



BY HAND

November 18, 2013

Letizia Tagliafierro, Esq.
Executive Director
Joint Commission on Public Ethics
540 Broadway
Albany, New York 12207

Re: The possible failure of certain state political parties to report their lobbying activities as required under Legislative Law Article 1-A.

Dear Ms. Tagliafierro:

Our organization hereby submits this verified complaint requesting that the Joint Commission on Public Ethics (the “Commission”) undertake a review of the lobbying activities of certain political parties in New York State and issue a formal opinion holding that political parties must register as clients and lobbyists and report their activities if they otherwise meet the criteria under the law.

NYPIRG is a non-partisan, non-profit research and advocacy organization. Since 1973, NYPIRG has worked to monitor state government and make it more accountable. As part of our watchdog mission, from time-to-time we have filed complaints with the state’s ethics and lobbying watchdog agencies, the forerunners to the Commission.¹

We believe this matter raises important issues about the interpretation of the state’s lobbying act. Our review of media reports, as well as the websites of certain political parties, shows that political parties are involved in spending money seemingly in excess of the lobby reporting threshold to influence legislation in New York and yet have neither registered as lobbyists nor reported their activities as required under the lobby law. Our review of the Legislative Law and the applicable advisory opinions finds no basis for excepting political parties from the provisions of the lobbying law. Accordingly the Commission must review the relevant facts related to lobbying by political parties, issue a formal opinion and take steps to ensure that the law is followed.

¹ Complainant bases this complaint upon information and belief, relying upon published news reports from a variety of reputable news-gathering sources cited herein, public databases and websites sponsored and maintained by the relevant political parties, the essential facts of which have not been fundamentally disputed and which complainant believes to be true. The verification of Blair Horner is appended hereto.

I. Evidence of Lobbying Activities by Certain Political Parties.

News reports make it clear that at least some political parties recently and over time have engaged in lobbying and have not reported these activities to the Commission.

A. Lobbying spending by the State Democratic Party

The following facts are based on several news accounts.² Earlier this year, news reports identified the state Democratic Committee as the source of spending seeking to influence legislation being advanced by the governor.³

According to the *New York Times*, during the debate over this year's state budget, "the state Democratic Party has begun running ads, at first promoting Mr. Cuomo's budget proposal."⁴

According to a May 2013 report in the *Wall Street Journal*, "the state Democratic party [wa]s set to spend more than \$1 million on TV ad campaigns designed to promote and execute two central planks of Gov. Andrew Cuomo's agenda, according to people familiar with the matter." "The campaigns, to begin airing early this week, will focus on Mr. Cuomo's package of anticorruption proposals, as well as on the 10-point Women's Equality Act, which includes a measure to codify state abortion rights with federal law."⁵

B. Additional Evidence of Lobbying by Certain Political Parties

A review of the websites of the state's political parties identified two other political parties that have been involved in lobbying. The Conservative Party has disclosed on its website that it has issued memoranda in reaction to active legislation.⁶ A review of the Commission's website found no disclosures by the Conservative Party. Obviously, issuing such memoranda is direct lobbying. The Commission should determine whether the Conservative Party spent enough to meet the minimum \$5,000 in spending to trigger the state's lobbying law's registration and reporting requirements.

The Working Families Party also lists a number of positions on legislation.⁷ However, there is an organization with a similar name (Working Families Organization) at the same address that is registered and reported on the Commission's website. While we cannot be sure, we assume that such reporting ensures compliance with the state's Lobbying Law. If so, it shows that this entity views lobbying registration and reporting requirements as applicable to political parties.

² Each news account is cited in a footnote.

³ The State Democratic Party has also set up additional committees, the "New Yorkers for Creating Jobs and Cutting Taxes" (#A19489) and the "New Yorkers for Gun Safety" (#19488), both of which appear to be explicitly designed to advocate for legislation.

⁴ Kaplan, Thomas, *Cuomo's Re-election Machinery is Already at Work*, *The New York Times*, April 11, 2013. Accessed at www.nytimes.com/2013/04/12/nyregion/cuomos-re-election-machinery-is-already-at-work.html?_r=0

⁵ Orden, E., *Ad Blitz Plan Backs Cuomo*, *The Wall Street Journal*, May 5, 2013.

⁶ See www.cpnys.org/priorities.

⁷ See www.workingfamiliesparty.org/our-issues/.

There also is evidence that the state Republican Party has used its funds in the past to lobby state lawmakers. As reported by the *New York Times* in 1995:

Aides to Mr. Pataki also said today that the Governor had started making personal solicitations for contributions to help finance the Republican State Committee's television and radio advertising campaign in support of his budget.⁸

II. The State Lobbying Law

As described in the legislative findings of Article 1-A of the Legislative Law (the "Lobbying Law"), the public policy rationale for its reporting requirements is that "to preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence the passage or defeat of any legislation."⁹

We believe that certain activities of the Democratic, Republican, Conservative and Working Families political parties have been oriented toward passage of state legislation and may be considered lobbying under the definition contained in the state's Lobbying Law. We can find no exception to the requirement that those entities register as lobbyists and report their lobbying as required under state law.

The law defines "*lobbying*" or "*lobbying activities*" as meaning and including any attempt to influence most decisions made by state and local governments; it does not include an exception or exemption for political parties. Lobbying Law, section 1-c(c). The law broadly defines "*organization*" as "any corporation, company, foundation, association, college as defined by section two of the education law, labor organization, firm, partnership, society, joint stock company, state agency or public corporation." Lobbying Law section 1-c(d). [Emphasis added.] **The Lobbying Law does not carve out political parties.**

However, the law does except campaign donations from the definition of "*expenses*," which is defined as spending or "expenditures incurred by or reimbursed to the lobbyist for lobbying, but shall not include contributions reportable under article fourteen of the election law." Lobbying Law section 1-c(g). [Emphasis added] In addition, the term "*compensation*" is defined as "any salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised to the lobbyist by the client for lobbying but shall not include contributions reportable pursuant to article fourteen of the election law." Lobbying Law section 1-c(h). [Emphasis added.] We will discuss these sections later.

Notably, the Legislature *demonstrated in the Lobbying Law that it knows exactly how to explicitly carve out certain entities and activities from the law's registration and/or reporting requirements when it wants to.* For example, "[n]ewspapers and other periodicals and radio and

⁸ Dao, James, *Pataki Vents Anger Over Stalling of Budget Talks*, *The New York Times*, March 22, 1995. Accessed at www.nytimes.com/1995/03/22/nyregion/pataki-vents-anger-over-stalling-of-budget-talks.html

⁹ Legislative Law, Section 1a.

television stations, and owners and employees thereof” are expressly deemed not to be lobbying when these entities engage in reporting, editorializing or advertising. Lobbying Law section 1-c(c)(A). Similarly, local lobbying by churches and religious orders are exempt from reporting. Lobby Law section 1-c(c)(F).

Yet no such exception or exemption is provided for political parties that engage in lobbying.

What is clear from a review of state law is that there is no exception from the Lobbying Law’s registration and reporting requirements for political parties.

III. The 2003 Lobby Commission Opinion

In response to this issue being raised recently in the media, spokespersons for the state Democratic Committee and the governor told the *Associated Press* that the party’s failure to register as a lobbyist and client and report its activities was based on a 2003 advisory opinion from the Commission’s forerunner agency, the New York Temporary State Commission on Lobbying (the “Lobbying Commission”).¹⁰

If anything, this opinion supports our reading that the Lobbying Law requires political parties to register and report their lobbying activities.

The 2003 advisory opinion addressed whether the Lobbying Law’s reporting requirements were triggered by *contributions* from a campaign committee [the “Andrew Cuomo for Governor” committee (2002)] to not-for-profits (the “Hip Hop Education and Research Fund” and the “Drug Policy Alliance”), some of which clearly was to be used for lobbying the public via radio ads.

The only issue in the 2003 opinion was whether a contribution *from a political committee to a nonprofit advocacy group* was reportable as lobbying compensation or expense. The Lobbying Commission found it was not. The key language from the advisory opinion is

"To the extent that the donations set forth above are *contributions* reportable pursuant to Article 14 of the Election Law, they do not constitute compensation or expenses under the Lobbying Act."
[Emphasis added.]¹¹

Significantly, the Lobbying Law refers to Election Law reporting in only a few instances: 1) excluding lobbyists’ reportable campaign contributions from what is reportable as a lobbying “expense or expenses” [Lobbying Law section 1-(c)(g)]; 2) excluding lobbyists’ reportable campaign contributions from the definition of lobbyist “compensation” [Lobbying Law section 1-c(h)]; and excluding lobbyists’ reportable campaign contributions from the definition of “gift” [Lobbying Law section 1-c(j)(viii)]. These definitions apply to situations where a lobbyist makes and a political committee receives a “campaign contribution.” None of these definitions apply to a political committee spending money directly to lobby state lawmakers.

¹⁰ Gormley, Michael, *NY Dem Committee Ads Questioned as Lobbying*, *Associated Press*, November 14, 2013. Accessed at www.timesunion.com/news/article/NY-Dem-Committee-s-ads-questioned-as-lobbying-4982879.php.

¹¹ New York Temporary State Commission on Lobbying, Advisory Opinion No. 53 (03-4).

While the Lobbying Law does not contain a definition of “contribution,” Article 14 of the Election Law does. Election Law section 14-100(9) defines “contribution” to include funds received by a political committee and in-kind donations. Thus, “contributions” under the Election Law are things of value donated to and received by a political committee to advance its interests; “contributions” do not include spending by the committee to lobby lawmakers.

In contrast to the salient facts in the 2003 Lobbying Commission advisory opinion, as set forth above, here the issue is whether permanent party committees directly spending money in their own capacity to influence lawmakers on legislation that is in play is lobbying.¹²

Moreover, since the drug reform advocacy groups that received the contributions from the Cuomo 2002 committee would have reported their lobbying activity, there was no loss to the public in terms of understanding who was behind efforts to overhaul the state’s drug laws.

In contrast, when political parties spend directly on lobbying, the public does not receive the information that would otherwise be disclosed if the party monies were used by other groups to deliver the same message. Lobby reporting is more frequent and more detailed than reports filed under the Election Law. Further, the state Board of Elections has a well-deserved reputation as an anemic regulator and watchdog. Thus, when parties fail to register and report their activities, the Lobby Law’s purposes are frustrated and the public is denied information that can help it understand how pressure is brought to bear on lawmakers.

IV. Conclusion

There is little doubt that certain political parties have engaged in lobbying as defined under the law. We urge the Commission to review lobbying spending by *all* political parties, issue a formal opinion holding that such activities trigger registration and reporting requirements under the law where appropriate, and direct that these committees register as lobbying entities, report their activities, and ensure that they comply with other provisions of the lobbying law.

Sincerely,

Blair Horner
Legislative Director

Russ Haven
Legislative Counsel

Attachment: Verification of Blair Horner

¹² The author of the 2003 Lobbying Commission advisory opinion, former Lobby Commission Executive Director David Grandeau, stated that the 2003 advisory opinion does not apply to lobbying by political parties and that the lobby registration and disclosure requirements apply: “That’s lobbying, no ifs, ands or buts about it.” Gormley, Michael, *NY Dem Committee Ads Questioned as Lobbying*, *Associated Press*, November 14, 2013. Accessed at www.timesunion.com/news/article/NY-Dem-Committee-s-ads-questioned-as-lobbying-4982879.php.