by others on this panel, the  
25 technical information about what the project

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2 is, not just what it would look like but what  
3 it would mean in the community, if architects  
4 refuse to come before community boards or  
5 before regulatory commissions, even though  
6 Landmarks requires it by law, something would  
7 be lost. The discussion indifference to all  
8 the people who are lawyers in the room would  
9 lose some of the spark, some of the color,  
10 some of the characterization of what the  
11 community impact would be of the project, as  
12 Mark and others had said.

13 Economic conditions in the City of New  
14 York now are not very good. Architects have  
15 been hurt along with many other sectors of  
16 the economy, but maybe just proportionately  
17 as construction has slowed down. It's been  
18 estimated that somewhere between 25 and 40  
19 percent of the architects in the City of New  
20 York are unemployed or the euphemism  
21 underemployed. The economic impact of not  
22 just filing and the keeping of records, but  
23 in trying to explain to a client how this is  
24 a necessary cost, most of the fees that  
25 architects receive are affixed. It's not



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2 that, "Well, there's additional tasks and  
3 we'll bill that on an hourly basis or  
4 15-minute basis," but it's cost affixed. The  
5 architect would be absorbing his or her costs  
6 at a time when they can both afford to do so.

7 I would like to conclude by saying that  
8 we urge the Commission to proceed carefully  
9 in this matter. We understand fully, as ably  
10 said, the need to bring some logic to a  
11 confused and unclear situation. But on this  
12 matter we really think that the governmental  
13 review process and the viability, visibility  
14 of architects before public commissions takes  
15 precedence as technical experts and people  
16 who add to the dialogue before us. Thank  
17 you.

18 MR. BERMAN: If I may, I want to point  
19 out that the process that we undertook was  
20 not an arbitrary process. But the issue came  
21 to us, "What about the architects?" which  
22 meant that somewhere, sometime, somehow,  
23 whether in the future or sooner, the issue of  
24 lobbying/architects/engineers has to be dealt  
25 with.

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2 Again, my personal opinion is that you  
3 are better off with the devil that you know  
4 as opposed to the devil that you don't know,  
5 and if you have rules and regulations which  
6 tell you when filing is important and  
7 required, and that doesn't mean that in every  
8 instance, as you announced a number of  
9 them, that you would be required to file. I  
10 mean, that's the process that has to flesh  
11 itself out.

12 But if we did nothing and if the Council  
13 or the Mayor did nothing, the issue of  
14 whether or not an architect is a lobbyist is  
15 still out there. Sooner or later it's going  
16 to have to be dealt with.

17 MR. BELL: May I respectfully try to  
18 reply to that in maybe a slightly different  
19 vein?

20 MR. BERMAN: Sure.

21 MR. BELL: I don't want to repeat  
22 things that have been said, and I understand  
23 what you're saying fully. And as I said, as  
24 both architect and registered lobbyist, and  
25 there's a vast difference, I submit my

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2 statement to the State of New York to be a  
3 registered architect every three years with  
4 essentially a checkoff box that I didn't  
5 commit any felonies.

6 MR. BERMAN: That's encouraging.

7 MR. BELL: I also check off completed  
8 continuing education requirement. It's a  
9 very easy process and I think they mostly  
10 want my check, not reports on how I spend my  
11 time.

12 It's very, very different to be a  
13 registered lobbyist, as you know better than  
14 I, that I catalog every conversation that I  
15 have. And as a former public official, I was  
16 an assistant commissioner at EDC, I'm proud  
17 that I have many friends in government  
18 employ, elected officials, appointed  
19 officials, and I spend a fair amount of time  
20 talking to them about how the City can be  
21 better.

22 When I worked at EDC, I would take  
23 architects, Mark Strauss amongst them, to  
24 regulatory commissions to try to get a  
25 particular project advanced, they were public

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2 projects, not private clients, but we would  
3 go to Landmarks or City Council on a rare  
4 occasion, and I was pushing to get the  
5 project through. It was vitally important to  
6 communities that that project -- then,  
7 essentially, as a public employee, I was a  
8 lobbyist, I was an advocate, I was pushing  
9 for projects, but I would bring the architect  
10 along in every instance, not just because  
11 they had a passionate concern about their  
12 project but because it was a function of  
13 answering questions. Sometimes those  
14 questions were opposed, often, the best part  
15 of the testimony at City Planning are the  
16 responses to commissioners, same as here  
17 perhaps, but also they had the knowledge of  
18 the project that with respect to land use  
19 lawyers and others advocating the economic  
20 interest of the client, the architect is  
21 there to talk about quality of life.

22 MR. BERMAN: I understand.

23 MR. BELL: And it's a big difference.  
24 So, with respect to the point you made well  
25 and repeatedly, I would say that the

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2 information whole aspect is very, very  
3 different than the need to be registered.  
4 Maybe the registration of architects with the  
5 State as people who are agents of positive  
6 change should be sufficient, because it's not  
7 lobbying in the real sense. A real lobbyist,  
8 and I don't consider myself as experienced,  
9 I've been a lobbyist only for two years,  
10 looking at a group of architects, you know, I  
11 kind of know it when I see it, you guys are  
12 not lobbyists, because you're not there with  
13 the same agenda. That's why we are so  
14 passionately, vehemently, you know,  
15 aggressively here to say that, you know, this  
16 doesn't seem to apply and there should be  
17 some careful deliberation --

18 MR. BERMAN: I can assure you that there  
19 will be careful deliberation and I can assure  
20 you that, as we have on every issue, there  
21 will be considerable amount of discussion.  
22 How it ends up, of course I can't tell you  
23 yet. I do appreciate your testimony and I  
24 appreciate your considerations and your  
25 concerns, and I thank you.

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2 Is there anything else that anyone else  
3 wants to say?

4 MS. BRAGG: Thank you very much. You've  
5 really given us a lot to think about in  
6 bringing the other perspective.

7 MR. BERMAN: Definitely killed my  
8 night.

9 (Laughter)

10 MS. BRAGG: We do appreciate it.

11 MR. BELL: Appreciate that we have had  
12 the chance to have this conversation.

13 MR. BERMAN: Next, representatives of  
14 the Union Services Association and the  
15 Lawyers Alliance. Identify yourselves and  
16 the organization you represent.

17 MS. JACKSON: I'm Michelle Jackson, I'm  
18 general counsel with the Human Services  
19 Council of New York City.

20 MR. BERMAN: You've testified before?

21 MS. JACKSON: Yes, a few times.

22 MS. PEREZ: I'm Elizabeth Perez. I'm a  
23 staff attorney and we represent quite a  
24 number of non-profits or registered  
25 lobbyists.

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2 MS. JACKSON: And in our testimony, we  
3 also include NTCC, a non-profit coordinating  
4 committee, they're not here with us tonight  
5 but it's part of our written testimony. We  
6 coordinate on all of the lobbying issues.

7 So, first I want to thank the  
8 Commission. We appreciate this opportunity  
9 to submit testimony and also greatly  
10 appreciate your recommendations. The  
11 Commission considers the burden of current  
12 lobbying laws on non-profits and incorporated  
13 a lot of our concerns and concerns that you  
14 expressed into these recommendations and we  
15 think the recommendations go a long way to  
16 easing the reporting burdens on non-profits.  
17 So, we'll just go through some of them.

18 Increasing the reporting threshold,  
19 we're big fans of that, bringing it up to  
20 \$5,000 to match the State, it also knocks out  
21 a lot of our small non-profits who really do  
22 minimus amounts of lobbying, so, raising that  
23 threshold will be very helpful to them.

24 Additionally, the change in reporting so  
25 that people between 5 and \$10,000 would only

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2 have to report twice a year would be very  
3 helpful, especially, the State has been  
4 considering and hopefully it will continue to  
5 consider raising the threshold to \$10,000  
6 which would mean that all those groups up to  
7 \$10,000 would only have to file twice a  
8 year. And also as other people have stated,  
9 the State reports are easier to file than the  
10 City ones, and so it would definitely reduce  
11 the administrative burden of reporting on  
12 those non-profits who are in that range of 5  
13 to \$10,000, so we appreciate that. And also  
14 of course we encourage that the Commission  
15 this recommendation in the future to think  
16 again about maybe even reducing those  
17 reportings even further.

18 MS. PEREZ: Especially, the 5 to \$10,000  
19 threshold, if we could get to one report  
20 after the legislation is finished, we would  
21 capture 90 percent of the work that is done.  
22 Something to think about in terms on easing  
23 the burden.

24 MR. BERMAN: On the other hand, the City  
25 of New York, City Council and City agencies



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2 function 12 months out of the year.

3 MS. PEREZ: True. Just a couple other  
4 points. We really appreciate your willing to  
5 consider recommending that the City Clerk  
6 grant some discretion in assessing penalties.  
7 One factor that the Commission might consider  
8 that wasn't included in the recommendations  
9 is the annual budget of a non-profit  
10 organization, because if you have a budget of  
11 \$25,000, penalty of \$2,000 is much more  
12 significant than it would be for a larger  
13 organization.

14 MS. BRAGG: I'm sorry, I thought that  
15 was on the --

16 MS. PEREZ: We didn't see it in the  
17 recommendations. So, to just move on to the  
18 amnesty, we of course would welcome that  
19 opportunity and we would be glad to  
20 participate in outreach efforts to encourage  
21 groups to take advantage of the amnesty, but  
22 we would state that it would be far more  
23 helpful for a one-time amnesty for self-  
24 identifying lobbyists who are entering the  
25 system for the first time. As for those to

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2 be able to come in and waive any past reports  
3 that were due would be really helpful to  
4 organizations who may be unaware despite the  
5 outreach efforts of the City Clerk, what's  
6 happening, because we want to encourage good  
7 reporting and compliance within the lobbying  
8 laws rather than discourage it.

9 We appreciate as well the definition of  
10 lobbying and the clarity that you are  
11 seeking. We agree 100 percent that clarity  
12 and consistency will help tremendously for  
13 the day-to-day reporting questions that we  
14 deal with and I'm sure that the City Clerk  
15 deals with as well.

16 We think that the definition should be  
17 broader in some senses, that it includes the  
18 preparation for lobbying and means that  
19 before the legislation actually exists, but  
20 we think that counterbalanced against the  
21 increased threshold will kind of be a good  
22 balance for small non-profits especially.

23 Finally, we would suggest on the  
24 definition of lobbying, it would be extremely  
25 helpful to have more advisory opinions on

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2 topics that are tricky situations like  
3 interpretations on the law.

4 MR. BERMAN: We agree.

5 MS. PEREZ: Great, and I think that  
6 would increase consistency as well.

7 And we would also just like to mention  
8 in terms of the outreach, we of course  
9 support that, and we would be more than happy  
10 to participate in any way that we can be  
11 helpful as an organization group.

12 MS. JACKSON: So, additionally, as far  
13 as training for lobbyists, we would encourage  
14 and appreciate more training opportunities.  
15 We think the City Clerk does good outreach.  
16 We also do training for our numbers.

17 We don't necessarily agree with having  
18 mandatory training for lobbyists. I think  
19 the State system works very well in that  
20 there's not mandatory training, there's  
21 plenty of training opportunity, and if you  
22 are someone you know had late filing or have  
23 some sort of penalty levied against you, then  
24 you have to take mandatory training. I think  
25 that will be kind of a better way the State

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2 system seems to work. So, people who were  
3 assessed penalties, that would be mandatory  
4 for them, but for other filers it wouldn't  
5 be, just because of the administrative burden  
6 on -- especially, you know, you are a board  
7 member of an organization, having to send  
8 someone to a training especially, or, and,  
9 you know, if you are already using the  
10 system. So, training isn't necessary for all  
11 filers. So, we would encourage the  
12 Commission to consider that.

13 Then, single system for lobbyist  
14 registration, we really appreciate the  
15 Commission looking into ways that the City  
16 and State can coordinate their efforts more  
17 on asking the State to accept City filings  
18 from people who want to do City filings. We  
19 would encourage the Commission to look more  
20 into ways that the City and State can  
21 coordinate together with the idea of in a  
22 utopian world there would be one system for  
23 both the City and State.

24 MR. BERMAN: That's going to be an  
25 ongoing.

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2 MS. JACKSON: I have to say it though,  
3 everywhere I go, so hopefully one day we can  
4 achieve that.

5 MR. BERMAN: I remember when advocating  
6 for the 51st state was a big deal.

7 MS. JACKSON: See, some day.

8 MS. BRAGG: We appreciate your  
9 dedication it to it. Thanks.

10 MS. JACKSON: 2015, saying the same  
11 thing. Finally, technological changes, as  
12 the person who fills out the forms for our  
13 organization, I greatly appreciate the idea  
14 of looking at way that the E-lobbyist system  
15 can be simplified; pre-populated lists,  
16 things that allow people to say what the  
17 activities and contacts that they have used  
18 before into the system will greatly cut down  
19 the amount of time it takes to enter  
20 information into the screens, and I also  
21 think that it will help with reporting  
22 because it allows people to really focus and  
23 put together every time real information; I  
24 know with this checkbox, I know I lobby these  
25 people every time, so you can actually get a

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2 more accurate picture of the amount of  
3 lobbying done because you can pre-populate  
4 those lists.

5 So, that's all of our comments. Again,  
6 I want to thank the Commission very much.

7 MS. PEREZ: There has been some  
8 suggestion along the way since the  
9 recommendations came out that penalties be  
10 documented or the mitigating factors for  
11 penalties assessed be documented. And I  
12 think in my experience with the small groups  
13 that I deal with, the best documentation  
14 we're really going to get is if someone is  
15 out for a sick day is going to maybe need an  
16 affidavit, and I'm not sure how --

17 MR. BERMAN: That might constitute  
18 sufficient -- once again, that's part of the  
19 process that has to find its way through.  
20 The City Clerk, hopefully, and I don't think  
21 they're going to be arbitrary, they will come  
22 up with their rules and regulations, City  
23 Council will, and these are things that are  
24 going to develop, and that's why we advocated  
25 creating another Commission down the road so

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2 if it doesn't happen, to review it.

3 MS. PEREZ: Right. It sort of sent off  
4 my little radars about how to deal with  
5 mitigating factors.

6 MS. JACKSON: It could be considered an  
7 additional administrative burden. So, again  
8 I think it's what that ends up looking like,  
9 you know, if it is something easier versus  
10 something that requires much more  
11 documentation is I think really the question  
12 as opposed to requiring it.

13 MR. BERMAN: Any questions?

14 (No response)

15 MR. BERMAN: Thank you both. Hannah  
16 O'Grady?

17 MS. O'GRADY: I'm Hannah O'Grady, I'm  
18 vice president of the American Council of  
19 Engineering Companies of New York.

20 MR. FISHER: I'm Ken Fisher, counsel to  
21 ACEC.

22 MS. O'GRADY: ACEC is an organization  
23 representing 280 engineering firms throughout  
24 New York State that collectively employ more  
25 than 20,000 people statewide. Over 100 firms

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2 are located in New York City.

3 I would like to thank the Lobbying  
4 Commission and the staff for their efforts to  
5 improve the City's lobbying law. We are here  
6 today to urge the Commission to recognize and  
7 clarify that the scientific and engineering  
8 exemption found in the Administrative Code  
9 should apply to all interactions with public  
10 entities.

11 Because of the previous presentation, I  
12 will focus on specific suggestions for  
13 changes in the law. ACEC believes it should  
14 not be considered lobbying for technical  
15 professionals to provide objective analysis  
16 based on facts and scientific principles.  
17 While we understand the importance of  
18 transparency in government, the nature of the  
19 work that is traditionally performed by  
20 engineers is not the type of work that the  
21 lobbying law is intended to capture.

22 Engineers traditionally provide  
23 objective information and give professional  
24 judgement based upon scientific analysis.  
25 Also, it is absolutely critical that the



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2 free-flow of information not be impeded by an  
3 expanded definition of lobbying. To that  
4 end, we have identified four amendments to  
5 the lobbying law that will substantially  
6 exempt technical testimony without  
7 compromising the purpose of the law.

8 First, professionals that are retained  
9 by a City agency where the City is the client  
10 should be exempt from the definition of  
11 lobbying. If the City uses an in-house  
12 employee, this is not to be considered  
13 lobbying because the lobbying law currently  
14 exempts any officer or employee of the City  
15 from the definition of the term "lobbyist."  
16 However, if the City were to retain an  
17 outside firm to provide the same information,  
18 the firm would be subject to the requirements  
19 of the law.

20 Second, the exemptions for persons who  
21 provide technical services that currently  
22 applies to procurement planning should be  
23 expanded. Technical services as defined in  
24 the lobbying law as advice and analysis  
25 directly applying to any engineering,

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2 scientific or other similar technical  
3 discipline, ACEC believes that applying this  
4 definition is good policy for the same reason  
5 it was already included in the procurement  
6 section.

7 Third, we propose that such interactions  
8 be specifically exempt if they occur prior to  
9 certification by the City Planning Commission  
10 that an application is complete. Because of  
11 the wide ranging interpretations of this  
12 section, the Council may wish to increase  
13 flexibility regarding this issue.

14 Fourth, the lobbying law currently  
15 provides an exemption for persons who prepare  
16 a response to a request for information by a  
17 City agency. ACEC would like this exemption  
18 to be interpreted so that it covers  
19 situations such as when an engineer prepares  
20 a draft Environmental Impact Statement and  
21 the reviewing government agency seeks to  
22 discuss the document before it is put into  
23 final form.

24 Lastly, the publication of the  
25 preliminary report has put firms in limbo as

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2 to how they should act between now and when  
3 the City Council votes on this issue. We ask  
4 that the Clerk not begin enforcing this new  
5 interpretation until this process is  
6 complete.

7 In closing, we look forward to opening a  
8 dialogue with the Commission and its staff  
9 and hope that our understanding of the law  
10 and our suggestions can be reflected in the  
11 final report. Thank you.

12 MR. BERMAN: Thank you. The City Clerk,  
13 by the way, is present with some of the  
14 senior staff people. So, he was able to get  
15 a direct indication of what you have in  
16 mind. Mr. Fisher, anything that you want to  
17 add?

18 MR. FISHER: Very briefly,  
19 Mr. Chairman. Because I have appeared  
20 before, let me just be clear that I'm not  
21 wearing my New York Advocacy Association hat  
22 tonight. It's a little bit of a -- I would  
23 say it's a difference of opinion. The  
24 Advocacy Association felt that the issue  
25 needed to be examined. ACEC and AIA have

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2 some specific concerns and want to talk about  
3 the application, I think fleshing it out is  
4 exactly what's needed.

5 I do want to mention that, without  
6 violating any -- I did recommend to our  
7 actual engineering clients that they not  
8 testify today for fear that somebody would  
9 ask them about their efforts and they would  
10 be admitting on the record that they were in  
11 violation of the law. That's the state of  
12 limbo that we're in now, now that the issue  
13 is on the table.

14 MR. BERMAN: I think that's a valid  
15 point. I didn't even think about that, but  
16 it is a point.

17 MR. FISHER: Just to emphasize a couple  
18 of things that Hannah said. The lobbying,  
19 this is one of the reasons why people didn't  
20 pick up on this for the last 25 years, there  
21 is a specific exemption for procurement  
22 lobbying for technical services based on  
23 scientific and engineering principles. If  
24 it's good public policy in there, we think it  
25 has good public policy in other places.

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2 If the client is the City, there's no  
3 public purpose by cataloging that. The  
4 expenditures that are made by the City in  
5 hiring those consulting firms are already a  
6 matter of public record, and in terms of the  
7 gross, and so specifically which technical  
8 person talked to whom doesn't really add  
9 anything to the process.

10 You already had a great discussion I  
11 thought by AKRF about the role of EISs and  
12 EASs, the fact that they become the agency  
13 documents. One bright line is certainly that  
14 anything that happened pre-certification,  
15 before City Planning has determined the  
16 application as complete and is ready to start  
17 the gun on the public hearing process, that's  
18 an easy bright line to draw what's advocacy  
19 and what's not. But even beyond that, during  
20 that process, it seems to us that if a  
21 traffic engineer is called in to meet with a  
22 Council member to talk about whether the red  
23 light that's proposed for the new shopping  
24 center is going to adequately protect the  
25 neighborhood, that wouldn't be considered in

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2 the same category as the exemption for a  
3 government agency requesting information.  
4 They're not there to convince you to do  
5 something, they're really there to provide  
6 the information.

7 So, we think that those, in the heart of  
8 the testimony, are specific legislative  
9 actions that can be done that would mitigate  
10 the breadth of the situation, in addition to  
11 identifying some situations where the  
12 rulemaking or advisory opinions may be  
13 necessary after those big pieces are taken  
14 off the table.

15 MR. BERMAN: Thank you. Any questions.

16 (No response)

17 MR. BERMAN: I think what is clear and  
18 what has come up tonight is the fact that  
19 there is really no easy answer to many of  
20 these issues. And of course we will as we've  
21 done with the other issues give very serious  
22 consideration. Is there anyone else who  
23 wants to testify?

24 (No response)

25 MR. BERMAN: There being no one else,

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then I adjourn, and we will meet again soon.

Thank you.

(Time noted: 7:16 p.m.)





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