

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

\* \* \* \* \*

State Ethics Commission's  
Lobbying Disclosure Regulations

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House Judiciary Committee

Room 60, East Wing  
Main Capitol Building  
Harrisburg, Pennsylvania

Thursday, February 25, 1999 - 9:40 a.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson  
Honorable Patrick Browne  
Honorable Raymond Bunt  
Honorable Scot Chadwick  
Honorable Stephen Maitland  
Honorable Albert Masland  
Honorable Chris Wogan  
Honorable Kevin Blaum, Minority Chairperson  
Honorable Harold James  
Honorable Kathy Manderino  
Honorable LeAnna Washington

IN ATTENDANCE:

Honorable Mark Cohen

ORIGINAL

KEY REPORTERS

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ALSO PRESENT:

Brian Preski, Esquire  
Majority Chief Counsel

Judy Sedesse  
Majority Administrative Assistant

Michael Rish  
Minority Executive Director

Kathy Hudson  
Minority Committee Secretary

Jane Mendlow  
Minority Research Analyst

Leanne Bronstein  
Minority Research Analyst

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1 CHAIRPERSON GANNON: The House  
2 Judiciary Committee will come to order. This  
3 public hearing concerns State Ethics  
4 Commission's Lobbying Exposure Regulations.  
5 These public hearings are to help the committee  
6 in getting a better understanding of the impact  
7 and effect of these regulations.

8 Our first witness is Mr. John  
9 Contino, Executive Director of the State Ethics  
10 Commission. Welcome, Mr. Contino, and you may  
11 begin when you are ready.

12 MR. CONTINO: Thank you. I'm  
13 actually appearing here today on behalf of the  
14 Vice Chair of the State Ethics Commission,  
15 Austin Lee, who is the chairperson of the  
16 Regulatory Committee that is looking at the  
17 lobbying disclosure regulations. Mr. Lee,  
18 unfortunately, is unavailable and asked me to  
19 present a written statement and then offer  
20 myself up for any questions that I may be able  
21 to answer.

22 I have submitted copies of Mr. Lee's  
23 written statement to the committee through Mr.  
24 Preski. At this point in time, I'd like to make  
25 Mr. Lee's short presentation.

1                   On behalf of the Pennsylvania State  
2 Ethics Commission and the Lobbying Disclosure  
3 Regulations Committee, I would like to express  
4 my appreciation to the members of the House of  
5 Representatives' Judiciary Committee for the  
6 invitation to participate in today's hearing.

7                   I regret that my temporary absence  
8 from the Commonwealth prevents my attendance at  
9 today's hearing. I ask, however, that the  
10 committee please accept this written statement  
11 for the record.

12                   As background, on October 15, 1998,  
13 the Lobbying Disclosure Act, Act 93 of 1998, was  
14 signed into law by Governor Thomas J. Ridge.  
15 The Lobbying Disclosure Act vests jurisdiction  
16 of lobbyists and principal registration and  
17 disclosure with the Pennsylvania State Ethics  
18 Commission. The Commission will have  
19 administration and enforcement responsibilities  
20 under the new law. Although the registration  
21 and disclosure provisions of the law take effect  
22 on August 1, 1999, a mandate that regulations be  
23 promulgated took effect immediately.

24                   In this respect, the law provides  
25 that regulations must be drafted and submitted

1 to the Independent Regulatory Review Commission  
2 within 180 days. As part of the law, a  
3 regulations committee was established by the  
4 General Assembly in order to accomplish this  
5 goal. The committee is comprised of the  
6 chairperson of the State Ethics Commission, the  
7 Secretary of the Senate, the Chief Clerk of the  
8 House of Representatives, the Attorney General,  
9 the Secretary of the Commonwealth, the Auditor  
10 General, the General Counsel, or their  
11 respective designees.

12 As a result of the collective  
13 efforts of the committee members, the  
14 regulations were drafted and submitted in a  
15 timely fashion. They followed diligent staff  
16 effort, a public hearing held on January 13,  
17 1999, to receive public comment, and extended  
18 discussions by the committee. The committee  
19 approved the regulations unanimously in the form  
20 presently before you. There's little I can add  
21 to the proposed regulations in your hands for  
22 comment pursuant to the statutorily mandated  
23 regulatory process. They speak for themselves.

24 It was your intention that  
25 regulations be fair, definitive, easily

1 understood and consistent with the legislative  
2 intent expressed in the Lobbying Disclosure Act.  
3 We hope we have achieved these goals. The  
4 regulatory review process is designed to elicit  
5 comments on the committee's efforts. We welcome  
6 any such comments, all of which will be fully  
7 considered as the review process moves forward.

8 I have asked John Contino, Executive  
9 Director of State Ethics Commission, to deliver  
10 my statement to you. Mr. Contino will be able  
11 to advise you as to the measures being taken to  
12 implement the act after the regulations become  
13 final. Such steps include, most importantly,  
14 the availability of advice and opinions as to  
15 the propriety of conduct as limited or regulated  
16 by the law and substantial educational efforts  
17 which will be available to interested parties.  
18 Respectfully submitted, Austin M. Lee.

19 As I mentioned, Mr. Lee is the Vice  
20 Chair of the State Ethics Commission. He was  
21 designated by the Commission's chair, Daneen  
22 Reese, to act as the chair of the Regulations  
23 Review Committee, and he is serving in that  
24 capacity. Thank you.

25 I will be able to answer any

1            questions. I think one of the things I'd like  
2            to just emphasize that we are doing in addition  
3            to the promulgation of the regulations, and as I  
4            note, it's not an ethics commission effort.  
5            That's an effort of the Regulatory Review  
6            Committee that has been established.

7                        Some of the other things we are  
8            doing that Mr. Lee asked me to make mention of,  
9            our efforts to start to put together educational  
10           programs, once these regulations become final  
11           and once they are approved. During the summer  
12           we intend to hold a series of seminars so that  
13           we will be able, as best we can, to provide  
14           educational information to those who will be  
15           subject to the law, who will be required to  
16           register and report.

17                        We also at the current time have a  
18           substantial effort underway to implement an  
19           electronic commerce process. This process will  
20           allow those who choose to do so to file both  
21           their registration and disclosure statements via  
22           the Internet. It will also allow individuals to  
23           file the forms via fax, as noted in the  
24           regulations. There's provisions for the filing  
25           of the forms by fax. Those forms will be



1 automatically entered into the electronic data  
2 processing system.

3 Along with those forms that are hard  
4 copied filed with the Commission, we have a  
5 process underway that will include imaging of  
6 those forms so that the entire system will be in  
7 an electronic format available for the  
8 individuals who are subject to the law, as well  
9 as to the public through access via the  
10 Internet. We have also efforts underway  
11 pursuant to the Lobbying Disclosure Law to  
12 interface with the Legislative Data Processing  
13 Committee and make this information available to  
14 them in electronic format in accordance with the  
15 law.

16 I would be happy to answer any other  
17 questions that you have that I will be able to  
18 answer under the process that we are now  
19 envisioning. I also would be able to give you  
20 some background as to how these regulations were  
21 promulgated at staff level, or assisted at staff  
22 level and how they went through the process of  
23 the Lobbying Disclosure Committee's review.  
24 Thank you.

25 CHAIRPERSON GANNON: Thank you, Mr.

1 Contino. Representative Chadwick.

2 REPRESENTATIVE CHADWICK: No

3 questions.

4 CHAIRPERSON GANNON: Representative

5 Manderino.

6 REPRESENTATIVE MANDERINO: Thank

7 you, Mr. Chairman. Thank you for being here.

8 I'm a little confused by your testimony in terms  
9 of what -- I thought you were limiting what you  
10 might be able to comment on. If I ask you  
11 something that you can't comment on, just tell  
12 me.

13 I'm looking at page 17 of the  
14 regulations. I did have an opportunity to read  
15 in full the regulations. Unfortunately, I did  
16 not have an opportunity to pull the section of  
17 the current Ethics Act that are referenced in  
18 here and part of my question comes from what  
19 that means.

20 In Subsection (j) when it says that  
21 there is a requirement that anything of value  
22 must be included in the statement of financial  
23 interests, meaning you must report anything of  
24 value, which must be included in the statement  
25 of financial interest under Section 1105(b)(6)

1 of the Ethics Act pertaining to gifts or Section  
2 1105(b)(7) of the Ethics Act pertaining to  
3 transportation, lodging, et cetera.

4 What I'm having trouble  
5 understanding is, almost what modifies what?  
6 When you read the definition of anything of  
7 value, it's a very broad definition in the  
8 definition section. Then when you apply it  
9 here, are you applying the -- Should I be  
10 applying the definition, of anything of value,  
11 only to items that are already listed in these  
12 existing sections of the Ethics; Act and if so,  
13 what are they? Or, if it's broader than that,  
14 then I have another question.

15 MR. CONTINO: The provision in (j)  
16 is specifically related to those sections in the  
17 Ethics Law that have been carried over to the  
18 Lobbying Disclosure Law. The Ethics Law  
19 provides that certain items have to be reported  
20 by public officials. The Lobbying Disclosure  
21 Law carries that over to the lobbyists or --  
22 primarily the principals, actually, who will be  
23 mainly required to report. So that, for  
24 specific identification purposes of individuals,  
25 there are two categories that carry over from

1 the Ethics Law.

2 The term anything of value is  
3 defined, as you indicated, in the regulations --

4 REPRESENTATIVE MANDERINO: Page 1.

5 MR. CONTINO: That is correct.

6 -- and will be applicable to the use of that  
7 phrase throughout the regulations and the  
8 statute.

9 REPRESENTATIVE MANDERINO: I  
10 understand that. Let me give you an example of  
11 something I'm stuck on. If you feel that you  
12 can comment and give me some guidance, I'd  
13 appreciate it.

14 MR. CONTINO: Let me preface what  
15 I'm saying is that, the Regulatory Review  
16 Committee discussed various situations,  
17 examples, hypotheticals as they went through  
18 their process. I don't know that I can  
19 accurately portray the intent of all the  
20 members.

21 I'm in somewhat of an unusual  
22 position as, although I'm the administrator for  
23 the agency, I was not primarily involved in the  
24 drafting of the regulations. We served -- Even  
25 the staff of the Commission has served in

1 somewhat of a unique position as we served as  
2 the staff for the Regulatory Review Committee,  
3 which is not our own Commission. Sometimes our  
4 understanding of where our own Commission is  
5 going with issues comes from a long-term  
6 relationship with those members, as opposed to  
7 the Regulatory Review Committee which we serve  
8 for a very brief period of time.

9 If I'm unable to answer specific  
10 hypotheticals, it is not because I don't want  
11 to. It's just I do not want to speak out of  
12 turn.

13 REPRESENTATIVE MANDERINO: I'll try  
14 anyway. Anything of value, Subsection 9, a  
15 service not extended free of charge to the  
16 general public. Here's my scenario. I  
17 understand and very clearly from past experience  
18 when we're talking about a tangible gift, a stay  
19 at a hotel, taking somebody to dinner, et  
20 cetera. But, a service not extended free of  
21 charge to the general public leads me to this  
22 kind of scenario.

23 I have a constituent who calls me  
24 with a problem with their insurance policy or  
25 coverage, or something like that. I call the

1 lobbyist for the company for whom my constituent  
2 is insured and said, here's the problem my  
3 constituent is having.

4 They say, let me look into it. They  
5 go to people in their company and they may go  
6 to -- Say it's an independent lobbyist; it's not  
7 an internal person. It's a independent  
8 lobbyist. He goes to a lawyer in his firm,  
9 whether he himself, the lobbyist, is a lawyer,  
10 and he goes to a lawyer in his firm and he says,  
11 here's this question or problem that  
12 Representative Manderino presented to me. Can  
13 we find her an answer? The lawyer spends three  
14 hours finding me the answer.

15 Now, if that lawyer makes \$200 an  
16 hour, has he now given 600 dollars' worth of  
17 services to me that is going to be reported  
18 under my name as a contribution to me because he  
19 spent three hours of his legal time trying to  
20 solve my constituent's insurance problem?

21 MR. CONTINO: My initial reaction to  
22 your question would be no. The reason my answer  
23 would be no is because, and this is something  
24 that I tried to answer, or at least keep in the  
25 forefront of the mind with each and every

1 hypothetical that's been asked. Believe me, we  
2 can sit here all day and go through a number of  
3 hypotheticals.

4 Everything in this law is qualified  
5 or at least, as we understand it, qualified by  
6 the term of lobbying and lobbyist. In order for  
7 something to be reportable, it has to be  
8 lobbied. There's a definition of lobbying in  
9 the law which has been parroted in the  
10 regulations which specifically says that it has  
11 to be an effort to influence legislative action.  
12 I don't know it verbatim, but there's no effort  
13 there to influence.

14 As long as you have not reached the  
15 threshold qualification that triggers the  
16 lobbying term, I cannot see how anything would  
17 be reportable, at least under this law for those  
18 purposes.

19 REPRESENTATIVE MANDERINO: Okay.  
20 Let me give you one more scenario and see if it  
21 fits that definition of lobbying.

22 MR. CONTINO: Let me also preface  
23 any further remarks by something that I also  
24 made a point of saying, is that, the Ethics  
25 Commission really does not know how the business

1 of lobbying works. We've never been involved in  
2 this process before. So, part of our mission --  
3 It's one of the reasons that the Regulatory  
4 Review Committee held the public commentary  
5 session on its own that it did was because we  
6 need to know how some of the processes work and  
7 take that into account during the course of this  
8 entire process. That's why the committee and  
9 Mr. Lee indicated that we're welcoming any  
10 comment that can be elicited through the  
11 process.

12 REPRESENTATIVE MANDERINO: Here's a  
13 similar scenario, but maybe closer to what -- I  
14 don't know whether it would be considered  
15 lobbying. Representative Masland and I are  
16 working on the opposite sides of an issue. It  
17 never happens, but by way of example.

18 We're getting ready for a floor  
19 debate on this issue. I realize that he's such  
20 a smart lawyer that he's going to come back at  
21 me at some particular issue. So I go to -- Say  
22 I go to the ACLU, who I know whose position is  
23 sympathetic or the same as the position that I'm  
24 going to be advocating during the debate. I say  
25 to them, if Masland brings up this argument on



1           this bill--Now I know they have the same  
2           interest in the bill so they kind of have a  
3           vested interest in it--and he says this, what  
4           does the law say in my response? How do I  
5           answer that? And they go back and spend a  
6           couple hours researching the law to give me an  
7           answer.

8                         Now that answer helps me in my  
9           debate. It helps the public policy debate, but  
10          it also helps their position because they're on  
11          the same side of the issue as I am. Is that  
12          lobbying and is that time anything of value that  
13          has accrued to me?

14                        MR. CONTINO: Once again, I think  
15          there's a provision, and please forgive my  
16          ignorance. As I've said, we go through this  
17          bill and we try, as we're just dealing with it  
18          upfront, remember everything that's in it.

19                        I do believe there's a provision in  
20          this bill that will exempt from the definition,  
21          or term of lobbying, the type of activity where  
22          an individual is requested by a committee to  
23          come in and provide information, to provide  
24          support or even testimony, even if it's in  
25          relation to a legislative action where the

1           General Assembly goes out or a member goes out  
2           and tries to get that information back in on  
3           their own for their own purposes.

4                       There's another definition in these  
5           laws that may or may not need some further  
6           review that similarly it exempts the provision  
7           of purely technical data which the committee put  
8           in for regulations, for the same purposes.

9           Looking at those provisions and seeing that they  
10          are geared towards exempting from that type of  
11          reporting requirement, situations where a  
12          General Assembly member goes out on his or her  
13          own to try to educate themselves as to an issue,  
14          I would think that, by analogy, it is quite  
15          likely that will not be the type of anything of  
16          value item that would be reported.

17                      Once again, these are my own  
18          interpretations. I'm not speaking on behalf of  
19          the committee. I am trying to give you an  
20          answer to a question that might -- the process  
21          that might come up during the course of maybe an  
22          interpretive opinion by the Ethics Commission.  
23          Once again, hypotheticals can be developed in  
24          any number of situations that may or may not be  
25          directly answered by the regulations and in some

1 respects may require further interpretation at  
2 some point.

3 REPRESENTATIVE MANDERINO: Thank  
4 you. Thank you, Mr. Chairman.

5 CHAIRPERSON GANNON: Thank you,  
6 Representative Manderino. Representative  
7 Masland.

8 REPRESENTATIVE MASLAND: No  
9 questions.

10 CHAIRPERSON GANNON: Representative  
11 Blaum.

12 REPRESENTATIVE BLAUM: No.

13 CHAIRPERSON GANNON: Brian.

14 MR. PRESKI: Mr. Contino, the  
15 question I have for you I guess concerns the  
16 public comment period. The testimony that's  
17 received today from this committee doesn't  
18 necessarily have any bearing on the public  
19 comment period that you have; isn't that  
20 correct?

21 What I'm trying to get at is this:  
22 What's the result if you receive no public  
23 comments on these proposed regs?

24 MR. CONTINO: My understanding is  
25 that they'll go through the process at that

1 point in time before the Independent Regulatory  
2 Review Committee after the reports or comments  
3 from Standing Committee comes in for their  
4 review.

5 MR. PRESKI: What would happen, I  
6 guess then, if we have no comment?

7 MR. CONTINO: Absolutely no  
8 comments?

9 MR. PRESKI: Do they get enacted the  
10 way they are proposed?

11 MR. CONTINO: Yes, they do. But I  
12 don't think it's going to happen because we've  
13 already received written public comment that's  
14 going to have to be considered by the committee.  
15 I mean, that has already happened.

16 MR. PRESKI: Okay. My question then  
17 becomes this, for the purposes of this committee  
18 would we be able to send to you basically a copy  
19 of the transcript; refer to it by -- I mean,  
20 basically have it incorporated by reference in a  
21 letter? Would that serve enough to you to have  
22 the comments that this committee receives, or  
23 would it be better for you if we break them down  
24 should the members so determine that they want  
25 to have the comments that we receive made

1 available to you?

2 MR. CONTINO: I think it's always  
3 better -- I'm a firm believer in delegating the  
4 work. If you like to break it down, it makes it  
5 easier for our staff. Either way, once the  
6 commentary is submitted to the committee, it  
7 will be reviewed by the committee regardless of  
8 what form it comes in.

9 MR. PRESKI: Do you want to give us  
10 a brief couple minutes on the process? You  
11 talked about that a little bit in your  
12 statement, but I think it would be important for  
13 us to know and to get on the record what was the  
14 process in reviewing this.

15 MR. CONTINO: The day the bill was  
16 signed into law, at staff level of the  
17 Commission we realized that the onus of, at  
18 least the work at staff level would be placed  
19 upon us.

20 Fortunately, I serve for the next 18  
21 months, or the next 12 months at this point as  
22 president of the National Association for the  
23 Council of Government Ethics Law. It's an  
24 international association that's comprised of  
25 every agency in United States and Canada that

1 deals with conflict of interest law, lobbyist,  
2 registration and disclosure laws, campaign  
3 finance laws, freedom of information laws.

4 I was able to, with legal staff of  
5 the Commission, tap that resource immediately  
6 via the Internet, via personal contact and via  
7 mail. As a result, over the next several weeks  
8 after the signing of the bill we received into  
9 our offices virtually every statute, regulation  
10 and form in force in the United States for  
11 lobbying regulation and disclosure.

12 The Commission's legal staff  
13 primarily through Vince Dopko and his assistant  
14 counsel, Robin Hittie, then went through  
15 mountains of documents and tried to pull out  
16 from those documents similar provisions of law  
17 that had regulations in force in other states  
18 that related to those provisions and put  
19 together a basic working package. Let me  
20 preface, they did not do this on their own.

21 During the same period of time the  
22 Commission actually contacted all of the members  
23 of the Regulatory Review Committee, got an  
24 initial meeting together where that committee  
25 decided that this would be the best process to

1 have Commission staff go through, correlate all  
2 this information and put it into some kind of  
3 rough working draft which staff then did.

4 That working draft then went to the  
5 committee; committee sat down at an initial  
6 meeting, went through the rough draft, chopped  
7 it up, and decided at that point in time that it  
8 would be in the best efforts of the committee to  
9 bring in public commentary, even though they  
10 weren't required to do so, at the earliest stage  
11 possible so that they could understand what some  
12 of the issues were that would be pending out  
13 there and to try to make the regulatory review  
14 process go faster.

15 As you all know, we're on a very,  
16 very fast track here. We have 180 days to start  
17 from scratch in an area for which there were no  
18 regulations in force.

19 The committee then held that public  
20 commentary period. I notice that some of the  
21 same individuals who are on the agenda today  
22 were there at the public commentary period that  
23 was held before the committee. The committee  
24 received the testimony. It was transcribed.

25 The committee then went back in and

1 looked at all of that public commentary and, in  
2 fact, made substantial changes to the first  
3 draft of those regulations based upon the public  
4 comments that were received.

5 The committee then had several other  
6 meetings, which were fairly lengthy; sat down,  
7 looked at those comments, went through the  
8 working draft, and then finally promulgated the  
9 document that you have before you today.

10 That was basically the process. It  
11 was a collective effort, as I said in my opening  
12 statement, and it does encompass a lot of work  
13 that was done in other states and provisions in  
14 force in other states.

15 MR. PRESKI: Thank you.

16 CHAIRPERSON GANNON: Mike.

17 MR. RISH: No.

18 CHAIRPERSON GANNON: Thank you very  
19 much, Mr. Contino, for appearing before the  
20 committee today and offering your comments.

21 MR. CONTINO: Thank you very much.  
22 I would like to offer our continued support or  
23 information that may be needed outside of this  
24 meeting to assist anyone that needs help in  
25 learning how our process works and how the act



1 is, at least, intended to be administered at  
2 this point in time. Thank you very much.

3 CHAIRPERSON GANNON: Thank you very  
4 much. Our next witness is R. David Tive,  
5 Immediate Past President of the Pennsylvania  
6 Association for Government Relations. Welcome,  
7 Mr. Tive. You may proceed when you're ready.

8 MR. TIVE: Thank you. Good morning,  
9 Chairman Gannon, Chairman Blaum, and members of  
10 the committee: My name is David Tive. I am  
11 president of the Tive Lobbying Group. I'm here  
12 today on behalf of the Pennsylvania Association  
13 for Government Relations, known as PAGR, the  
14 professional organization representing lobbyists  
15 in Harrisburg.

16 Our over 220 members reflect all  
17 aspects of the lobbying community, including  
18 lobbyists from associations and corporations, as  
19 well as lawyer lobbyists, contract lobbyists,  
20 and even several legislative liaisons for  
21 administrative departments and agencies. Thank  
22 you for letting us testify today on the proposed  
23 regulations to implement Act 93 of 1998,  
24 Lobbyist Disclosure Act. I believe you all have  
25 copies of my statement.

1                   Since it began, PAGR has spoken out  
2                   on the need to reform Pennsylvania's antiquated  
3                   and ineffective lobbying laws. We have worked  
4                   closely for two legislative sessions with the  
5                   sponsors and drafters of what's become Act 93.  
6                   While we feel there are some problems with the  
7                   bill finally enacted, we have nevertheless been  
8                   working since its passage to achieve smooth and  
9                   effective implementation in keeping with the  
10                  law.

11                  On behalf of PAGR, I testified on  
12                  December 30 at a public hearing being held by  
13                  the seven-member committee charged with writing  
14                  the regulations. There I identified some of the  
15                  major problems contained in the draft, which was  
16                  released for public comment right before  
17                  Christmas. I'm glad to say that a number of our  
18                  suggestions were adopted by the committee  
19                  before it approved the proposed regulations as  
20                  published on January 30.

21                  Unfortunately, there is still many  
22                  problems which remain and which need to be  
23                  resolved before the regulations can be finally  
24                  adopted. I will address the more serious of  
25                  those here, within the limits of time allotted,

1 and the remainder will be submitted to the  
2 committee, and to you, before the 30-day comment  
3 period has expired.

4 Due process. It is probably best if  
5 we start at the end of the proposed regulations,  
6 in Chapters 41 and 43 dealing with compliance  
7 audits, and investigations, hearings and  
8 referrals, because it is here that the most  
9 serious problems exist.

10 Let me say at the start that the  
11 worst problems in the draft regulations put out  
12 for comment last December were also found in  
13 these two chapters. The most egregious of  
14 those, such as the presumption that any lobbyist  
15 appearing in front of the Ethics Commission is  
16 guilty until proven innocent, and that the  
17 accused lobbyists must present his defense  
18 first, before hearing the case of his accusers,  
19 have been removed. However, there's still much  
20 in the proposed regulations which denies  
21 lobbyists and lobbying groups due process as  
22 we've come to understand it, and much goes  
23 against our concepts of fair play.

24 Let's start with the concept of  
25 cost. This is important in two places where it

1 helps to determine whether the Commission can  
2 take action against a lobbyist or principal.  
3 First of all, in 41.1, it says that no lobbyist  
4 or principal shall be subject to an audit more  
5 than once in every two-year session except for  
6 cause. However, cause is never defined. It  
7 needs to be clearly spelled out so that  
8 lobbyists and principals will know when their  
9 actions may place them in jeopardy of being  
10 audited or having other disciplinary action  
11 taken against them.

12 The need to have clear criteria for  
13 starting audits is more important by provisions  
14 41.2(d) and (e), which states that while  
15 lobbying, any lobbyists or principal, the  
16 Commission can also examine the relevant records  
17 of any other lobbyist or principal. What are  
18 relevant records? Again, we have no idea.  
19 Apparently, relevant records can be anything  
20 that the Commission wishes them to be.

21 Taken together, this ambiguity, and  
22 the lack of definition of cause, seem to give  
23 the Commission the power to audit anyone at  
24 anytime for any reason. That is not what these  
25 regulations should do. They should provide

1 registrants with safeguards, guarantees and  
2 understandable procedures. They should not  
3 provide the Commission with free rein for  
4 open-ended audits or with justifications for  
5 fishing expeditions.

6 Moving on to Chapter 43, we, once  
7 again, come up against the concept of cause.  
8 Here we're talking about what constitutes cause  
9 for the Commission to open a proceeding against  
10 a lobbyist or principal. In 43.2, the grounds  
11 for opening a proceeding under Section 1307 of  
12 the act, dealing with specific prohibited  
13 activities, are far too vague. Paragraph (a) of  
14 43.2 says the Commission must begin a  
15 preliminary hearing if it receives a signed  
16 complaint alleging a violation of 1307.

17 However, paragraph (b) says that the  
18 Commission can start an inquiry based on any  
19 alleged violation. That allegation need not be  
20 in the form of a complaint, let alone signed,  
21 and could be anything from any source that the  
22 Commission may happen to come across. As  
23 before, the absence and specificity and clarity  
24 are very troubling.

25 This is multiplied thousands of

1 times over when we get to 43.3. This subsection  
2 deals with cause for the Commission to open a  
3 proceeding under Sections 1304 and 1305 of the  
4 Act, dealing with registration and reporting.

5 Here we see that proceedings can be  
6 opened for virtually any reason at all,  
7 including a complaint, information that doesn't  
8 meet the criteria for a complaint, an audit, or  
9 the motion of the Executive Director which can  
10 be based, without limitation, on any information  
11 he may have received.

12 As bad as that is, it gets worse at  
13 43.3(b)(4) where it says, information received  
14 informally may form the basis for opening a  
15 proceeding. Informal information is, of course,  
16 not defined, but I don't think it's too  
17 far-fetched to view it as possibly including  
18 such things as rumor, innuendo or malicious  
19 gossip. Because, once you deviate from the  
20 constitutional concept of requiring something  
21 akin to just cause in order to start a  
22 proceeding, anything at all is sufficient cause.

23 But wait, it still gets worse.  
24 Following the receipt of this informal  
25 information, the Commission may begin a

1 noninvestigative process. The very idea of a  
2 noninvestigative process is horrifying and  
3 offensive. It says the Commission doesn't need  
4 to be bothered finding any facts. It already  
5 knows what it needs to know. How does the  
6 Commission know it? Well, we're back to the  
7 malicious gossip again.

8 And then, to support the idea that  
9 it already knows what it needs to know without  
10 any investigation, the first thing that the  
11 Commission does upon opening this  
12 noninvestigative process is to send a notice of  
13 noncompliance to the lobbyist or principal  
14 involved.

15 Remember, the Commission may well  
16 have no actual evidence that the registrant has  
17 done anything wrong. It may only have informal  
18 information. It may only have a belief or idea  
19 that the registrant has done something wrong.  
20 It has not investigated anything. This is  
21 explicitly a noninvestigative process. However,  
22 the first step is to issue a notice of  
23 noncompliance.

24 The concept of the Commission  
25 undertaking a noninvestigative process is bad

1           enough, but to start it with an official  
2           communication indicating that it believes you  
3           have done something wrong is far worse. It says  
4           the Commission has decided, based upon possibly  
5           specious information from a potentially  
6           unreliable and unknown source, and without  
7           attempting to get any clarifying input from the  
8           accused, that a violation has occurred. I'd ask  
9           the members of the committee if you would like  
10          to be subjected to such a process?

11                    Let me take you through the rest of  
12          the process. The registrant then has 20 days in  
13          which to cure the noncompliance. There may, of  
14          course, not be any noncompliance to cure, but it  
15          must be cured in any case. If it is not, a  
16          petition for civil penalties is issued. This  
17          petition must set forth the pertinent factual  
18          averments, which, in the absence of any  
19          investigation, can have been derived from things  
20          as inconsequential, or I should say informal, as  
21          party gossip.

22                    The registrant can then request a  
23          hearing in front of the Commission, and since he  
24          luckily is no longer presumed to be guilty at  
25          the start, the Commission must prove his guilt.



1           The standard of proof is, of course, not  
2           specified.

3                         However, that may be a moot point  
4           since this is the same Commission that has  
5           already determined his guilt, as evidenced by  
6           its notice of noncompliance.

7                         The seriousness of all this is clear  
8           when you remember that in addition to monetary  
9           penalties, the Commission can also ban a  
10          lobbyist or an organization from lobbying for up  
11          to five years. We have significant reservations  
12          about the constitutionality of banning a group  
13          of citizens from lobbying their government, but  
14          that is a provision of the law and not open to  
15          discussion here. However, we urge you to review  
16          that part of Act 93 after you finish acting on  
17          the regulations.

18                        Our solution for all these due  
19          process and fairness problems is simple.  
20          Chapters 41 and 43 should be rewritten to  
21          parallel the current Chapter 21 of Title 51 of  
22          the PA Code, the regulations of the Ethics  
23          Commission for public officers and employees.  
24          Those processes appear to have worked well for  
25          the past couple of decades. They have withstood

1 court scrutiny and are easily adaptable to  
2 lobbyists and principals. We do not understand  
3 the need for a separate lower and  
4 constitutionally inadequate standard of due  
5 process for lobbyists and principals, and we  
6 strongly oppose it.

7 The chart on the back page of my  
8 statement shows the differences between the  
9 processes for public officials and the employees  
10 and those for lobbyists and principals. First  
11 of all, as grounds for opening a proceeding in  
12 Chapter 21 there must be an official complaint,  
13 which must be sworn to and signed and must  
14 allege a violation of more than de minimus  
15 economic impact. Under Chapters 41 and 43, as  
16 we have seen, virtually anything, down to and  
17 possibly including rumor and innuendo, is deemed  
18 sufficient grounds, not just for an inquiry, but  
19 for issuance of a notice of noncompliance.

20 The next step in Chapter 21, after  
21 receipt of the official complaint, is a  
22 preliminary inquiry. Again, with regard to the  
23 lobbyists and principals, the Commission can opt  
24 for an explicitly noninvestigative process with  
25 no inquiry. Following the preliminary inquiry

1 in Chapter 21, the Commission can either close  
2 the case or open a full investigation if the  
3 results of the inquiry meet specific grounds for  
4 doing so, and it must notify the official or  
5 employee involved. Under Chapter 43, a notice  
6 of noncompliance is sent at the start, there is  
7 no investigation and no standards need to be met  
8 at all.

9 It should also be noted at this  
10 point that under Chapter 21, an official or  
11 public employee who is the subject of frivolous  
12 or harassing complaints can ask the Commission  
13 to investigate them. Lobbyists and principals  
14 are given no such right.

15 In keeping with due process, all  
16 investigations under Chapter 21 must be carried  
17 out according to a lengthy and specific list of  
18 procedures and rules. The subject of the  
19 investigation must be kept informed of its  
20 process, and the rights are carefully protected.  
21 For lobbyists and principals accused under 1304  
22 and 1305 of the act there is no investigation  
23 since the Commission has deemed them  
24 noncompliant from the start.

25 Finally, we get to the hearing

1 process. Here, at last, the proposed  
2 regulations state that the hearing should be  
3 conducted in accordance with the Ethics Act and  
4 its regulations to the extent possible. We  
5 don't know why that qualifier is added, as it is  
6 at every citation of the Chapter 21 regulations  
7 in this document, and we suggest that it be  
8 removed in each case.

9 These two processes are clearly  
10 separate and unequal. PAGR sees no  
11 justification at all for even having two  
12 processes, especially when one is so stunningly  
13 deficient in due process and fairness. We urge  
14 this committee to recommend that the proposed  
15 regulations be rewritten to include one and only  
16 one process, and that it be the same as that  
17 contained in Chapter 21 of the Commission's  
18 current regulations.

19 Moving on to lobbying activity.  
20 Proposed regulations refer a number of times to  
21 lobbying activity. The most obvious places it  
22 occurs are at 31.8(e)(1) where the Commission is  
23 directed to publish an annual report on lobbying  
24 activities in the state, and 35.2 where  
25 registrants are required to keep records of all

1 of their lobbying activity. The problem is that  
2 the term lobbying activity is never defined.

3 We raised this issue in December,  
4 along with the concern that if you read the  
5 definition of lobbying in the act and the  
6 regulations, you could draw the conclusion that  
7 lobbyists will be required to keep records of  
8 every person they talk to or contact in any way  
9 in the course of business. We felt that this  
10 went far beyond the requirements of the law.

11 The proposed regulations addressed  
12 part of our concerns by making it clear in  
13 Chapter 35 that we need not report all the  
14 persons we contact. However, since there is  
15 still no definition of lobbying activities, we  
16 still don't know exactly what it is we are  
17 supposed to keep a record of.

18 Furthermore, the proposed  
19 regulations state that registrants may keep  
20 their records of lobbying activities separate  
21 from their records of nonlobbying activities.  
22 If we don't know what lobbying activities are,  
23 we certainly don't know what nonlobbying  
24 activities are, and are therefore completely  
25 unable to distinguish between them.

1                   If we are to be held liable under  
2                   penalty of law for our records of lobbying  
3                   activities, we must be able to know what they  
4                   are. Only a clear definition of the term will  
5                   serve that purpose. Anything short of that will  
6                   cause people trying to conscientiously comply in  
7                   full with the law to commit unknown violations  
8                   of it.

9                   Delinquencies and deficiencies.

10                  Under the proposed regulations, failure to file  
11                  complete and accurate reports in a timely manner  
12                  subjects a principal or lobbyist to action by  
13                  the Commission under the penalties section of  
14                  the law. This is as it should be. However,  
15                  different terms are used to describe such  
16                  failure, and this makes for a potentially  
17                  confusing situation. Since Act 93, at Section  
18                  1309(c), requires a daily fine for a failure to  
19                  file registration statements or reports, it is  
20                  crucial for registrants to know what they could  
21                  be fined for, and when.

22                  The terms delinquency and deficiency  
23                  are not defined clearly enough to enable a  
24                  principal or lobbyist to fully know which  
25                  sections of the proposed regulations they may be

1           violating and which they are not. For example,  
2           under 31.5, failure to file registration  
3           statements and reports on time is a delinquency.  
4           However, in Subsection (d) it says that a  
5           delinquent statement or a report continues to be  
6           such until received in proper form. This will  
7           qualify as a deficiency under the next section,  
8           31.6, which says deficiencies are statements and  
9           reports that are not properly filled out.

10                   Two questions which immediately come  
11           to mind are: Does a statement or report which  
12           is filed in a delinquent manner and is then  
13           found to be deficient, become increasingly  
14           delinquent until refiled without any  
15           deficiencies? And, does a statement or report  
16           filed on time, but in a deficient manner, and  
17           which must be refiled at a later date, become  
18           therefore both delinquent and deficient?

19                   It seems to us that a simple way to  
20           resolve this problem would be to just use the  
21           term found in the statute and elsewhere in the  
22           regulations--compliance. Failure to comply  
23           would be a clearer concept to the registrants  
24           than trying to distinguish between deficiency  
25           and delinquency.

1                   Our goal here, as it was in the  
2 previous section of lobbying activities, and  
3 with many of our other comments, is to provide  
4 regulations that enable registrants to  
5 understand what they have to do and when they  
6 have to do it. Far too often in this document  
7 we find language that is imprecise, vague or  
8 simply not defined. All that does is to create  
9 a situation where compliance becomes excessively  
10 difficult, if not impossible, and opens traps  
11 for registrants to fall into. That benefits no  
12 one.

13                   Other issues. As I said at the  
14 start, I've spoken in detail only about some of  
15 our major concerns with this document. However,  
16 given the time constraints of this committee and  
17 its need to hear other witnesses, I cannot give  
18 our other concerns the same treatment. So let  
19 me finish by listing a series of brief key  
20 points to bring these items to your attention.  
21 We will be expounding upon them at length when  
22 we submit our formal comments to the drafting  
23 committee next week.

24                   The following are given in the order  
25 they appear in the proposed regulations, and I



1 will not read all of them here; just a couple to  
2 highlight issues.

3 The definition of association leaves  
4 out any reference to unincorporated  
5 associations, many of which are lobbying  
6 principals.

7 The definition of efforts to  
8 influence legislative action or administrative  
9 action contains an exemption for the provision  
10 of purely technical data to a state official or  
11 employee, or to a legislative or administrative  
12 body, in response to a request for that  
13 information. An argument can be made and has  
14 been made to me that most or all information a  
15 lobbyist provides is technical data, and this  
16 loophole could lead to a great deal of  
17 misunderstanding and confusion, and perhaps even  
18 to evasion of the law.

19 The definition of service of  
20 official papers states that the papers are being  
21 served on the date mailed by the Commission.  
22 This could create problems since the regulations  
23 also provide for short response time to  
24 Commission action. If the lobbyist is on  
25 vacation for two weeks, he could miss an

1 important deadline. Official papers that  
2 require a response to be sent by certified mail,  
3 and the date of service should be considered to  
4 be the date received and signed for.

5 Under Section 31.11, dealing with  
6 electronic filing, there should be a clear  
7 statement limiting access to a registrant's  
8 digital signature, and requiring all employees  
9 of the Commission to have that access to  
10 maintain strict confidentiality.

11 Language of 33.1(a) seems to require  
12 duplicate payments of the registration fee. For  
13 example, my firm was retained by a principal to  
14 provide lobbying services. Under this proposal,  
15 the principal would have to pay, my firm would  
16 have to pay, and I would have to pay. Some who  
17 have read this section also see it as requiring  
18 my firm and me to each pay a separate fee for  
19 each client. Our understanding of the act is  
20 that there should be one fee for the principal  
21 and one fee for the lobbyist. That's it. The  
22 regulations need to be rewritten to be  
23 consistent with the act.

24 Provisions of the proposed  
25 regulations at 33.2(b)(3) and 35.1(g)(2)

1 requires the reporting of unregistered lobbyists  
2 in registration statements and financial  
3 reports. The statute contains specific  
4 exemptions to avoid catching masses of citizen  
5 lobbyists in the net of this law, and all  
6 reference to unregistered lobbyists should  
7 therefore be deleted.

8 The entire section on termination,  
9 33.5, is a minefield just waiting to destroy  
10 even the most conscientious lobbyist or  
11 principal. One small example is the requirement  
12 that the lobbyist sign the principal's  
13 termination report. Sometimes a termination can  
14 be less than amicable, and one party could cause  
15 a great deal of trouble for the other by  
16 refusing to sign or not allowing him to sign.  
17 The regulations should be rewritten to more  
18 closely mirror the act's simple language on  
19 terminations.

20 Section 35.1(i) requires that the  
21 rental cost of office space be included in the  
22 quarterly financial reports. However, it does  
23 not require the cost of offices that may be  
24 owned by the lobbyist or principal to be  
25 reported. Many associations and corporations

1 own huge and luxurious office facilities, but  
2 those costs would go unreported, while a small  
3 one-person operation would have to report the  
4 cost of all office space.

5 Finally, PAGR is concerned by  
6 provisions of the proposed regulations at 35.2  
7 that require lobbyists and principals to give  
8 the Commission full access to their computer  
9 files. There is no indication that any sort of  
10 warrant or legal justification is necessary for  
11 this invasion of privacy, and we believe that it  
12 could rise to the level of a constitutional  
13 violation of privacy.

14 To summarize, let me say that PAGR  
15 finds these proposed regulations to be seriously  
16 deficient in many ways. First and foremost,  
17 they do not protect the rights of those  
18 regulated under the law, but seem to seek ways  
19 to punish them. They use terms not defined well  
20 at all, and in other places are written in a  
21 very confusing manner. They show little  
22 understanding of what lobbying really is and how  
23 lobbyists and principals operate.

24 They seem to assume that all  
25 lobbyists are private contract firms and are

1 written with that segment in mind, ignoring or  
2 not recognizing the fact that the vast majority  
3 of lobbyists are full-time employees of one and  
4 only one principal, usually either an  
5 association or corporation.

6 In short, we feel that these  
7 regulations have so many flaws that the best  
8 course of action is to have the drafting  
9 committee go back, virtually to the start, and  
10 do a major rewriting. Failing that, we will ask  
11 you to reject them when they come before you in  
12 final form.

13 On behalf of PAGR, let me say that  
14 we look forward to working with you and all  
15 other concerned parties to resolve the  
16 difficulties in implementing this stature.  
17 There is work to be done, and we are anxious to  
18 help do it.

19 Thank you for your time and  
20 attention. I will be happy to answer any  
21 questions you may have.

22 CHAIRPERSON GANNON: Thank you, Mr.  
23 Tive. Representative Washington, question?

24 REPRESENTATIVE WASHINGTON: No  
25 questions.

1                   CHAIRPERSON GANNON: Representative  
2                   Masland.

3                   REPRESENTATIVE MASLAND: Dave, thank  
4                   you for your testimony. You raise some good  
5                   points, but frankly, I'm going to have to go  
6                   back through and reread because at some point in  
7                   your testimony they all kind of blurred  
8                   together.

9                   MR. TIVE: Unfortunately, the  
10                  statement I think is long by necessity, but I  
11                  tried to pare it down.

12                  REPRESENTATIVE MASLAND: But I think  
13                  in your use of much words, you kind of leave me  
14                  at a loss for a response to your question that  
15                  you don't know what lobbying is or what lobbying  
16                  activity is, and you don't know what you're  
17                  going to have to report based on the  
18                  definition -- based on the fact there's not a  
19                  definition of lobbying activity even though  
20                  there is a definition of lobbying.

21                  I would submit in the regulations  
22                  and in the legislation there is sufficient  
23                  definitions to allow anybody to know what  
24                  lobbying is. You really -- At that point I  
25                  think you really stretched it a little bit too

1 far.

2 MR. TIVE: Our concern when we  
3 appeared in the hearing that the committee had  
4 was based on the definitions of lobbying that is  
5 contained in the act, which is essentially  
6 direct and indirect communication. That's why  
7 we were concerned that requiring a report of  
8 lobbying activities was going to require us to  
9 list the direct and indirect communications that  
10 we have with the people, be they legislators,  
11 administrators; you know, whatever. We raise  
12 that concern because we didn't think that's what  
13 the law was expecting.

14 The committee agreed with that, and  
15 in the proposed regulations they clearly say we  
16 do not have to list the people we talk to.  
17 Well, if we are not listing those we communicate  
18 with, and lobbying is direct and indirect  
19 communication, what is it that we're supposed to  
20 list on this report? You've taken out direct  
21 and indirect communication, which is the  
22 definition that the law and the regulations  
23 provide. That's where our confusion comes from.

24 REPRESENTATIVE MASLAND: Well, I  
25 think, again -- I don't want to take a whole lot

1 of time because I know we have a long committee  
2 meeting after we get through all the testimony  
3 here today. But, I think the bottom line is, it  
4 just takes a little bit of common sense. I  
5 don't think that it's that much of a stretch to  
6 figure out when you're lobbying and when you're  
7 not lobbying, and when you have to keep track of  
8 something, when you don't have to keep track of  
9 something.

10 CHAIRPERSON GANNON: Representative  
11 Maitland.

12 REPRESENTATIVE MAITLAND: No.

13 CHAIRPERSON GANNON: Representative  
14 Bunt.

15 REPRESENTATIVE BUNT: No.

16 CHAIRPERSON GANNON: Representative  
17 Blaum.

18 REPRESENTATIVE BLAUM: No.

19 CHAIRPERSON GANNON: Brian.

20 MR. PRESKI: Just housekeeping, Mr.  
21 Tive, I guess before your laundry list of page  
22 5, I want to make sure, for the record of the  
23 committee, when we submit this to the committee  
24 that's drafting this that I get it right.

25 I guess the top six concerns that I



1 saw, and I'll go through them rather quickly.  
2 Just tell me if I'm at the right place.

3 You're concerned about a definition  
4 of cause. In Section 41.1 there's no definition  
5 there. The same with the term relevant records,  
6 in Sections 41.2 paragraphs (d) and (e) there's  
7 no definition there.

8 The next area of concern that I saw  
9 was basically at 43.2(a) and 43.2(b). What you  
10 see is a conflict between an inquiry begun on a  
11 signed complaint and inquiry done on any alleged  
12 violation.

13 With that, at 33.3(b)(4) (sic) you  
14 talk about information received informally, the  
15 whole inquiry based on that kind of information.

16 The next one that I have is at 43.3,  
17 compliance and the cure for noncompliance.  
18 Basically what you have urged this committee or  
19 what you've urge is that, Chapters 41 and 43 of  
20 the proposed regs be drafted with an eye towards  
21 Chapter 21 of Title 51.

22 The next one that I see here is  
23 lobbying activity. You talk about that being  
24 undefined in two Sections, 31.8(e)(i) and 35.2.  
25 One question that I have before I move off of

1 that one, lobbying itself is defined at 31.1.

2 MR. TIVE: Yes.

3 MR. PRESKI: What's the distinction  
4 that you make between the definition of lobbying  
5 as it's defined in the beginning sections and  
6 the term lobbying activities that's later found?

7 MR. TIVE: This is directly related  
8 to Representative Masland's question, I think.  
9 And that's -- that lobbying is defined at 31.1  
10 and in the statute as direct and indirect  
11 communication. If we are not required under  
12 provisions in Chapter 35, and I don't have a  
13 specific subsection at the tip of my tongue  
14 here -- If we are not required under Chapter 35  
15 to list those communications, then what is it we  
16 are supposed to record?

17 We feel that listing those  
18 communications go beyond what the law envisioned  
19 so we don't really -- If lobbyist communication  
20 and communication is not to be listed as part of  
21 this report, then what's left?

22 MR. PRESKI: The last area of  
23 concern that I saw that you had raised before  
24 the other points was, that basically a conflict  
25 between the terms delinquency and deficiency;

1 delinquency occurring at Section 31.5 and  
2 deficiency at 31.6. Is that a fair read of what  
3 your comments were?

4 MR. TIVE: Yes.

5 MR. PRESKI: Thank you.

6 CHAIRPERSON GANNON: Mr. Rish.

7 MR. RISH: No questions.

8 CHAIRPERSON GANNON: Mr. Scott.

9 MR. SCOTT: No.

10 CHAIRPERSON GANNON: Thank you, Mr.  
11 Tive, for appearing before the committee and  
12 offering your insights and comments on these  
13 regulations.

14 MR. TIVE: Thank you.

15 CHAIRPERSON GANNON: Our next  
16 witness is Representative Mark Cohn. You may  
17 proceed when you are ready.

18 REPRESENTATIVE COHEN: Thank you  
19 very much. Chairman Gannon, Chairman Blaum,  
20 members of the House Judiciary Committee: I  
21 deeply appreciate the opportunity to discuss  
22 proposed regulations of the Lobbying Disclosure  
23 Act. I have been active in ethics-related  
24 legislation for more than two decades.

25 I voted for the Ethics Act in 1978.

1 I testified before the Local Government  
2 Committee against repealing the Ethics Act in  
3 1979. I co-sponsored the Ethics Act of 1989 and  
4 authored some of its provisions. I supported  
5 the Lobbying Disclosure Act of 1998 on the House  
6 floor and testified before the Lobbying  
7 Disclosure Committee in December of 1998.

8 The Lobbying Disclosure Act of 1998  
9 represents an improvement over the lobbying  
10 disclosure bills of prior years. The Lobbying  
11 Disclosure Act of 1999 represent an improvement  
12 over the Lobbying Disclosure Act regulations of  
13 1998.

14 We are moving in the right direction  
15 but we still have a long way to go. We need  
16 regulations that avoid producing needless  
17 litigation and controversy. We need regulations  
18 that fully protect the due process, equal  
19 protection, and free speech rights that all  
20 Americans have under the United States  
21 Constitution.

22 We need regulations that have clear  
23 meanings, produce information with clear  
24 meanings, and allow the Ethics Commission to  
25 proceed with focus and economy of effort.

1                   When I testified before the Lobbying  
2 Disclosure Commission around Christmas, I, like  
3 everyone else, was able to offer only first  
4 impressions due to time pressures. I deeply  
5 appreciate the responsiveness that was shown to  
6 my December comments in the current draft. My  
7 understanding of the current draft has been  
8 immensely aided by excellent staff work from  
9 both diverse leadership offices and the  
10 Judiciary Committee.

11                   These regulations can and must  
12 continue to be improved.

13                   Before I itemize the improvements in  
14 the written statement, I just want to add to the  
15 written statement for prefaces of putting  
16 something in that should have been there. The  
17 act has two very simple and very important  
18 goals: First, to give the public information  
19 about the dollars spent in lobbying; second, to  
20 give the public information about any personal  
21 benefits public employees receive from lobbying.  
22 All the details of these regulations should be  
23 judged by whether or not they meaningful advance  
24 these two very simple goals.

25                   I offer the following suggestions

1 for change:

2 First, interrelated definitions  
3 should be made much clearer by using identical  
4 language whenever possible. The definition of  
5 gift, lobbying and hospitality are all  
6 interrelated in Section 31.1, and should be  
7 clearly consistent when read together.

8 The definition of hospitality should  
9 be alphabetized under "H", because that's the  
10 easiest place to find it, and not be buried  
11 under transportation and lodging or hospitality  
12 received in connection with public office or  
13 employment under "T". Entertainment and meals  
14 fit under the definition of hospitality, but  
15 they are listed separately under lobbying.

16 The definition of lobbying should  
17 exclude the words entertainment and meal and use  
18 the word hospitality instead. Similarly, the  
19 quarterly expense reports listed in Section  
20 35.1(g)(6) should exclude the words  
21 entertainment, meals and receptions and use the  
22 word hospitality instead.

23 The language in 35.1(j) lacks  
24 clarity. While I believe the intent is to  
25 acquire disclosure of information by principals

1 or lobbyists, which covered public employees  
2 must disclose, other interpretations could be  
3 made. I would suggest the relevant section of  
4 35.1(j) should read: anything of value which,  
5 due to the cumulative amount for the current  
6 calendar year, must be included.

7 I would also suggest that Section  
8 35.1(j)(1) should end, an aggregate amount per  
9 calendar year in order to remove any ambiguity  
10 as to what year means. Is a year a calendar  
11 year starting in January? Is a year any 12  
12 months strung together?

13 Second, the reporting dates for  
14 lobbyists should be consistent with the  
15 reporting dates for public officials. Since  
16 public officials report on a January-through-  
17 December year, an erroneous impression of lying  
18 could be created in certain circumstances if  
19 there's a disparity between the public  
20 official's annual report and a lobbyist's  
21 quarterly report.

22 Regulation 31.4(b) should create  
23 periods of January through March, April through  
24 June, July through September and October through  
25 December. I would you suggest the first

1 reporting period beginning August 1, 1999, be  
2 adjusted in 31.4(b) to continue through December  
3 31st, 1999.

4 Third, the definition of gift states  
5 what it includes, but not what it does not  
6 include. The definition of gift in 31.1,  
7 anything which is received without consideration  
8 of equal or greater value is too broad. Help  
9 with a constituent problem, testimony before a  
10 committee, the text of a bill enacted in another  
11 state, research about actions or results of  
12 actions in another state, the results of a  
13 public opinion poll, the text of a study, all  
14 fit in the category of anything.

15 The definition of gift should be  
16 modified to include anything which is received  
17 for the personal and nongovernmental use of the  
18 recipient without consideration of equal or  
19 greater value.

20 Fourth, the term effort to influence  
21 legislative action or administrative action in  
22 Section 31.1 should be merged with the  
23 definition of lobbying in 31.1 because lobbying  
24 is defined as, you guessed it, an effort to  
25 influence legislative action or administrative



1           action. This may have occurred because the  
2           lobbying -- the definition of lobbying is  
3           statutory and the effort to influence  
4           legislative action or administrative action.  
5           This definition is not statutory, but it is  
6           extremely confusing the way it's done.

7                         The second sentence of the  
8           definition of effort to influence legislative  
9           action or administrative action--The term as  
10          used in this act does not apply to the provision  
11          of purely technical data to a state official or  
12          employee or to a legislative body, at his, her  
13          or its request--is puzzling and serves no  
14          apparent purpose. It should be deleted.

15                        What is purely technical data? What  
16          is data that is not purely technical? What is a  
17          request? If a lobbyist says, I have reports  
18          here for anyone who wants them, and all public  
19          employees present raise their hands, is that  
20          lobbyist responding to a request? What is the  
21          significance of whether data, purely technical  
22          or not, is provided in response to a request or  
23          not?

24                        The relevant question under the  
25          Lobbying Disclosure Act is whether the provision

1 of information or constituent assistance to a  
2 legislator constitutes a gift. My clear and  
3 unequivocal sense of the will of the General  
4 Assembly is that it does not. We should nip in  
5 the bud any frivolous investigations of whether  
6 data is purely technical or not purely  
7 technical, or whether data was or was not  
8 provided in response to a request. We should  
9 get rid of the entire purely technical data  
10 sentence.

11 Fifth, lobbyists should not be given  
12 the option of accumulating and attributing  
13 values of certain gifts, transportation, meals  
14 and hospitality to one individual when more than  
15 one individual benefits from them. If a  
16 lobbyist wishes to set up a lunch or dinner with  
17 House Judiciary Committee members, for instance,  
18 the total cost should not be reported as a gift  
19 for Chairman Gannon.

20 Section 31.1(k)(6)(ii) is unclear in  
21 meaning. My guess is that was intended to allow  
22 the cost per person of, for example, a meal for  
23 ten people, to be divided by ten. This would be  
24 a perfectly reasonable purpose. But, there is a  
25 lot of surplus wordage in Section 35.1(k)(6)(ii)

1           that allows the argument that a dinner for ten  
2           could be attributed to the leader of the group  
3           and be counted as a gift for the leader of the  
4           group.

5                       I recommend that Section 35.1(k)  
6           (6)(ii) be clarified by striking all language  
7           after the word recipients on line 2. I feel it  
8           is totally unnecessary to say the cost of meals  
9           on one occasion should be added to the cost of  
10          meals on another occasion in order to calculate  
11          a total spent on a public official. If it's  
12          felt necessary to say it, it should be clearly  
13          placed in another sentence; not as a dependent  
14          clause in a sentence discussing a single  
15          occasion or a transaction.

16                      Sixth, the noninvestigative process  
17          under Sections 43.3(b) and 43.3(c) allow the  
18          Executive Director of the Ethics Commission to  
19          issue a notice of noncompliance without having  
20          conducted any investigation. David Tive went  
21          into this at great length. I agree with his  
22          comments. If there are to be any proceedings  
23          conducted without any investigations, the  
24          circumstances for such proceedings should be  
25          clearly and narrowly defined in order to avoid

1 litigation over due process and equal protection  
2 of the laws.

3 Absent such careful delineation of  
4 the circumstances for noninvestigative  
5 procedures, I would recommend that all  
6 investigative (sic) procedures be removed from  
7 these regulations and that all actions proceed  
8 through investigative procedures.

9 Seventh, the audit procedures  
10 provided for in Sections 41.2(c) and 41.3(c)  
11 need to be more tightly defined. Any other  
12 relevant information in Section 41.2(c) and  
13 interviews of all other individuals necessary to  
14 the completion of the audit, are formulas for  
15 investigations of endless scope and kind. This  
16 sweeping language should be deleted. David Tive  
17 spoke at this at great length. I agree with his  
18 remarks.

19 Any additions to items covered in  
20 Section 35.2, which enumerate the records which  
21 must be retained by registrants, should be  
22 narrowly targeted and clearly defined, if they  
23 are necessary at all. Similarly, audit  
24 interviews should be limited to those who  
25 prepare relevant documents and any other clearly

1 and narrowly defined persons.

2 Eighth, the regulations should make  
3 clear that Ethics Act standards of Section 1107  
4 and 1108 of the Ethics Act apply to the Lobbyist  
5 Disclosure Act. These standards establish a  
6 formal investigative process, preliminary  
7 inquiry after a formal complaint or the motion  
8 of the Executive Director, then a full  
9 investigation and a findings report with four  
10 members required to find a violation by clear  
11 and convincing proof.

12 The proposed regulations at Section  
13 43.3(a)(iv) allow Commission proceedings to be  
14 based on information received that does not  
15 satisfy the criteria for a formal complaint,  
16 which would appear to include anonymous letter  
17 or telephone call.

18 Section 43.3(e) specifically equates  
19 the punishment levied by noninvestigative  
20 processes with the punishment levied by  
21 investigative processes. This again raises the  
22 question of why the noninvestigative processes  
23 should be allowed to subject the enforcement of  
24 the act to legal challenges from due process and  
25 equal protection claims.

1 Ninth, the question of who is a  
2 lobbyist is greatly impacted by the broad  
3 definition of indirect communication in Section  
4 31.1. Under this definition, advertising  
5 agencies, mailing houses, research analysts,  
6 pollsters, academic experts and others who have  
7 no direct contact with legislators should be  
8 counted as lobbyists.

9 I would suggest that the definition  
10 of lobbying be amended to include, an effort to  
11 influence legislative action or administrative  
12 action by one who personally meets or otherwise  
13 engages in conversation with one or more  
14 legislative or administrative employees in a  
15 reporting period. This would eliminate large  
16 numbers of support personnel from the reporting  
17 requirements and make the information received  
18 more relevant to the public. Other regulations  
19 already limit the reporting to those who spend  
20 time equivalent to \$2,500 over three months.

21 The term regularly published should  
22 be deleted from the last line of the definition  
23 of indirect communication in accord with the  
24 First Amendment to the United States  
25 Constitution. While others were testifying, I

1 saw clearly that line is in the statute and,  
2 therefore, it would be difficult to delete it as  
3 this written text recommends, but I think it  
4 ought to be severely modified through  
5 regulation.

6 The Ethics Commission should not be  
7 investigating publishing schedules, which  
8 commonly vary widely from year to year in many  
9 organizations. All periodic newsletters  
10 primarily designed for and distributed to  
11 members of organizations should be deleted from  
12 the definitions of indirect communication.

13 Tenth, Section 43.3(e) should be  
14 clarified to require four members of the  
15 seven-member Ethics Commission to find a  
16 violation by a standard of clear and convincing  
17 proof. This is the standard that I am proud to  
18 have been responsible for initiating, and it  
19 belongs in this regulation to avoid due process  
20 and equal protection legal challenges.

21 Eleventh, the limitation on lottery  
22 audits of reports in Section 41.1(c)--the point  
23 I should be there and is not--can also be read  
24 indirectly authorized and unlimited number of  
25 undefined for-cause audits.

1           I would suggest that Section 41.1(c)  
2           be written to say, that no lobbyist or principal  
3           be subject to a random audit more than once in  
4           any biennial registration period. If there's a  
5           need to create a new category of for-cause  
6           audits, and David Tive expressed legitimate  
7           objections to such a concept, that need should  
8           be clearly and narrowly defined in a separate  
9           section from the lottery audits.

10           Twelfth, to avoid equal protection  
11           and due process challenges, lobbyists must be  
12           accorded the same rights as public officials  
13           are. The Lobbying Disclosure Act in Section  
14           1308 provides that investigations should be  
15           conducted in accordance with Sections 1107 and  
16           1108 -- in 1107 and 1008 of the Ethics Act. The  
17           current Ethics Act regulations at 51  
18           Pennsylvania Code, Chapter 21, should be  
19           followed regarding investigations of violations  
20           of the Lobbying Disclosure Act.

21           All sections dealing with  
22           investigations of lobbyists should make clear  
23           that lobbyists have the same rights as public  
24           officials, including, but not limited to, four  
25           members being needed to find a violation and a



1 standard of proof by clear and convincing  
2 evidence.

3 In conclusion, I hope these remarks  
4 will be helpful to the House Judiciary Committee  
5 and the Lobbying Disclosure Committee. The  
6 lobbying regulations must be further amended to  
7 meet the goals of the Lobbying Disclosure Act  
8 which was passed in 1998 by unanimous vote.

9 We need public accountability and  
10 meaningful information. We do not need  
11 investigations of trivial or irrelevant matters  
12 or highly politicized or heavily litigated  
13 implementation of this act.

14 Use of the concepts of clarity,  
15 focus, economy and enforcement efforts, due  
16 process and equal protection will produce  
17 results that we in the public will all be proud  
18 of for years to come. Thank you, Mr. Chairman.

19 CHAIRPERSON GANNON: Thank you,  
20 Representative Cohen. Representative James.

21 REPRESENTATIVE JAMES: No questions.

22 CHAIRPERSON GANNON: Representative  
23 Browne.

24 REPRESENTATIVE BROWNE: No  
25 questions.

1 CHAIRPERSON GANNON: Representative  
2 Wogan.

3 REPRESENTATIVE WOGAN: Good morning,  
4 Mr. Chairman. This is the Judiciary, I hope.

5 CHAIRPERSON GANNON: You're in the  
6 right place. Representative Masland.

7 REPRESENTATIVE MASLAND: No  
8 questions.

9 CHAIRPERSON GANNON: Representative  
10 Maitland.

11 REPRESENTATIVE MAITLAND: No  
12 questions.

13 CHAIRPERSON GANNON: Representative  
14 Bunt.

15 REPRESENTATIVE BUNT: No questions.

16 CHAIRPERSON GANNON: Mr. Scott.

17 MR. SCOTT: Thank you, Mr. Chairman.

18 Representative Cohen, your testimony and your  
19 comments and the specificity set forth, I  
20 appreciate them, being a staff attorney here for  
21 22 years, gives us something to go with.

22 It's my understanding that the  
23 respective leadership staff has been meeting the  
24 last couple of weeks. Attorney Preski has been  
25 meeting with them and also Mike Rish. I don't

1 know if this is the result of some of that  
2 meeting, but --

3 REPRESENTATIVE COHEN: I benefited  
4 from the meeting and a written document prepared  
5 by Reizdan Moore.

6 MR. SCOTT: Reizdan was there also.  
7 I didn't --

8 REPRESENTATIVE COHEN: If you look  
9 at Reizdan's document you'll see others --  
10 There's a good solid area of agreement here.

11 MR. SCOTT: All right. Whatever  
12 commentary Attorney Preski and Chairman Gannon  
13 are going to put together along with Chairman  
14 Blaum to go to the Ethics Committee, I would  
15 hope this would be -- some input from your  
16 documentation. That's all I have.

17 REPRESENTATIVE COHEN: Thank you  
18 very much.

19 MR. PRESKI: Representative Cohen, I  
20 guess my concern is, I think what I'm going to  
21 do with the comments that we get from the  
22 testifiers here today is that, I will use that  
23 old lawyerly trick of incorporating by reference  
24 for a lot of this stuff.

25 With your testimony also, I think

1           you were very detailed. Rather than run through  
2           with you all your points, I think they're pretty  
3           straightforward. And what we'll do, and I  
4           assume I have your permission, to incorporate  
5           that by reference in the correspondence this  
6           committee has with the drafting committee for  
7           the Ethics Commission.

8                         REPRESENTATIVE COHEN: Yes. You, of  
9           course, have that permission.

10                        MR. PRESKI: Thank you.

11                        CHAIRPERSON GANNON: Representative  
12           Cohen, there seems to be a fair deal of concern  
13           about these noninvestigative procedures.  
14           They're referenced in the regulations. What  
15           does the statute itself say about these non --

16                        REPRESENTATIVE COHEN: The statute  
17           has no reference to noninvestigative procedures  
18           that I have been able to find. This is totally  
19           an invention of the Lobbying Disclosure  
20           Committee.

21                        CHAIRPERSON GANNON: These anonymous  
22           letters and telephones calls that you're talking  
23           about, or anonymous reports, where are they --  
24           What does the statute say about that kind of  
25           thing?

1                   REPRESENTATIVE COHEN: The statute  
2 is silent on that. They're referred to in the  
3 noninvestigative procedures only by language  
4 that gives -- That's extremely broad.  
5 Noninvestigative processes are on page 25 of the  
6 regulations. All they require is pertinent  
7 factual averments. It is totally unclear how  
8 they get the facts; whether the facts are  
9 contested or not. There's nothing stopping  
10 anybody from -- There's no requirement for  
11 formal complaint, in other words.

12                   Under investigative procedures,  
13 there has to be a formal complaint. Under  
14 noninvestigative procedures, there does not have  
15 to be a formal complaint. Under investigative  
16 procedures, there has to be some kind of  
17 investigation first. Under noninvestigative  
18 procedures, there does not have to be an  
19 investigation first.

20                   The Commission can treat -- The  
21 Commission staff can treat any information that  
22 is presented in any fashion with as much  
23 seriousness as it desires.

24                   Chairman Contino said he has access  
25 to the regulations and decisions in all 50

1 states. I have mixed feelings about that  
2 announcement. I have no idea and I doubt any  
3 lawyer in this Commonwealth has any idea of what  
4 all 50 states have done. He or I have no idea  
5 of what any one state considers relevant case  
6 law, what protections any one state offers. I  
7 think rather than focusing on all 50 states,  
8 which is an enormous burden -- I doubt there's  
9 an attorney in the entire country who is an  
10 expert of the laws in all 50 states in any  
11 subject.

12 MR. PRESKI: We're told we have --  
13 There's 27 states that have adopted lobbying  
14 regs in addition to the federal government. We  
15 have them in the committee's files if any member  
16 wishes to review them or if anyone else wishes  
17 to see them.

18 CHAIRPERSON GANNON: We'll make them  
19 available to the members.

20 REPRESENTATIVE COHEN: I think you  
21 ought to track what states have noninvestigative  
22 processes.

23 CHAIRPERSON GANNON: Let me just  
24 pursue this a little bit, because it says the  
25 record of the case before the Commission is

1 public. At what point would a noninvestigation  
2 process become a record of the Commission and be  
3 publicly available?

4 REPRESENTATIVE COHEN: That's a good  
5 question. I don't think it specifically says  
6 that. Certainly, it would be publicly available  
7 if there's a finding of guilt. Certainly,  
8 knowledge of it would be public knowledge if  
9 there's a widespread investigation of it.

10 The Ethics Commission goes around  
11 interviewing people by saying, hi, I'm from the  
12 Ethics Commission. We're conducting an  
13 investigation. Please answer some questions.  
14 If you tell enough people that, the word gets  
15 out there's an investigation.

16 CHAIRPERSON GANNON: But from what I  
17 hear you saying, that investigation could be  
18 based upon an anonymous phone call.

19 REPRESENTATIVE COHEN: That's  
20 correct.

21 CHAIRPERSON GANNON: Or letter.  
22 Thank you, Representative Cohen, unless there's  
23 other questions from committee members.

24 (No audible response).

25 CHAIRPERSON GANNON: Thank you,

1 Representative Cohen.

2 REPRESENTATIVE COHEN: Mr. Chairman,  
3 to fully answer your question. The relevant  
4 figures for -- Relevant narrow answer to your  
5 question is at 43.3(4), which David Tive  
6 referred to on page 24 in the middle, allows  
7 information received that does not satisfy the  
8 criteria for a formal complaint. Therefore, it  
9 could be anything; anonymous phone calls or  
10 anything else fits in.

11 CHAIRPERSON GANNON: Thank you,  
12 Representative Cohen. Thank you for taking time  
13 to share your views with the committee.

14 The next witness is Travis J. Tu,  
15 Assistant Executive Director of the American  
16 Civil Liberties Union. Welcome, Mr. Tu, and you  
17 may proceed when you are ready.

18 MR. TU: Good morning. My name is  
19 Travis Tu, and I'm here today as a  
20 representative of the American Civil Liberties  
21 Union of Pennsylvania to comment on the  
22 regulations drafted to implement the recently  
23 enacted Lobbying Disclosure Act. I am thankful  
24 for the opportunity to present testimony this  
25 morning.



1           The ACLU shares in the desire to  
2           eliminate the real or perceived corruption in  
3           the legislative process. Certainly, in a time  
4           of such public distrust of government, it is  
5           worthwhile to regulate those individuals and  
6           organizations who are furthering an agenda of  
7           special interest while masquerading as  
8           proponents of the public weal.

9           We are concerned, however, that the  
10          enactment of the Lobbying Disclosure Act through  
11          these regulations will impose far-reaching and  
12          substantial burdens on public policy advocacy  
13          that will make participation by grassroots  
14          organizations costly, complicated, and thus,  
15          less likely. Although we believe the  
16          regulations contain problematic implications for  
17          lobbyists as well, I will assume that there are  
18          plenty of lobbyists in the room who can take  
19          care of themselves.

20          My statement will be limited  
21          primarily to discussing the potential impact on  
22          grassroots and small nonprofit organizations  
23          treated as principals under the draft  
24          regulations. I concede that some of our  
25          objections call into question the statute itself

1           rather than the regulations, and I can only  
2           suggest that these concerns may warrant a  
3           re-examination and amendment of the Lobbying  
4           Disclosure Act.

5                         We at the ACLU are fortunate to have  
6           the funding to support a full-time lobbyist and  
7           salaried bookkeeper; but, we consider ourselves  
8           unusual amongst nonprofit issue advocacy  
9           organizations. For many of the smaller  
10          nonprofit organizations throughout our state,  
11          compliance with these regulations will be a  
12          significant burden. The burden imposed by these  
13          regulations is implicitly recognized by the  
14          exemption of religious organizations from the  
15          registration and reporting requirements.

16                        However, this burden does not  
17          singularly affect religious organizations. It  
18          puts constraints on a wide variety of groups,  
19          especially the under-resourced.

20                        Before detailing our objections, let  
21          me also suggest that the statute's religious  
22          exemption, Section 1306, may unfairly favor  
23          religious groups; thereby, violating the  
24          Establishment Clause of the U.S. Constitution as  
25          well as Section 3, Article 1 of the Pennsylvania

1 Constitution that states that no preference  
2 shall ever be given by law to any religious  
3 establishments or modes of worship. Concerted  
4 effort should be made to resolve the potential  
5 for a constitutional challenge to the act.

6 If religious organizations are  
7 exempted because the restrictions may violate  
8 the First Amendment right to free exercise of  
9 religion, it stands to reason that the First  
10 Amendment right of grassroots and nonprofit  
11 principals to petition the government may also  
12 be infringed. If the act is not amended to  
13 remove the exemption for religious groups, then  
14 at the very least the regulations should be  
15 drafted to ensure that small, nonprofit groups  
16 and grassroots principals share the same favored  
17 status as religious organizations.

18 In Walz versus Tax Commission, the  
19 Supreme Court upheld property tax exemptions for  
20 church property only because the same tax  
21 exemptions were available as part of a general  
22 taxation scheme exempting all nonprofit or  
23 socially beneficial organizations. The  
24 exclusive exemption for religious organizations  
25 in this bill may, therefore, be deemed

1           unconstitutional.

2                       These regulations will unreasonably  
3 hinder access to the legislative process for  
4 grassroots and nonprofit organizations. Our  
5 concerns stem from our belief that participation  
6 of grassroots and nonprofit organizations is a  
7 valuable asset in the legislative process.

8                       These organizations often have  
9 particular expertise regarding policy issues  
10 that is helpful in drafting effective  
11 legislation. These organizations, commonly  
12 underfunded and overburdened, may choose to  
13 withhold their expertise for fear of reaching  
14 the threshold for reporting requirements and  
15 becoming subject to the regulations and  
16 punishments for noncompliance.

17                      To draw attention to particularly  
18 burdensome lobbying disincentives for grassroots  
19 organizations, let me point to the ambiguous  
20 definitions of indirect communication and  
21 anything of value. If these regulations are  
22 supposed to flesh out the provisions of the  
23 Lobbying Disclosure Act, it stands to reason  
24 that they should make clear and specific the  
25 intent and jurisdiction of the law.

1                   However, the regulations not only  
2 fail to narrow the definition of indirect  
3 communication provided in the statute, they go  
4 on to create even greater confusion by not  
5 limiting what shall be considered under the law  
6 as anything of value.

7                   Now, nonprofit organizations are  
8 vulnerable to inadvertently meeting the  
9 expenditure threshold and subsequently  
10 responsible for complying with the record  
11 keeping and reporting demands. This may cause  
12 many overburdened nonprofits to abstain from  
13 contributing to the legislative process  
14 altogether.

15                   For organizations that do meet the  
16 threshold of reporting, an even greater burden  
17 is created by the requirement to maintain  
18 electronic records in a manner to enable the  
19 Commission or Attorney General access. While  
20 there is ambiguity in this regulation as well,  
21 it automatically necessitates greater technical  
22 support and computerized security measures that  
23 may be difficult to finance. Besides this  
24 requirement's burden, we hold firm to our  
25 assertion that the requirement potentially

1 infringes on rights of privacy and attorney-  
2 client privilege.

3 Question 14 of the regulatory  
4 analysis form asks: Describe who will be  
5 adversely affected by the regulation. The  
6 response was unknown. The ACLU fears that there  
7 will be a clear, adverse effect on nonprofit,  
8 social advocacy organizations that engage in  
9 grassroots lobbying. When faced with the  
10 biennial registration fees, detailed reporting  
11 requirements, and ambiguous definitions outlined  
12 in the statute and restated in the regulations,  
13 many of these grassroots organizations may just  
14 turn their back on the legislative process  
15 leaving only those lobbyists and principals that  
16 can afford to be heard, alongside religious  
17 groups, to influence public policy through  
18 organized lobbying.

19 Thank you for your consideration,  
20 and I'll try to answer any questions you have at  
21 this time.

22 CHAIRPERSON GANNON: Thank you, Mr.  
23 Tu. Representative Browne.

24 REPRESENTATIVE BROWNE: Thank you,  
25 Mr. Chairman. Just very briefly, if you're

1           trying to set a threshold for a grassroots  
2           community, group, how would you set that  
3           threshold?

4                       MR. TU: One of the things that  
5           we've discussed at the ACLU is, perhaps, the  
6           threshold is too low. With the ambiguous  
7           definitions, any group that's activating their  
8           membership, to participate in any form of  
9           indirect communication to affect legislation can  
10          suddenly reach the minimum thresholds that are  
11          set out in the regulations.

12                      So, it might consider to raise those  
13          thresholds to insure that grassroots  
14          organizations aren't meeting the limit; just  
15          carrying out the activities they have been  
16          doing.

17                      REPRESENTATIVE BROWNE: Any  
18          recommendations in that regard?

19                      MR. TU: I would have to discuss  
20          that and maybe refer you to a statement from the  
21          ACLU.

22                      REPRESENTATIVE BROWNE: Okay. Thank  
23          you, Mr. Chairman.

24                      CHAIRPERSON GANNON: Representative  
25          Wogan.

1                   REPRESENTATIVE WOGAN: I have no  
2                   questions. Thank you, Mr. Chairman.

3                   CHAIRPERSON GANNON: Representative  
4                   Masland.

5                   REPRESENTATIVE MASLAND: No  
6                   questions.

7                   CHAIRPERSON GANNON: Representative  
8                   Bunt.

9                   REPRESENTATIVE BUNT: Mr. Tu, on the  
10                  first page of your testimony you concede that  
11                  some objections call into questions the statute  
12                  itself rather than regulations. I mean, you  
13                  have gone right back to the start.

14                  In addition, you talk about the  
15                  significant burdens, but in the second paragraph  
16                  on page 2 you also indicate a suggestion in the  
17                  statute's religious exemption may be a violation  
18                  in the Establishment Clause of the United States  
19                  Constitution. Can I read into that there may be  
20                  a challenge by your organization?

21                  MR. TU: In discussions with the  
22                  organization, they haven't said that they would  
23                  challenge. The only thing I can go by is the  
24                  testimony that Larry Frankel submitted when he  
25                  appeared on January 13, he stated--I don't know



1 if it was during the testimony--but at one time  
2 he indicated there were no plans underway to do  
3 so.

4 REPRESENTATIVE BUNT: Reading the  
5 statement, one could be reasonably led to  
6 believe --

7 MR. TU: One can reasonably deduce  
8 that an organization could make a constitutional  
9 challenge. At this point we haven't undertaken  
10 that.

11 REPRESENTATIVE BUNT: That's all,  
12 Mr. Chairman.

13 CHAIRPERSON GANNON: Thank you,  
14 Representative Bunt. Representative Blaum.

15 REPRESENTATIVE BLAUM: No questions.

16 CHAIRPERSON GANNON: Mike.

17 MR. RISH: No.

18 CHAIRPERSON GANNON: Brian.

19 MR. PRESKI: Just to go over, just  
20 so I make sure I highlight the right things, the  
21 concerns that you have raised are the potential  
22 for religious preference and your concerns about  
23 the grassroots and nonprofit organizations,  
24 specifically in relation to the definitions of  
25 indirect communication and to determine anything

1 of that value; is that correct?

2 MR. TU: Yes.

3 MR. PRESKI: Thanks.

4 MR. TU: And beyond those concerns,  
5 again, the requirement for computerized records  
6 that allow access to the Attorney General's  
7 Office.

8 CHAIRPERSON GANNON: Representative  
9 Blaum.

10 REPRESENTATIVE BLAUM: When you say  
11 religious organizations are exempt from  
12 provisions of this law, how would that impact a  
13 contract-lobbying firm who may be retained by a  
14 religious organization to lobby on behalf of  
15 their interests? Would that exempt the lobbyist  
16 and that firm from the provisions of the law and  
17 regulations?

18 MR. TU: That question is probably  
19 directed to those who drafted the regulations  
20 better than I am. But my reading of the  
21 regulations is that, any lobbyist is exempt when  
22 acting on behalf of a bona fide church  
23 establishment. I would have to check the  
24 regulations and read them over again, but that's  
25 my impression.

1                   REPRESENTATIVE BUNT: One more  
2 question.

3                   CHAIRPERSON GANNON: Representative  
4 Bunt.

5                   REPRESENTATIVE BUNT: Following that  
6 question, that line of thought, under the First  
7 Amendment, freedom of the press, once a year the  
8 Pennsylvania Newspaper Publishers Association  
9 has a meeting here in Harrisburg. They do have  
10 a function downtown where they invite  
11 legislators to speak.

12                   In addition, various newspapers will  
13 get legislators and Senators within their  
14 readership area for a social dinner at the  
15 expiration of the evening. Would that same  
16 constitutional provision that protects them also  
17 exempt them?

18                   MR. TU: Again, that question is  
19 probably directed better to a constitutional  
20 lawyer than myself. I can discuss that with the  
21 ACLU staff attorneys. The argument that we try  
22 to make in this statement was that, yes, it  
23 raises questions. Would that also exempt them  
24 and do the regulations not make provisions for  
25 that?

1           If we're exempting religious  
2 organizations because we think the regulations  
3 would violate freedom to exercise their  
4 religion, then does the same logic apply to the  
5 fact that these regulations could violate things  
6 like freedom of the press, freedom of  
7 association, freedom of -- the things we  
8 described in the testimony?

9           REPRESENTATIVE BUNT: Do they employ  
10 lobbyists?

11          MR. TU: Yes.

12          CHAIRPERSON GANNON: From reading  
13 your statement and your comments, you seem to  
14 focus on these constitutional violations which  
15 actually go back to the act itself. You feel  
16 they were carried over into the regulations, or  
17 did the regulations seem to solve some of the  
18 those problems that you had with the statute?

19          MR. TU: Our concerns that we  
20 discussed with regards to the exemptions were  
21 carried over straight into the regulations, and  
22 one of the things we considered and discussed in  
23 the testimony in order to create some leeway,  
24 there are remedies of some of our concerns were  
25 to make the regulations also exempt some other

1 organizations that might be considered nonprofit  
2 or socially advantageous, or to raise the  
3 threshold such a clear definition wasn't made  
4 between a religious organization and  
5 organizations partaking grassroots lobbying.

6 CHAIRMAN GANNON: You don't say  
7 there, but I want to ask for the record. Are  
8 you really getting back to the issue, as  
9 Representative Bunt referred to, First Amendment  
10 referring to free speech and freedom of the  
11 press where you talk about, this will have  
12 chilling effect on other nonprofit or small  
13 organizations that don't have the resources in  
14 terms of their right to petition the General  
15 Assembly?

16 MR. TU: What we're getting back to  
17 is that, organizations have a constitutional  
18 right to petition the government. These  
19 regulations potentially could create barriers to  
20 that right to petition.

21 CHAIRPERSON GANNON: You see that as  
22 a -- You go to the fundamental issue that would  
23 probably -- or in your view is a violation of  
24 the Constitution?

25 MR. TU: If enacted in the way that

1           it is, especially when it concedes that there  
2           are various religious organizations imposed by  
3           these regulations, thus will exempt them, in  
4           that same fashion we see the rights of  
5           grassroots organization to petition the  
6           government would similarly be infringed.

7                         CHAIRPERSON GANNON:   Just to  
8           clarify, hypothetically, you're saying that a  
9           small religious organization with one office and  
10          one staff person would go up here to Harrisburg,  
11          lobbying the legislature for some type of  
12          legislation that would affect their organization  
13          or their religious organization, would be  
14          exempt.

15                        Yet, a one-office, one-person  
16          operation that, for example, was advocating some  
17          environmental law change but was nonprofit, and  
18          once again, underfunded, just as poor as a  
19          religion organization, would be subject to all  
20          these reporting requirements?

21                        MR. TU:   Right.   Our fear is that  
22          when faced with these, especially with the  
23          ambiguity there, they would just choose not to  
24          participate.   They would choose to influence  
25          policy in other ways or activate their

1 membership around other things.

2 CHAIRPERSON GANNON: Just so I can  
3 summarize it, correct me if I'm wrong, the  
4 principal problem that the American Civil  
5 Liberties Union has with these regulations is,  
6 it essentially broadens the statute as opposed  
7 to narrowing it, so it's better understood and  
8 better definitions and a better understanding  
9 why the lobbyists of the public and legislature  
10 exactly what their impact --

11 MR. TU: Exactly. I can only echo  
12 the remarks made earlier with the ambiguity to  
13 terms like indirect communication and anything  
14 of value. With the ambiguity there, these  
15 organizations will be very nervous to partake in  
16 anything with regard to public policy because  
17 they think they'll met the threshold and then  
18 have to report.

19 CHAIRPERSON GANNON: Representative  
20 Masland.

21 REPRESENTATIVE MASLAND: I just feel  
22 a need to -- I'm trying not to say too much  
23 because, having been involved in drafting the  
24 legislation, I don't want to appear to be  
25 offended at anybody who is upset with the way we

1 drafted the legislation. Certainly, I have no  
2 pride of authorship in the regulations.

3 The language dealing with religious  
4 organizations found in 1306(5) is very narrowly  
5 drawn; that is, an individual representing a  
6 bona fide church in which the individual is a  
7 member and the purpose of the lobbying is solely  
8 for the purpose of protecting the constitutional  
9 right to free exercise of religion.

10 If a church hires a lobbyist to come  
11 down here and tell us that we ought to pass the  
12 voucher program, that's lobbying and they're not  
13 going to be exempt. It is not a blanket  
14 exemption. Less anyone in this room walk away  
15 with the feeling it is, that's not the case.

16 Thank you.

17 CHAIRPERSON GANNON: You can respond  
18 if you wish.

19 MR. TU: I apologize if my statement  
20 earlier was ambiguous. Again, I said that I  
21 would consult the regulations. One of the  
22 things that I know was discussed in our office  
23 was that, there are lots of people involved with  
24 the ACLU who lobby for free expression of  
25 religion as well. It's questionable, would they



1 be exempt, would they not?

2 REPRESENTATIVE MASLAND: Let me just  
3 follow with this: If the ACLU really believed  
4 that there was a constitutional problem based on  
5 that paragraph, I would be surprised if you  
6 wouldn't file suit. I have never known the ACLU  
7 to be hesitant about challenging anything on  
8 constitutional grounds. I appreciate you may be  
9 exempting the Lobbyist Disclosure Law, but I  
10 don't think it rings true.

11 CHAIRPERSON GANNON: Thank you, Mr.  
12 Tu, for attending today and presenting us with  
13 your testimony on behalf of the American Civil  
14 Liberties Union.

15 MR. TU: Thank you.

16 CHAIRPERSON GANNON: Our next  
17 witness is Jean Becker, Common Cause. You may  
18 proceed when you are ready.

19 MS. BECKER: Chairman Gannon, and  
20 member of the House Judiciary Committee: I  
21 thank you for the privilege of presenting Common  
22 Cause/Pennsylvania's comments on the proposed  
23 regulations to Chapter 13, Act 93, the Lobbying  
24 Disclosure Act. My name is Jean Becker. I  
25 chair the organization's Lobbying Reform Project

1 Team.

2 Our comments are few. We believe  
3 that for the most part the regulations are well  
4 designed and will provide the lobbying community  
5 with proper direction for complying with its  
6 legal obligations under the act. However, we  
7 would like to make the following  
8 recommendations:

9 Under Section 31.1 in the definition  
10 of anything of value, part (i)(c), after the  
11 word conveyance, where it appears for the second  
12 time, to add the words, present or future. And  
13 under part (i)(k), the same definition, add the  
14 words, and recreation.

15 The second modification is necessary  
16 to make it more consistent with the intent of  
17 the law as described under the definition of  
18 transportation, lodging or hospitality.

19 In the definitions section of the  
20 term de minimis, it should be defined. In the  
21 alternative, the term de minimis should be  
22 deleted in every place where it occurs and  
23 specific thresholds should be used to replace  
24 it. For example, under the definition of  
25 transportation and lobbying (sic) a reasonable

1 threshold could be ten dollars.

2 The content of 35.1(k)(2) should be  
3 deleted and replaced with the following: The  
4 valuation of a complimentary ticket to any type  
5 of fund-raising event shall be based upon the  
6 full value of the ticket.

7 The following suggestions, although  
8 not part of the regulations, are recommendations  
9 we believe are necessary to ensure proper  
10 compliance with the reporting requirements of  
11 the act.

12 Before the regulations take effect,  
13 require the Ethics Commission to provide free  
14 training seminars for lobbyists on how to comply  
15 with the regulations, record keeping,  
16 registration, reporting standards and restricted  
17 activities. And prior to conducting the  
18 seminars, all lobbying registration and  
19 disclosure forms and manuals should be made  
20 available to lobbyists.

21 In closing, I would like to  
22 congratulate you, Chairman Gannon, and all the  
23 members of the General Assembly for rescuing  
24 Pennsylvania's reputation from the humiliation  
25 of being the worst in the nation for its

1 oversight of lobbyists' activities.

2 At the same time, I must point out  
3 that while we took a giant step forward in  
4 providing the public with the kind of  
5 information they need to understand the  
6 pressures being exerted on the institutions of  
7 government, Act 13 certainly is far from being  
8 the toughest lobbying disclosure and regulation  
9 law of the country.

10 Many states require significantly  
11 more disclosure of lobbying activities and  
12 spending, and thus, tougher bookkeeping  
13 requirements. Many other states have  
14 significantly stricter prohibitions on lobbying  
15 activities.

16 As you proceed with your regulatory  
17 review duties, we ask that you be careful not to  
18 weaken in any manner the disclosure obligations  
19 now required under the regulations of the act.  
20 Any weakening of the standards would be a  
21 terrible and unjustifiable disservice to the  
22 citizens of Pennsylvania.

23 I thank you, and I will try to  
24 respond to any questions you may have.

25 CHAIRPERSON GANNON: Thank you very

1 much. Representative James.

2 REPRESENTATIVE JAMES: No.

3 CHAIRPERSON GANNON: Representative  
4 Blaum.

5 REPRESENTATIVE BLAUM: No questions.

6 CHAIRPERSON GANNON: Representative  
7 Wogan.

8 REPRESENTATIVE WOGAN: No, Mr.  
9 Chairman.

10 CHAIRPERSON GANNON: Representative  
11 Manderino.

12 REPRESENTATIVE MANDERINO: No, thank  
13 you.

14 CHAIRPERSON GANNON: Representative  
15 Bunt.

16 REPRESENTATIVE BUNT: Yes. On page  
17 2, you indicate in your closing, rescuing  
18 Pennsylvania's reputation from the humiliation  
19 of being the worst in the nation for its  
20 oversight of lobbyists' activities.

21 Can you tell me how we got that  
22 reputation?

23 MS. BECKER: I will try to tell you  
24 how we came to this conclusion. We did a lot of  
25 research on --

1                   REPRESENTATIVE BUNT:   If you  
2                   remember Mr. Tu's testimony from the ACLU, he  
3                   made a statement as to real or perceived.  Is  
4                   this real or is this perceived, this statement,  
5                   this notion?

6                   MS. BECKER:   We consider it real  
7                   based on the information and the research that  
8                   we undertook regarding lobbyists disclosure  
9                   acts.  We contacted each of the large states:  
10                  California, New York, Massachusetts, Illinois,  
11                  and several others and many small states,  
12                  Virginia, State of Washington, personally and by  
13                  phone and by letter, asked them to send us  
14                  copies of their lobbying disclosure acts;  
15                  compared all the ones that were sent to us and  
16                  the information, and that is where our  
17                  conclusion came from.  And we --

18                  Specifically, on certain items that  
19                  came up during the initial drafting, how they  
20                  dealt with certain particular items.  That's how  
21                  we came -- we compared those.

22                  REPRESENTATIVE BUNT:   Was there some  
23                  group or organization that has designated the  
24                  Pennsylvania law as humiliating and  
25                  embarrassing?

1 MS. BECKER: I would say that we  
2 used those strong words ourselves. I do not in  
3 any way give anybody else any sharing of that  
4 language.

5 REPRESENTATIVE BUNT: You go on to  
6 say that, many states require significantly more  
7 disclosure of lobbyists' activities and  
8 spending, and thus, tougher bookkeeping  
9 requirements. Would you suggest that all  
10 elected officials have a bookkeeper within their  
11 office in order to make sure --

12 MS. BECKER: No.

13 REPRESENTATIVE BUNT: Are you aware  
14 of some of the scheduling problems that  
15 representatives and senators have and how many  
16 meetings they go to on any given day, and how  
17 very difficult it is to keep a log or record of  
18 who they spoke to during that given day?

19 MS. BECKER: I absolutely believe  
20 that, and I think it's getting probably more so.  
21 I would like to say that --

22 REPRESENTATIVE BUNT: But to keep  
23 from going to jail, while we're doing our job,  
24 both from the lobbyists and also from the  
25 perspective of the elected or appointed

1 officials, an oversight, which could be very  
2 possible, could have some severe penalty imposed  
3 on the official.

4 MS. BECKER: May I respond in two  
5 ways to that?

6 REPRESENTATIVE BUNT: Sure.

7 MS. BECKER: Number 1, I do think  
8 that the Pennsylvania -- the publication of  
9 January 30 does make a difference between an  
10 oversight that was innocently conceived and  
11 corrected, than an oversight that was purposely  
12 done.

13 The other thing, I think one of the  
14 big reasons we thought about the training  
15 sessions, if we had those training sessions  
16 beforehand and had all of the forms, this would  
17 give a clearer picture to the lobbyist of what  
18 is required of them and there would be less  
19 problems and less scheduling problems.

20 REPRESENTATIVE BUNT: Frankly, I  
21 think I want to do what you want us to do here  
22 in Pennsylvania, but frankly, I'm concerned -- I  
23 consider what I'm doing is public service. I'm  
24 in my 17th year of public service. I don't want  
25 to go to jail for providing a public service. I



1 just may, in fact, put a sign outside my door  
2 that if it costs five cents to send you to come  
3 and knock on my door, you may not enter. When I  
4 say you, I don't mean you personally. I mean  
5 anyone.

6 If you don't send me a letter and  
7 are a constituent in my district or you call me  
8 on the phone, I just may not want you in my  
9 office, pro or con. That's how bad I believe  
10 this statute is right now which have promulgated  
11 these regulations. That's how bad I think it is  
12 personally.

13 I have not talked to any of the  
14 members here. I certainly would concur with  
15 other members on this committee who have been  
16 very, very involved in the drafting of the  
17 statute, in the drafting of those of -- within  
18 the bureaucracy who have been involved in the  
19 drafting of the regulations. I think we need to  
20 do --

21 We're on the right street, but I  
22 think we're just a little bit too far to the  
23 curb, if you will, imposing, imposing some very,  
24 very harsh penalties, whether they be financial,  
25 legal, or a loss of information which would help

1 us to make a decision, which is our job, is to  
2 make decisions. I'm really concerned about  
3 that.

4 MS. BECKER: I can only say that I  
5 hope we'll be able to work with the legislature  
6 and help relieve some of those concerns and  
7 maybe have a sense of -- a feeling of consensus  
8 there when the law is actually -- when the  
9 regulations are made final.

10 REPRESENTATIVE BUNT: Please don't  
11 take my remarks --

12 MS. BECKER: I feel like you. I  
13 don't want to go to jail for anything I did. I  
14 believe in the government. That's why I'm doing  
15 it.

16 CHAIRPERSON GANNON: Representative  
17 Cohen.

18 REPRESENTATIVE COHEN: No questions.

19 CHAIRPERSON GANNON: Mike.

20 REPRESENTATIVE RISH: No questions.

21 CHAIRPERSON GANNON: Following up a  
22 little bit on what Representative Bunt said and  
23 your response, I don't mean any disrespect, but  
24 you do make a pretty strong statement that this  
25 act rescues Pennsylvania from a reputation --

1 Pennsylvania's reputation from the humiliation  
2 of the being the worst in the nation for its  
3 oversight of lobbyists' activities.

4 Now, that's a broad-brush statement  
5 that Pennsylvania -- If I stopped a man on the  
6 street and said, what's Pennsylvania's worst  
7 reputation? He would say, they don't regulate  
8 lobbying activities.

9 However, in your statement you say  
10 what happened here is, Common Cause contacted  
11 other states about what they were doing with  
12 lobbying activities, then made their own  
13 comparison with what Pennsylvania did and felt  
14 that Pennsylvania was weaker than those other  
15 states and then drew the conclusion that this  
16 was the worst in the country.

17 I just have to take exception with  
18 the characterization that Pennsylvania has the  
19 broad reputation. Common Cause can certainly  
20 have its own opinion that we don't have the best  
21 in the country or the world. But, I really have  
22 to take exception to the characterization that  
23 our reputation was out there on the street that  
24 we were the worst in the world.

25 I'm more making a statement than a

1 question. I felt compelled to make that  
2 comment. I don't know whether we were the best  
3 or the worst, but I don't have the sense that we  
4 had a reputation of being the worst. I would  
5 imagine that somebody can pick up any newspaper  
6 in this country on any given day and see a story  
7 about a lobbyist or legislator, or legislator  
8 and the lobbyist or some other government  
9 official being involved in some illegal  
10 activity, but that doesn't necessarily mean they  
11 have the reputation of the worst in the world.

12 Now I want to ask a question. This  
13 gets into, I guess the issue of lobbying. Maybe  
14 you don't know the answer to this. But, has  
15 anyone from Common Cause ever picked up the  
16 phone and called the editor of one of the  
17 newspapers and said, you ought to write an  
18 editorial about this legislation that was passed  
19 or should be passed or should be done; it did or  
20 did not occur?

21 MS. BECKER: There were a number of  
22 articles based on the formal hearings; I mean,  
23 the hearings that had occurred, in all of the  
24 newspapers in Pennsylvania. I do know that --  
25 That's in our state you're talking about?

1                   CHAIRPERSON GANNON: Yes, in  
2                   Pennsylvania.

3                   MS. BECKER: Because I have also  
4                   read many articles from other states. I have to  
5                   tell you that the language, looking at it and  
6                   how it's written, it's a little harsh. Okay.  
7                   Accept that, please, because you're looking at  
8                   probably the --

9                   REPRESENTATIVE BUNT: Did the  
10                  stenographer hear that word harsh?

11                  MS. BECKER: You're looking at a  
12                  great booster of Pennsylvania right in front of  
13                  you. That's why, as I said, I'm here because I  
14                  believe very strongly in our government. It may  
15                  be a little harsh, but it was the law that was  
16                  simply not effectual. We saw that from the time  
17                  it was enacted 20 years ago. Please accept the  
18                  fact that it's a little harsh, but it was not a  
19                  good law.

20                  CHAIRPERSON GANNON: Thank you very  
21                  much for attending. I'm sorry. Representative  
22                  Masland.

23                  REPRESENTATIVE MASLAND: I have a  
24                  copy of the press release regarding your last  
25                  question, Common Cause, dated October 7 saying,

1 triple-play reform passes legislature. They at  
2 least got this out to the newspapers to say we  
3 finally did a good job. I think you rated us a  
4 D before, maybe an F. We are now to a B or B  
5 minus. We've made some headway.

6 Just to address one point raised by  
7 Representative Bunt. The focus of this  
8 legislation is on the lobbyist and the  
9 principal; not on the legislator. That's  
10 important to keep in mind, especially when  
11 looking at the penalties under Section 1309 for  
12 anybody who does anything wrong under the  
13 auspices of this act. These penalties are  
14 specifically directed at the lobbyist and at the  
15 principal and not at the legislator.

16 The highest grading of any of the  
17 intentional, not the negligent; the intentional  
18 acts is a misdemeanor 2. We are not talking  
19 about felonies here. We are talking about  
20 misdemeanors 2's, misdemeanors 3's for  
21 intentional acts. Otherwise, it's a negligent  
22 act which could receive a civil penalty.

23 It's not something that I think in  
24 any way endanger the way we, as legislators,  
25 conduct our business. We must still and only

1           comply with requirements of the Ethics Law where  
2           we fill out our statements once a year. We  
3           don't have any specific requirements placed on  
4           us under this act. Thank you.

5                       CHAIRPERSON GANNON: Representative  
6           Bunt.

7                       REPRESENTATIVE BUNT: With all due  
8           respect to the gentleman, Mr. Masland, under the  
9           regulations you folks will have to file a  
10          statement I believe in October, September;  
11          October, November; is that correct?

12                      MS. BECKER: Yes.

13                      REPRESENTATIVE BUNT: We only file a  
14          yearly statement under the present law. We have  
15          to file it by April 30th. So, conceivably, you  
16          folks would be reporting first in September,  
17          October or November, of which that information  
18          would be available to the media and to the  
19          public from a source other than me because I've  
20          not yet been required by law to make that  
21          information known because I'm only on a yearly  
22          basis.

23                      So, as I understand Representative  
24          Masland indicated, there wouldn't be a penalty,  
25          but if we remember Mr. Tu's statement, real or

1           perceived, perception in politics has the effect  
2           of being real. We need to be very, very  
3           careful.

4                       CHAIRPERSON GANNON: Thank you,  
5           Representative Bunt. Thank you very much for  
6           coming before the committee and sharing the  
7           views of the Common Cause. We appreciate it.

8                       MS. BECKER: Thank you.

9                       CHAIRPERSON GANNON: Our next  
10          witness is Senator Franklin Kury, Reed, Smith,  
11          Shaw & McClay.

12                      MR. KURY: Thank you, Mr. Chairman,  
13          members of the committee. The hour grows late.  
14          I shall be very brief. I won't anesthetize you  
15          by reading my letter to the chairman of the  
16          Ethics Commission. I'm appearing before you  
17          today as a practicing lawyer whose practice  
18          includes advising clients with regard to the  
19          legislature of Pennsylvania and executive  
20          agencies of Pennsylvania.

21                      My concern is a jurisdictional  
22          question which this Lobbying Disclosure Act and  
23          the regulations raised. Mr. Contino said that  
24          the acts and the regulations put in the Ethics  
25          Commission the jurisdiction to regulate



1 lobbyists. I agree with that.

2 But, there's also another type of  
3 jurisdiction. The Supreme Court of Pennsylvania  
4 under Rule 103 of the Rules of Professional  
5 Conduct says that the Supreme Court declares  
6 that it has inherent and exclusive jurisdiction  
7 to supervise the conduct of attorneys who are  
8 its officers which power is asserted in Section  
9 10(c) of Article 5 of the State Constitution.

10 So, my concern here today is that  
11 these regulations as drafted, and possibly the  
12 act, create a conflict of these jurisdictions  
13 and a conflict with the attorney's obligation to  
14 his clients with regard to confidentiality. I  
15 think this is an unnecessary problem. I think  
16 it can be resolved by the amendments which I  
17 have put in the letter, which you have before  
18 you which I addressed to the chairman of the  
19 Ethics Commission.

20 Let me just take a moment to read to  
21 you from the rules with regard to  
22 confidentiality of information under the Lawyers  
23 Rules of Conduct. This is Rule 1.6: A lawyer  
24 shall not reveal information related to  
25 representation of a client unless the client

1 consents after consultation, except for  
2 disclosures that are inherently authorized in  
3 order to carry out their representation.

4 It goes on to point out that the  
5 reason for this is, it's only when the clients  
6 have the ability to present the full development  
7 of facts to their lawyer that they can get  
8 proper representation.

9 Now, let's go to the regulations  
10 real quickly and the points that I think can be  
11 corrected to alleviate this potential conflict.

12 If you go to the question of  
13 indirect communication, which is defined in the  
14 act, and you'll see it in my letter, it's so  
15 broadly drafted that if somebody comes into my  
16 office and said, Mr. Kury, I have a problem. We  
17 go through the problem. He says, what can I do?  
18 I can say, you have a couple choices. One thing  
19 you can do is go to the legislature, or you can  
20 go to the agency and try to change the  
21 regulations, or I can give him other advice.

22 That could be construed as lobbying  
23 because, I couldn't very well advise him, you  
24 need to seek a change in the law, either  
25 legislatively or administratively. That would

1 violate, I think, the lawyer-client privilege  
2 if I, as a lobbyist, were required to disclose  
3 that.

4 I think the way to correct that, if  
5 you look at my letter, is to add an exemption  
6 there that the term did not include  
7 communications between attorneys and their  
8 clients. I think that would resolve that on  
9 that point.

10 If you go to two other points in the  
11 regulations, they say that, except as provided  
12 by the act of these regulations, the specific  
13 contents of a particular communication or the  
14 identity of those with whom the communication  
15 takes place need not be reported. I think that  
16 phrase, except as provided by the act of these  
17 regulations, should be removed because that  
18 assumes the right to find out who I'm talking to  
19 or who any lawyer is talking to or the subject  
20 of their communication.

21 I think the way to resolve that  
22 problem is take out that clause. In my letter I  
23 explain the sections of the regulations where  
24 that should be done.

25 I think equally important is to the

1 exemption clauses of 37.1, you ought to add two  
2 exemptions, and I'll just read them: (m) that  
3 an attorney while engaged in communications with  
4 a client and a client while engaged in  
5 communications with a attorney, that activity  
6 should be exempt from these regulations and this  
7 act.

8 And (n); an attorney while engaged  
9 in litigation or proceedings before a state  
10 administrative agency in which the agency is  
11 represented by counsel. That would be like a  
12 case before the PUC or one of the licensing  
13 boards, or something like that where they have  
14 counsel. Obviously, you're trying to change  
15 something, so it's lobbying, but since they have  
16 counsel, you shouldn't -- That's not typically  
17 lobbying. I don't think it's what was intended  
18 by the act. I think if you put it in as an  
19 exemption that would remove that problem.

20 Now, the rest of the justification  
21 of this is explained in my letter. I won't  
22 bother to bore you further by going further.  
23 But, those are the points I think ought to be  
24 made. I think you ought to change these  
25 regulations so you don't have these conflicts

1           between lawyers and their obligations to clients  
2           which is supervised by the courts and the  
3           jurisdiction of the Commission.

4                       On that, I'll be happy to curtail my  
5           further remarks and take any questions anybody  
6           might have.

7                       CHAIRPERSON GANNON: Thank you,  
8           Senator Kury. Representative James.

9                       REPRESENTATIVE JAMES: No questions.

10                      CHAIRPERSON GANNON: Representative  
11           Browne.

12                      REPRESENTATIVE BROWNE: No question

13                      CHAIRPERSON GANNON: Representative  
14           Masland.

15                      REPRESENTATIVE MASLAND: Just to  
16           mention to Mr. Kury, I believe there's a recent  
17           decision, and I have the cite back in my office,  
18           PJS, that does address this issue of when the  
19           Supreme Court is in control and when they are  
20           not in control.

21                      If you're engaged in lawyering,  
22           you're okay. If you're engaged in lobbying, you  
23           come under the ambit. We have a right to  
24           basically control or at least -- not control,  
25           but at least to have you report what you are

1 doing, just as any other lobbyist would.

2 I haven't read the opinion yet. I  
3 just heard excerpts from it, but I will make  
4 sure that everyone gets a copy if Mr. Preski  
5 will not.

6 MR. PRESKI: I will make sure they  
7 do.

8 MR. KURY: Would you see that I get  
9 a copy?

10 REPRESENTATIVE MASLAND: Sure.

11 MR. KURY: I haven't seen that case  
12 either. I'd be glad to read it.

13 REPRESENTATIVE MASLAND: Thank you.

14 MR. KURY: I still think -- The  
15 question still recurs, when you're engaged in  
16 certain conduct it could be considered lobbying.  
17 You are also engaged in communications which are  
18 protected under this --

19 REPRESENTATIVE MASLAND: In your  
20 hypothetical, that's not lobbying. You are  
21 giving somebody advice in your office, and  
22 that's clear. We can go through a whole bunch  
23 more hypotheticals. I thought I had actually  
24 heard them all during the debate on the floor.  
25 Obviously, I haven't. There's a few more.

1                   We can hypothetical this thing to  
2 death and come up with the most strained type of  
3 hypothetical and say is that. Now it's  
4 something that comes under the ambit. I don't  
5 think what you said does.

6                   MR. KURY: Let me say this: I take  
7 what you say as what you mean. But the people  
8 who administer this in the Ethics Commission  
9 don't -- You don't speak for them. When they  
10 get an act, they never underestimate what they  
11 can do.

12                   REPRESENTATIVE MASLAND: That's very  
13 discouraging.

14                   MR. KURY: If you were running it, I  
15 would feel much more comfortable.

16                   REPRESENTATIVE MASLAND: Mr. Kury,  
17 if you have a problem with that scenario that  
18 you gave us, and the Ethics Commission wants to  
19 take you to the max on it, come and see me.  
20 I'll be happy to represent you.

21                   MR. KURY: There are plenty of  
22 lawyers in my firm who will take care of that.  
23 But, my concern is that we don't get into these  
24 kind of conflicts. What I'm trying to do is  
25 clarify it. The four amendments I think are

1 reasonable and I think removes any doubt, and I  
2 think it would avoid that confrontation so we  
3 can get on with complying with the act and  
4 carrying out your wishes in passing this act.

5 I have no problem with the act.  
6 It's a basic concept, but I do feel a strong  
7 obligation to my clients and to the Court.

8 CHAIRPERSON GANNON: Representative  
9 Manderino.

10 REPRESENTATIVE MANDERINO: Thank  
11 you. I missed some of the middle testimony from  
12 this morning, but it seems that a lot of the  
13 questions are arising around the definition of  
14 what is lobbying and what is legislative action  
15 or administrative action. I think that's some  
16 of what you're getting into. I just want to be  
17 clear that I understand what you are saying with  
18 regard to attorney-client privilege.

19 If a client comes into your office  
20 and in the scenario that you gave, you gave them  
21 advice that says, you know what, you're going to  
22 have to change the law because this is how the  
23 law is written. You are arguing that's clearly  
24 an attorney-client privilege.

25 What you haven't addressed is -- and



1           you think it should remain such and not be  
2           considered lobbying. That's what I heard so  
3           far. What you haven't said, if that client then  
4           turns to you and says, Mr. Kury, I understand  
5           you also lobby. I would like to hire you to  
6           work for me to change that part of the law, and  
7           then you take action as a result of that.

8                     You're not arguing that that new  
9           scenario I have just given you comes under  
10          attorney-client privileges and Supreme Court  
11          rules? You would concede that that would come  
12          under the Lobbyist Disclosure Act?

13                    MR. KURY: That's correct. In other  
14          words, my client and I confer. My client says,  
15          seek a change. When that conversation ends and  
16          I start to call you or send you letters or talk  
17          to people in the legislature, then that is  
18          lobbying and I have no problem with that being  
19          subject to the act. But, what I am very  
20          concerned about is what we say between us,  
21          clients and myself or other lawyers. I think  
22          that's where you have the confrontation here.

23                    REPRESENTATIVE MANDERINO: I did not  
24          see it, but I want to ask you specifically.  
25          Nothing in what you suggested would set up a

1 different set of rules with regard to lobbyists  
2 disclosure for lobbyists who are attorneys  
3 versus lobbyists who are not attorneys.  
4 Lobbyists who are attorneys may be subject to  
5 additional sets of rules under their obligation  
6 to the Supreme Court, but you're not arguing  
7 that they be exempt from any rules or set up  
8 under a different set of rules than nonlawyer  
9 lobbyists?

10 MR. KURY: Well, it may. My concern  
11 is that, I don't think you can require lawyers  
12 to disclose confidential communications. Other  
13 than that, I think they are the same.

14 But, I think the question of lawyer-  
15 client communication is something exclusive to  
16 lawyers because of the nature of the profession  
17 and the Supreme Court rules. I don't think you  
18 can get into that. So, I think as long as you  
19 are not going into that area, I think you can  
20 regulate beyond that.

21 REPRESENTATIVE MANDERINO: Tell me  
22 one more time in the context of a lobbying  
23 activity what a lawyer-client confidential  
24 communication would be that you should not be  
25 able to disclose, but that somebody acting in

1 the same mood as you, on behalf of a client,  
2 that that person is not an attorney, that other  
3 lobbyist is not an attorney should be required  
4 to disclose?

5 MR. KURY: I don't want to speak for  
6 people who are not lawyers. I don't want to put  
7 words in their mouths or say how they would do  
8 it. But I'm saying, if I have a discussion with  
9 a client and we're talking strategy, or whatever  
10 we are talking about, to me that's like talking  
11 to a priest or to a doctor. It's confidential.  
12 I'm giving him advise and strategy, whatever we  
13 are doing, and I think that's protected.

14 REPRESENTATIVE MANDERINO: I guess  
15 the point that I'm saying is, we have to go back  
16 to what's reportable, and how does what's  
17 reportable in what you just described to us fit  
18 the definition of anything of value that is  
19 reportable under here?

20 MR. KURY: It's not a question of  
21 anything of value. You go to the question of  
22 what you have to report. Look at records  
23 maintenance, 35.2(3), for (a)(3): Except as  
24 provided by the act or these regulations, the  
25 specific contents of a particular communication,

1 or identity of those with whom communications  
2 takes place may not be recorded.

3 Well, that suggests the act of these  
4 regs could require you to disclose the contents  
5 of particular communications or identity of  
6 those to whom you send it. If I do that with a  
7 client, I don't think it's anybody's business  
8 but me and the client. I think that phrase,  
9 except as provided by the act of these  
10 regulations, is out of bounds, and I think it  
11 ought to be removed.

12 REPRESENTATIVE MANDERINO: Okay.  
13 Let me ask a follow-up question. Your argument,  
14 while you recognize it because of your  
15 obligation as a lawyer to your client under the  
16 Supreme Court rules and under our ethical  
17 obligations for confidentiality, in essence, I  
18 don't think you would argue that any nonlawyer  
19 lobbyist should have to disclose this either.

20 MR. KURY: I think that's a matter  
21 of privacy. I don't think anybody should be  
22 required to disclose what they say to their  
23 clients whether they're a lawyer or not a  
24 lawyer.

25 REPRESENTATIVE MANDERINO: So then

1 the better way to -- Or another way to fix it  
2 would be if this is truly a troublesome thing is  
3 to not put a special exception in there for  
4 lawyer lobbyists, but to suggest a rewording of  
5 that section so that it equally protects the  
6 privacy of lawyer or nonlawyer lobbyists?

7 MR. KURY: I think that would be a  
8 good idea.

9 REPRESENTATIVE MANDERINO: Thank  
10 you.

11 MR. KURY: In other words, the act  
12 is aimed at getting financial disclosure, how  
13 much is spent. I think you can get that without  
14 going into who I talk to or what I told somebody  
15 or what a nonlawyer said to his client and what  
16 their -- who they talked to. The question of  
17 what did you spend; not who did you talk to or  
18 what did you say.

19 REPRESENTATIVE MANDERINO: With that  
20 in mind, I feel a lot more comfortable not  
21 carving something out that looks like it's some  
22 special classification for lawyers, but rather  
23 thinking about what we might suggest that fits  
24 everybody and is equally appropriate for the  
25 intent of the legislation, but not engraving

1 private conversations between a principal and  
2 their client regardless of that principal's --

3 MR. KURY: That's a good idea. But  
4 I again would remind you -- I don't need to  
5 remind you because you are a lawyer. The  
6 Supreme Court has exclusive jurisdiction and it  
7 bases it on the Constitution, and whether I  
8 raise the question or not, you have that  
9 potential conflict out there. My advice to the  
10 committee and to the Ethics Commission, why not  
11 resolve it before you get into this, rather than  
12 after you get into it and start litigation. I  
13 love litigation, but there's other ways I'd  
14 sooner litigate, other subjects.

15 REPRESENTATIVE MANDERINO: Thank  
16 you. Thank you, Mr. Chairman.

17 CHAIRPERSON GANNON: Representative  
18 Bunt.

19 REPRESENTATIVE BUNT: I agree with  
20 Representative Manderino that it be rewritten,  
21 that whole section. I would find that  
22 especially attorneys who are also lobbyists  
23 would have a great deal of problem with that  
24 section. I think Mr. Tive earlier indicated  
25 that at Section 34.3(b)(4), where it says

1 information received informally.

2 Now, the question was asked of you  
3 earlier about hypothetical situations. I think  
4 one of the members here asked you that question,  
5 under hypothetical situations where, if you made  
6 a decision that it was a conversation or an  
7 action, words spoken did not substitute lobbying  
8 activity but were indeed client-lawyer  
9 confidentiality, the whole area of ethics,  
10 campaign finance, lobbyist disclosure have the  
11 effect of being adversarial at some point,  
12 especially at election time.

13 Based on another section, that  
14 section I just referenced, that if someone just  
15 wants to file a procedure, or provides  
16 information informally to the State Ethics  
17 Commission relative to this particular section,  
18 it then comes into play that there is a  
19 noninvestigative procedure, then that takes  
20 place.

21 When you are in a situation like an  
22 election, which people use whatever information  
23 they can use, someone fishes it out to the media  
24 and just says, it's my understanding that a  
25 complaint has been filed against Reed, Shaw or

1 former Senator Kury and you are left to defend  
2 yourself in the media, if you will, for  
3 something really that has no basis and will be  
4 found to have no basis.

5 But nevertheless, in the time before  
6 an election -- And that's the only reason these  
7 are done is to have an advantage. They're  
8 always adversarial, and they're always at  
9 election time. You never read ethics complaints  
10 being filed in nonelection years. You just  
11 don't see them. Let's be honest about it.

12 So, I would agree with  
13 Representative Manderino that we try to rewrite  
14 that whole section.

15 CHAIRPERSON GANNON: Brian Preski.

16 MR. PRESKI: Senator Kury, my  
17 questions are basically this: How many lawyers  
18 do you have at Reed Smith?

19 MR. KURY: About 438.

20 MR. PRESKI: Okay. I want to work  
21 with Representative Manderino's scenario,  
22 basically. You have a client come in. Your  
23 legal advice is basically, the law needs to be  
24 changed for you to win, assuming that.

25 The client then turns around like



1 Representative Manderino says, okay, I want to  
2 hire you. Now, you have become the lobbyist  
3 basically for that one client. If that client  
4 is me because I want a change in workmen's  
5 compensation, or if it's Exxon and they want to  
6 change an entire code, do you think the advice  
7 that you give to that client, depending on who  
8 they are, has some effect on the rest of your  
9 firm?

10 I guess what I'm trying to get at  
11 is, once this would happen there's provisions in  
12 here, in the audit procedures, assume your  
13 client, whether it be the small guy or the big  
14 corporation, gets picked in the lottery, there's  
15 provision in there that talk about all relevant  
16 information or all related information.

17 MR. KURY: That's right.

18 MR. PRESKI: Could you comment,  
19 basically, on what effect that would have for  
20 your firm because you're not an entity onto  
21 yourself in that firm? You are one of 400.

22 MR. KURY: That's right. I'm one of  
23 438. I'm a partner with 149 other partners.  
24 What I do is bind the firm in some  
25 circumstances.

1                   Now, I think that the comments that  
2                   were raised earlier about the relevant  
3                   information, the point you're driving at, is  
4                   very well taken, because, unless there's clear  
5                   boundary lines established here, the Ethics  
6                   Commission, through these audits, could go  
7                   pretty far afield in trying to figure out how  
8                   much we spend on lobbying or how much our  
9                   clients spend on lobbying.

10                   That's why I think the point that  
11                   David Tive and others have made here, you really  
12                   have to clarify a lot of this. I didn't go into  
13                   that in my testimony, but I really think you  
14                   really have to put up the boundary lines.

15                   MR. PRESKI: Let me make the jump.  
16                   Does this change then the advice you would give  
17                   to a client, because now if they say to you, I  
18                   want you to be my lobbyist, is the potential  
19                   there for you to say no. I don't want to put my  
20                   firm at risk. Here's a list of people that we  
21                   refer to. Is that a potential scenario?

22                   MR. KURY: Not likely. I've spent a  
23                   lot of time examining the act and I've prepared  
24                   a memo for our clients and we're trying to  
25                   educate them as to what's involved. I think we

1 would continue to represent them, obviously. We  
2 serve a lot of clients, and it's a part of our  
3 practice. We're not going to turn them away if  
4 we can possibly help them, if there's no  
5 conflict of interest and there's a satisfactory  
6 understanding. I don't see why we would tell  
7 them to go someplace else.

8 MR. PRESKI: Do you think that  
9 analysis changes as you get smaller and smaller  
10 by the size of firm?

11 MR. KURY: I don't know. It's hard  
12 for me to speak for anybody else.

13 MR. PRESKI: Thank you.

14 CHAIRPERSON GANNON: Thank you,  
15 Senator Kury, for attending the hearing today  
16 and sharing the views of Reed, Smith, Shaw and  
17 McClay.

18 MR. KURY: Thank you very much.

19 CHAIRPERSON GANNON: Our next  
20 witness is David Sheppard, Pennsylvania Society  
21 of Association Executives. Welcome, Mr.  
22 Shepperd, and you may begin when you're ready.

23 MR. SHEPPARD: Thank you, Mr.  
24 Chairman. Like Senator Kury, I'm going to be  
25 brief. I'm not going to read my testimony. I'm

1 just going to quickly summarize it. I think  
2 some of the points may have been already covered  
3 here this morning.

4 First of all, let me say, I am David  
5 Sheppard. I am president of the Pennsylvania  
6 Society of Association Executives. We represent  
7 some 600 professionals in the profession of  
8 association management. This issue of lobbyist  
9 disclosure is, quite frankly, one of our top  
10 issues this year. It is the most important  
11 state law that has impact on associations.

12 In my testimony I really identify  
13 three issue areas. One is the definition of  
14 lobbying and the need for clarification. The  
15 second is reporting, and especially in the area  
16 of greater specificity, giving more guidance.  
17 And finally, record retention and maintenance,  
18 where we are seeking more guidance.

19 Quite frankly, this is an issue of  
20 resources and paperwork for associations. Right  
21 now, and I don't know whether everyone is aware  
22 of it, associations already have to comply with  
23 two similar requirements. They require some of  
24 the same reporting, some of the same  
25 definitions.

1           The first is under the federal law  
2           where lobbying is no longer at the state level.  
3           It's no longer tax deductible. And so, we must  
4           as a state association, and a number of other  
5           state associations must provide information to  
6           our members regarding the amount of their dues  
7           that is not deductible due to lobbying. That  
8           requires a certain amount of record keeping and  
9           paperwork.

10           Then also we have to pay as we  
11           are -- Many of our members are organizations in  
12           lobbying are required to pay the lobbying sales  
13           tax; another set of keeping records and  
14           definitions and things such as this.

15           Now we're bringing in a third item.  
16           There's a great deal of concern that as we pile  
17           these things on and people aren't talking to  
18           each other, that it continues to add additional  
19           paperwork, requires additional resources of my  
20           members. Our typical member association has  
21           less than 10 employees. So, for them to be able  
22           to have to continue to comply with the  
23           additional paperwork and requirements--It may be  
24           different from what they were doing before--is  
25           extremely burdensome. We want to see some

1 consistency and some further definition and  
2 clarification.

3 I thank you for your time. I know  
4 you probably want to get on to lunch, and I'll  
5 be happy to answer questions.

6 CHAIRPERSON GANNON: Representative  
7 Browne.

8 REPRESENTATIVE BROWNE: Thank you.  
9 Just one quick suggestion. This comes back  
10 again to the issue that was mentioned before on  
11 the threshold for reporting as far as  
12 organizations. I think if I had to give a  
13 suggestion, there is currently a threshold  
14 within the Department of State of a hundred  
15 thousand dollars in total receipts, total  
16 donations that an association has to receive  
17 before they have to go through an audit process.

18 In terms of the size of an  
19 organization and having to comply with these  
20 regulations, maybe that's something we can  
21 possibly take into account. That's a matter of  
22 having enough resources to make this not too  
23 burdensome. That's the reason for that.

24 MR. SHEPPARD: I just made the  
25 comment. Even if you do have the resources--I

1           happen to come from an association that's fairly  
2           large and has a fairly large staff--the  
3           resources still are critical factors because you  
4           have other services you are trying to provide  
5           your members and you don't want to eat them up  
6           in doing all kinds of paperwork. That's a  
7           worthwhile suggestion.

8                   CHAIRPERSON GANNON: Representative  
9           Wogan.

10                   REPRESENTATIVE WOGAN: No, thank  
11           you, Mr. Chairman.

12                   CHAIRPERSON GANNON: Representative  
13           Manderino.

14                   REPRESENTATIVE MANDERINO: No  
15           questions.

16                   CHAIRPERSON GANNON: Representative  
17           Cohen.

18                   REPRESENTATIVE COHEN: No, thank  
19           you.

20                   CHAIRPERSON GANNON: Representative  
21           Blaum.

22                   REPRESENTATIVE BLAUM: No.

23                   CHAIRPERSON GANNON: Thank you very  
24           much, Mr. Sheppard, for attending the hearing  
25           today and sharing the views of the Pennsylvania

1 Society of Association Executives concerning  
2 these regulations.

3 MR. SHEPPARD: Thank you.

4 CHAIRPERSON GANNON: Mr. Bob O'Hara  
5 of the Pennsylvania Catholic Conference will be  
6 submitting written comments to the committee,  
7 and these will be incorporated in the record of  
8 today's proceedings.

9 MR. PRESKI: I guess one last thing.  
10 People have come up and asked me, the Supreme  
11 Court decision is PJS and the City of Erie.  
12 It's not available yet. It was about three  
13 weeks ago from the Supreme Court. It's only  
14 available as a lexis number. If you give me a  
15 call at the office, I should have that, but we  
16 don't have the recorder number yet.

17 CHAIRPERSON GANNON: The public  
18 hearing of the House Judiciary Committee  
19 concerning the proposed regulations of the State  
20 Ethics Commission on the lobbying disclosure  
21 bill is closed.

22 (At or about 12 o'clock noon the  
23 hearing concluded)

24 \* \* \* \*

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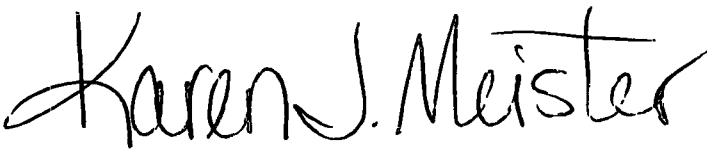
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I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Dated this 3rd day of March, 1999.



Karen J. Meister - Reporter  
Notary Public

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expires 10/19/00