



The League of Women Voters of New York State
62 Grand Street, Albany, New York 12207
Phone: 518-465-4162 Fax: 518-465-0812
www.lwvny.org E-Mail: lwvny@lwvny.org

**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**TESTIMONY BEFORE THE
NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY
REGARDING STAFF LEGISLATIVE PROPOSALS TO AMEND THE
THE NEW YORK STATE LOBBYING ACT
LEGISLATIVE OFFICE BUILDING, MEETING ROOM B
TUESDAY, SEPTEMBER 8, 2009 @ 1:00 P.M.**

Good afternoon, my name is Betsey Swan, president of the League of Women Voters of New York State (League); and I am a registered lobbyist. I would like to begin by thanking the members of the New York State Commission on Public Integrity (Commission) for conducting this hearing today on the Commission's Legislative Proposals to strengthen and streamline the New York State Lobbying Act.

The League of Women Voters of New York State is a nonpartisan political membership organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League has over fifty local Leagues statewide. It is celebrating its ninetieth anniversary and its current membership includes both men and women.

The League, along with our good government colleagues, has lobbied for many years for effective lobbying regulations to improve disclosure and oversight of this very lucrative Albany industry. After vigorous lobbying by the League and its colleagues, lobby reform legislation was passed in 2005 by the legislature and signed into law by then Governor Pataki. It went into effect January, 2006. Since that time the League has monitored the new law and appreciates the opportunity to comment on your proposals.

In general, we believe the set of seven proposals constitute a meaningful attempt to more realistically regulate all forms of lobbying and to make the activities of lobbyists more transparent.¹

¹ Specifically, we laud: the expanded definition of *lobbying* in Proposal Number 1; the expanded definition of *expense*

This is admirable and something for which the League has long advocated, We do, however, have some concerns that the proposals may be insufficient to achieve their stated goals and that, in some respects, they may represent a move away from prohibition in favor of disclosure. If this is the intended consequence, it is unacceptable. From the League's standpoint, the role of prohibition is to limit the tit for tat that we witnessed in its most ugly permutations during this legislative session. We believe that limitations are both desirable and necessary to reign in its most flagrant exercise. Transparency is the necessary corollary, which serves both to inform voters of pressures brought to bear on elected officials and adds legitimacy to the system. A system of regular reporting and meaningful consequences for non-reporting is essential to restoration of the public trust. Given the limited period of time, we would like to focus on concerns with the proposals and areas in which we believe they fall short.

ANY PROPOSAL THAT LESSENS EXISTING PROHIBITIONS WHILE INCREASING TRANSPARANCY IS UNACCEPTABLE BECAUSE IT MAY HAVE THE UNTENDED CONSEQUENCE OF INCREASING INFLUENCE OF MONEY ON THE LEGISLATIVE/ADMINISTRATIVE PROCESS.

First, and perhaps foremost, to the extent that Proposal Number 1 repeals prohibitions or limitations on particular types of lobbying when it adopts the all-inclusive definition of lobbying, it moves toward replacement of a system based on prohibition with one based on disclosure.² While the League favors more rigorous disclosure, an effective system is not an either/or proposition. Therefore, the proposals should be modified insofar as they repeal existing prohibitions or limitations on the ability to lobby.

THE DEFINITION OF PUBLIC OFFICIAL SHOULD BE EXPANDED TO INCLUDE CANDIDATES WHO, IF ELECTED, WILL BECOME PUBLIC OFFICIALS.

Second, we believe that the definition of public official should be expanded to encompass those

in Proposal #2 to Article XIV contributions to public officials; the amendment of *gift* in Proposal Number 3 as it applies to lobbyists and their clients to include an unstated presumption of intent to influence, rebuttable only by prior opinion of the Commission; and the imposition of penalties for failure to comply with random audits contained in Proposal Number 4.; the imposition of civil penalties for use of contingent fee lobbying retainer agreements contained in Proposal Number 5; and the expanded period for retention of business records contained in Proposal Number 6.

² See Proposal Number 1, which would repeal Legislative Law, sections 1-c (m), defining *restricted period*, and 1-n (l), prohibiting lobbying during the restricted period. While the League does not in this testimony explore other prohibitions that might be weakened or abolished by the series of proposals, it notes that, as a general matter, any

who are candidates to become public officials. Lobbying encompasses a range of activities that starts with identification of candidates who will be supportive of positions and activity (monetary or otherwise) in support of those candidates. The proposals very correctly require disclosure of Article XIV contributions for public officials. It should also require disclosure of Article XIV contributions for candidates to become public officials, as well as monies spent for their election.

THE PROPOSED PENALTIES FOR NONCOMPLIANCE WITH AN IMPARTIAL AUDIT MAY BE INSUFFICIENT TO IMPEL COMPLIANCE.

While we are supportive of Proposal Number 4, which imposes the a civil penalty for failure to comply with a random audit, we believe that imposition of a civil penalty without the possibility of criminal sanctions may be insufficient to impel compliance, especially in cases where the accuracy of filings may be called into question. If the goal is to impel compliance, the assumption, in styling the penalty, must be that there is something to hide, and the criminal sanctions imposed for non-filing or filing erroneous information should be applied. Otherwise, the bad actors are able to shield themselves from a random audit by payment of a civil fine.³ The League similarly questions whether the possibility of civil penalties alone imposed by Proposal Number 5 is sufficient to eradicate the prohibited behavior.

THE LANGUAGE OF PROPOSAL NUMBER 1 SHOULD BE CLARIFIED TO SPECIFY THAT THE \$10,000 RECEIPT OR EXPENDITURE DEFINITIONAL THRESHOLD FOR *LOBBYING AND LOBBYING ACTIVITIES* IS CUMULATIVE AND NOT APPLICABLE TO EACH PUBLIC OFFICIAL LOBBIED

Third, the League has a technical concern about the language of Proposal Number 1 in that it is unclear whether the \$10,000 compensation and expenditure threshold to meet the definition of *lobbying and lobbying activities* is directed to money received and/or expended to influence one public official or all public officials for the period in question. This confusion derives from use of both singular and plural with no apparent reason for the difference. See lines 14-16 of page 2 of the language for Proposal Number 1, which uses the singular with respect to *a public official* and

attempt to alter such provisions is inappropriate ,

³ This situation is analogous to failure to submit to a breathalyzer test when stopped for suspected DWI or DWAI. The penalty for noncompliance should be devised so that it constitutes a similar disincentive.

activity for which compensation is received by the lobbyist and *activities* for which expenses are incurred.

THE ULTIMATE SUCCESS OF ANY SYSTEM IS DEPENDENT UPON ENFORCEMENT THAT IS AGGRESSIVELY AND IMPARTIALLY ADMINISTERED AND PERCEIVED AS SUCH.

The process of regulating human behavior is both an imprecise art and subject to human fallibility. While we, as engaged citizens, are constantly asked to develop ideal systems with which to regulate our public lives, the success of any undertaking is dependent on the integrity and vigilance of those administering the system and overseeing imposition of penalties. It also presupposes adequate funding to translate integrity into meaningful action through enforcement of sanctions for noncompliance. This year we have experienced a legislative system in extreme meltdown. It has brought legislative activities to a halt and further eroded public perception of state government. This body also has not been without criticism, both for its action and inaction, and for the public perception that it is a body motivated by partisan political concerns. In closing, the League of Women Voters of New York State implores the Commission on Public Integrity to rise above its partisan beginnings and to become the aggressive and nonpartisan body that this state needs.

Thank you very much for your invitation to comment today. The League welcomes the opportunity to work with you toward the restoration of governmental integrity in New York State.