

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Lobbying Disclosure Regulations

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House Judiciary Committee

Room 205
Capitol Annex
Harrisburg, Pennsylvania

Monday, June 14, 1999 - 10:45 a.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson
Honorable Daniel Clark
Honorable Craig Dally
Honorable Albert Masland
Honorable Peter Daley
Honorable Kathy Manderino

ALSO PRESENT:

Brian Preski, Esquire
Majority Chief Counsel

Judy Sedesse
Majority Administrative Assistant

Michael Rish
Minority Executive Director

Leanne Bronstein
Minority Research Analyst

Cathy Hudson
Minority Administrative Assistant

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1 CHAIRPERSON GANNON: The House Judiciary
2 Committee will come to order concerning an informational --
3 informational hearing with respect to the final rule making
4 of the State Ethics Commission Lobbying Disclosure
5 Regulations.

6 We've had some folks that -- and I appreciate
7 the patience of both the members and those who are
8 participating in this meeting because of the delay of
9 starting the meeting. We have some folks who would like to
10 address the Committee on these regulations.

11 And our first witness will be Representative
12 Paul Clymer. I don't see Paul so we'll go to Mr. Barry
13 Kauffman with Common Cause. Welcome, Mr. Kauffman.

14 MR. KAUFFMAN: Thank you, Mr. Chairman. My
15 remarks today are just going to be very informal. We only
16 got the notice late Friday of the meeting happening today.
17 I guess basically Common Cause wants to urge the committee
18 to move forward and endorse these regulations.

19 I know there's a lot of speculation out there
20 that these are imperfect regulations, and I rather suspect
21 that anything which is created by humans is imperfect. And
22 certainly when a committee of humans gets together, it's a
23 little more imperfect.

24 But these are reasonable regulations. They
25 comply with the law. And I think that as we go over this

1 after they're in place for a year or so or probably at the
2 end of a session, we may want to go back and revisit them
3 and tighten them up a bit.

4 Common Cause is not completely pleased with
5 them. They have watered down certain aspects which we
6 would like to have seen tightened up. But we would like to
7 move forward. We understand there is a -- a very
8 aggressive effort going under way right now to try to stop
9 this from being implemented. And I think that would be a
10 sorry state of affairs for Pennsylvania.

11 We have been far behind the rest of the nation
12 in lobbyist regulations for a long time. And this is
13 certainly not a tough law. This is a reasonable law. This
14 is a respectable law. And I think it behooves us and it's
15 in the best interest of the lobbyists as well as everybody
16 else to move forward with this because if we don't have
17 regulations in place, then everybody's sort of making it up
18 as we go along.

19 And I think we should have the regs in place
20 for August 1st so we know -- we'll have a general idea of
21 what rules to follow. And perhaps after the session, we
22 may need to adjust these regs. So I would just ask that
23 the committee does endorse these regs and move forward.

24 CHAIRPERSON GANNON: Thank you, Mr. Kauffman.
25 Representative Masland, do you have any questions?

1 REPRESENTATIVE MASLAND: Just if you have any
2 particular section of the revised regs, looking
3 specifically at the revisions themselves, not what has been
4 in place, but is there any specific section that you have a
5 problem with that you think will need to be addressed?

6 MR. KAUFFMAN: I think some of the comments
7 made by the Senate, some of their comments I think have
8 some merit, especially the minor things like having
9 consistencies in definitions, putting in the burdens of
10 proof which are in some places and not other places.

11 I think some of the comments made by the
12 Senate have a lot of merit. Common Cause, as you know, had
13 pursued an effort to have recreation and entertainment put
14 under the gift section rather than under the hospitality
15 section. We failed at that. We're willing to let that go
16 for now and work on that in the future.

17 CHAIRPERSON GANNON: Representative Manderino?

18 REPRESENTATIVE MANDERINO: No questions.
19 Thank you, Mr. Chairman.

20 CHAIRPERSON GANNON: Just a comment. I have
21 here in my hands the winter/spring 1999 Common Cause PA
22 Up-front Newsletter --

23 MR. KAUFFMAN: Yes, sir.

24 CHAIRPERSON GANNON: -- where they give this
25 law I believe a B+.

1 MR. KAUFFMAN: Absolutely.

2 CHAIRPERSON GANNON: However, later in the
3 newsletter under its seven key reforms, it quotes, The most
4 ominous cloud on the horizon, however, is the General
5 Assembly's increasing disrespect and disdain for the
6 constitutionally established process of creating and
7 passing laws, especially with high impact politically high
8 priority bills.

9 CC/PA is putting more effort in cleaning up
10 legislative rules and enforcement of constitutional
11 standards. Legislation cannot be permitted to bypass the
12 committee review process or to be rammed through the
13 legislatures without legislators having time to read or
14 understand it nor should knowledgeable and concerned
15 lawmakers be denied all opportunity to offer strengthening
16 amendments.

17 This evolving system of oligarchical control
18 which eliminates meaningful involvement by the
19 representatives of the vast majority of Pennsylvanians must
20 be stopped immediately.

21 Now, as you probably know, the bill that was
22 the nexus of these regulations came over to the House. It
23 was about two or three pages long. It was offered as an
24 amendment late in the afternoon which brought it up to
25 about 90 pages of which no one had an opportunity to read.

1 And yet you give it a B+.

2 Don't you find that a little hypocritical on
3 the part of Common Cause to allow legislation that was
4 rammed through without committee process bypassing
5 legislative input and yet in your own newsletter you decry
6 that very same process and say this is one of our seven key
7 reforms? Well, why wasn't it one of your key reforms when
8 this bill was being pushed through?

9 MR. KAUFFMAN: Well, let me bifurcate that
10 comment because we do think the content of the Lobbyist
11 Disclosure Law was good quality. We think it was a solid
12 B. We did not support and we have commented in the past
13 that we did not think that was the most appropriate process
14 to move that bill.

15 Our board has even had some discussions of
16 whether it should have been challenged. They chose not
17 to. We can't fight every battle. And we did not
18 particularly like the process by which this law was passed
19 and -- but we do think the contents, the actual components
20 of the law are quality.

21 But we will not try to defend the process by
22 which it was done.

23 CHAIRPERSON GANNON: So what you're saying is
24 Common Cause has a double standard. If it doesn't like the
25 bill and it doesn't like the process, it's going to

1 challenge the bill. But if it likes the bill but doesn't
2 like the process, it's still not going to -- then it's not
3 going to challenge the bill.

4 I believe you challenged the budget because
5 you didn't care for the process.

6 MR. KAUFFMAN: Uh-huh.

7 CHAIRPERSON GANNON: I don't know whether you
8 liked the budget or not, but I know you challenged it
9 because of the process.

10 MR. KAUFFMAN: Well, there's also another bill
11 which -- law which we have challenged, and that's the gas
12 tax bill. And I think most of our board -- although, we
13 did not take a specific vote on it. -- but have actually
14 defended the gas tax increase.

15 But we did challenge that because we thought
16 there was a serious flaw in the process. If you want to
17 call us hypocritical, I guess there might be some -- some
18 -- you can defend that statement. We are --

19 CHAIRPERSON GANNON: Well -- I'm sorry. I
20 don't mean to interrupt.

21 MR. KAUFFMAN: We are a small organization.
22 We do not have unlimited resources. We do choose our
23 litigation very carefully for the highest impact in the
24 likes of we will not try to defend the process by which
25 this bill was passed.

1 CHAIRPERSON GANNON: Well, it would be my
2 impression -- and I'm speaking for myself. -- that nobody
3 likes taxes. So when you challenge a bill that raises
4 taxes, you're going to become a hero. It expands
5 membership, it increases dues and makes you a very popular
6 person whether you attack the bill because of the tax
7 increase or whether you attack the bill because of the
8 process.

9 There are losers and there are winners on the
10 budget. And I'm sure the losers become the person who
11 challenges the budget, whether they like the budget or
12 whether they dislike the process, becomes heroes with the
13 losers. And it does increase membership, and it increases
14 contributions.

15 On this type of legislation, there's nobody
16 outside the curb to -- beyond this bill it really cares
17 about other than the editorial writers and the media and
18 folks like yourself that drive that issue. It doesn't make
19 you a hero anymore to challenge it because you didn't like
20 the process. It doesn't increase dues and doesn't expand
21 membership.

22 That's just me speaking. That's my view end.
23 But I do appreciate you coming here and offering your
24 comments on these important regulatory regulations.

25 MR. KAUFFMAN: You're quite welcome, sir.

1 CHAIRPERSON GANNON: Thank you. Our next
2 commentator is Mr. Dave Tive who represents the petitioners
3 before the General Assembly.

4 MR. TIVE: Yes, I think that's accurate.
5 Thank you, Chairman Gannon, for asking me to come here
6 today. I don't have prepared testimony because I was told
7 this was not a hearing where you presented testimony. I do
8 have some comments with regard to the proposed regulations,
9 both general and specific.

10 And in the interest of time, I will probably
11 submit the specific comments to you in writing later today
12 if that's okay.

13 CHAIRPERSON GANNON: That would be fine.

14 MR. TIVE: I'll just briefly summarize them
15 here. General comments, I have two in particular that I
16 would like to make. Let me start off by saying even before
17 that that the Pennsylvania Association for Government
18 Relations, which is the professional lobbying association
19 here in Harrisburg, feels that these regulations still need
20 further work and would hope that they are rejected and sent
21 back to the Ethics Commission and the Lobbyist Disclosure
22 Committee for that work.

23 Our feeling is based, as I said, on general
24 concepts and on specific issues. The general concepts are,
25 first of all, we see a distressing lack of consistency in

1 the regulations where in some places the Commission is
2 taking a very strict constructionist's interpretation of
3 Act 93 and in other places they are stretching it to the
4 point or perhaps beyond the point of breaking.

5 For example, quick example, we have requested
6 on a number of occasions that language be included in the
7 regulations that would allow a registrant, be it a lobbyist
8 or a principal, to request that the Ethics Commission look
9 into somebody who was filing frivolous or harassing
10 complaints against the registrant.

11 The Commission said they could not do that
12 because it's not provided for in the statute, which it
13 isn't. We agree on that much. However, the Commission has
14 also taken the section on audits where it said that they
15 shall hold quarterly random audits and expanded that
16 significantly by saying that while they're doing these
17 audits they can also audit anybody else that they think
18 might possibly for some reason or another have some
19 relevant information regardless of whether there's actual
20 cause there or not. And that's not provided for in the
21 act.

22 So there's a clear lack of consistency. When
23 it's, you know -- and I guess it's human nature. When it's
24 in their interests, they interpret it loosely. And when
25 it's in their interests, they interpret it conservatively.

1 We're suggesting that perhaps they ought to interpret it
2 consistently.

3 And that interpretation ought to be in favor
4 of providing the greatest possible protections and due
5 process to all of those involved in this lobbying effort
6 that goes on up here, whether they be lobbyist
7 organizations, staff or legislators.

8 The second general comment is that our concern
9 up front with this whole regulatory process was that there
10 is -- there was nobody involved in it who really knew and
11 understood lobbying. There are no lobbyists on the
12 committee. There was no formalized system for input by
13 lobbyists although we had requested such.

14 And we think that the final product, the final
15 form of regulations show the harm that that has done. It's
16 clear after eight or nine months that the Ethics Commission
17 still really doesn't understand lobbying. I don't know
18 that that's their fault. It's just a fact.

19 And the regulations as drafted are still
20 difficult to comply with in many ways. They are -- they
21 drift off the mark. For example, as they define lobbying
22 activities, they clearly exempt from that definition
23 anything that has to do with talking to a legislator or a
24 staff person, presenting your case, working an issue.

25 And as we know, that's the vast majority of

1 what lobbyists do. They seem to only define lobbying
2 activities as spending money on gifts and entertainment,
3 which is a part of it but clearly doesn't even begin to
4 come close to being the majority of it. So we think that
5 that problem is still there.

6 And we would like to see a process by which
7 there would be more input in a formalized manner. Remember
8 that lobbyists, once this law will go into effect, will be
9 the only profession with this level of regulation that does
10 not have any voice in its own regulation at all.

11 Every other profession that the state
12 regulates to this level has a licensing board comprised
13 primarily of members of that profession. Now, we're not
14 asking for that. We're not asking for licensure. We've
15 just been asking all through this process for some sort of
16 formalized structured input, and we think that the process
17 has suffered because of a lack of that.

18 Now, we have a number of concerns. I
19 mentioned a couple of them. The audits is one. It's been
20 a consistent complaint of ours that they can go far beyond
21 the subject of a random audit. They can check the records
22 of anybody regardless of whether there's cause or not. All
23 they have to do is have some presumption that there's some
24 relevant information out there somewhere, and they can
25 audit them.

1 We still have a concern with the whole notice
2 of noncompliance procedure. It has been explained to us
3 that what the Commission intends there is that if a
4 registration or quarterly financial report comes in and is,
5 for some reason, inaccurate or incomplete or something like
6 that, that they can send notice to the registrant that
7 something needs to be cleaned up.

8 We understand that. And we appreciate their
9 desire to do that. We have a concern that sending a notice
10 of noncompliance carries with it a negative tone that is
11 perhaps not accurate. Maybe somebody typing the numbers up
12 trans, you know, transfigured two numbers, reversed them in
13 their order, something like that and the numbers came out
14 wrong.

15 We just think there should be something more
16 gentle, less negative like a request for clarification.
17 Now, their response is that that's not allowed in the law
18 or not required in the law. The law doesn't prohibit it
19 either. And we think that a request for clarification
20 would help the process and would not cast from step one the
21 Commission and the registrant in an adversarial role as a
22 notice of noncompliance appears to do just on its face.

23 We still have questions about the requirements
24 for contract lobbyists and firms to report separately. In
25 the drafting of Senate Bill 1, which eventually became

1 Senate Bill 254 which became Act 93, we dealt with that
2 issue. And we felt we had dealt with it sufficiently.

3 And we made it clear that a contract lobbyist
4 does not have to report separately but merely has to sign
5 off on his or her client's reports to say that to the best
6 of their knowledge that is the money that was spent. These
7 regulations appear to say that there has to be double
8 reporting of funds anyway.

9 For example, if a client pays me a fee, they
10 have to report that clearly, obviously. And that is as it
11 should be. But the regulations also seem to say then if I
12 take that fee and I use it to pay rent, heating bills and,
13 you know, salary to a staff person, that I didn't have to
14 report that money again. That's double reporting.

15 And it's not what we had intended when we
16 wrote the law because I was involved in drafting that
17 particular portion of it with former Senator -- now
18 Judge -- Heckler. We think that's a real problem there.
19 And quite frankly, if you're a sole practitioner, as many
20 of us are -- and a couple of us in the room are sole
21 practitioners. -- where the firm and the lobbyists are
22 identical, you could end up with triple reporting where the
23 client and the firm and the lobbyist all report the same
24 dollar.

25 The firm reports as it comes to me, and then I

1 report it, so on and so forth. That's a little less clear.
2 But I think it's a clear implication of double -- double
3 reporting.

4 And finally, as a result of the change that
5 was made in Chapter 43, much of it was very good. A change
6 was made to make it clear that a complaint alleging a
7 violation of Act 1307, which is prohibited activities in
8 the act, had to meet the same standards as a complaint
9 under Chapter 21 of the Commission's current regulations.
10 And we support that change, in fact had asked for it.

11 However, the next paragraph when you get to
12 43.2 (B), that was not changed. And now as it relates to
13 the preceding paragraph, it refers to alleged negligent --
14 alleged negligent violations and does not define it. Does
15 an alleged negligent violation have to be a result of a
16 complaint, or can it be something else?

17 That much is not clear. And if an alleged
18 negligent violation could be anything, then we still have
19 the same types of problems with regard to opening --
20 opening investigations without just cause that we had with
21 the proposed regulations that were published in February.

22 So that summarizes my written comments which,
23 as I said, I will intend to get to you later today. I need
24 to get final approval from my association president before
25 I can do that. He had one concern, and I need to talk to

1 him about that.

2 CHAIRPERSON GANNON: Thank you.

3 Representative Masland, questions?

4 REPRESENTATIVE MASLAND: No.

5 CHAIRPERSON GANNON: Representative Manderino?

6 REPRESENTATIVE MANDERINO: No.

7 CHAIRPERSON GANNON: One of the concerns I
8 have -- and I'm not sure whether that's been properly or
9 adequately addressed. -- was this issue of a de minimis.
10 The statute does not use the word de minimis in terms of
11 amounts that have to be included in reporting yet the
12 regulations talk about de minimis and say insignificant.

13 I haven't had a chance to analyze exactly how
14 that -- what changes were made with respect to that. Could
15 you comment on that, what they did with the final form?

16 MR. TIVE: They would probably be in a better
17 position to comment on that. I have looked at that issue
18 because you did raise it in your comments to -- to the
19 Commission on proposed regulations. I'm not sure that your
20 concerns have been resolved.

21 CHAIRPERSON GANNON: I don't mean to
22 interrupt. My concern is that when we had testimony before
23 the committee on the original draft regulations, it was --
24 there was testimony that some folks said that a \$10 cab
25 ride or a cab ride that had a value of \$10 should be

1 reported.

2 And I don't have a big problem with -- with
3 that. But at the same time, it may be found that a trade
4 association might tell all of its members if you go up to
5 Harrisburg and lobby your legislators, we'll give you \$10
6 to cover your costs and your meals and transportation, that
7 that could be determined, well, that's a de minimis.

8 So that \$10 allocation to each member does not
9 have to be reported yet the \$10 cab ride that was given to
10 Tom Gannon has to be reported. Do you see that
11 possibility?

12 MR. TIVE: Yes, I see that possibility. And
13 the definition of de minimis that is included in the final
14 form regulations is, if I might hazard this, is de minimis.

15 CHAIRPERSON GANNON: It's insignificant.

16 MR. TIVE: Insignificant is the entire text of
17 the definition. I don't know that that really defines
18 much. Insignificant in one person's eyes is not
19 insignificant in somebody else's. The previous occupant of
20 the seat, Mr. Kauffman, and I disagree on almost everything
21 with regard to this bill in these regulations.

22 And my guess is we would disagree
23 significantly on insignificant.

24 CHAIRPERSON GANNON: Well, a loaf of bread to
25 a rich man may be insignificant; but a slice of bread to a

1 hungry man may be very significant.

2 MR. TIVE: Absolutely. Correct.

3 CHAIRPERSON GANNON: And I think it's
4 relative. And that's what concerns me. That would be
5 subject to an overbroad interpretation. I think that
6 perhaps if de minimis was called for, it would have been
7 written into the statute.

8 MR. TIVE: Thank you. This is another area
9 where they seem to have taken the loose constructionist's
10 interpretation of the act. And I don't know that I
11 disagree with an attempt to not have to deal with de
12 minimis expenses.

13 I think that's -- that's a nodical goal. But
14 I think that the regulations need to provide more detailed
15 guidance to lobbyists and to legislators as to what is
16 considered de minimis. And it just -- it's just not
17 sufficient what's in there now.

18 CHAIRPERSON GANNON: One other issue that you
19 touched on was this duplicate reporting.

20 MR. TIVE: Yes.

21 CHAIRPERSON GANNON: For example, someone that
22 would hire you to represent them on an issue must report
23 the amount that they paid you.

24 MR. TIVE: Yes. And that I think is proper.

25 CHAIRPERSON GANNON: And then you must report

1 the amount that you spend out of that on heat, light and
2 entertainment and gifts and whatever?

3 MR. TIVE: Entertainment and gifts I would --
4 that's -- that's a different thing. I, you know, I
5 think --

6 CHAIRPERSON GANNON: Yeah. I'm not --

7 MR. TIVE: The whole point of this is to get
8 to entertainment and gifts.

9 CHAIRPERSON GANNON: Just for a discussion
10 purpose. And I would agree with you on that. I don't have
11 a problem with that. But my concern is can those -- can
12 someone arguably take both of those numbers and combine
13 them? So for example --

14 MR. TIVE: Oh, yes.

15 CHAIRPERSON GANNON: -- I hire you. And I
16 say, Dave, I want you to represent me on the issue of
17 manufacturing widgets in Pennsylvania. Here's \$100. And I
18 report the \$100. And then you take that 100, and you spend
19 25 for heat and \$25 for secretarial service and \$50 for
20 your rent, and you report that.

21 And somebody comes along and says, Jeez, \$200
22 was spent on lobbying to have widgets made in Pennsylvania
23 as opposed to just -- anything in the final form to prevent
24 that from happening?

25 MR. TIVE: No, not as I read them.

1 CHAIRPERSON GANNON: That's all I have. Thank
2 you very much for --

3 MR. TIVE: Thank you.

4 CHAIRPERSON GANNON: -- coming before the
5 committee and presenting your comments. Our next witness
6 is Representative Mark Cohen. Welcome, Representative
7 Cohen.

8 REPRESENTATIVE COHEN: Welcome, Mr. Chairman.

9 CHAIRPERSON GANNON: You may proceed.

10 REPRESENTATIVE COHEN: Chairman, I don't have
11 detailed testimony like I had earlier in this process. I
12 wish to offer just general conclusions. First, I think
13 it's clear that these amendments that have been made are an
14 improvement over the -- over the final draft.

15 Second, I think that you know the Ethics
16 Commission can either be run in a controversial manner,
17 which generally occurs when the regulations are obscure and
18 there are legitimate differing opinions as to what the
19 words of the Ethics Act mean, or it can be run in a
20 non-controversial manner as has generally been done in the
21 past decade.

22 Since the '89 Ethics Act, there was general
23 agreement on what the words mean; and therefore, there's a
24 heavy degree of compliance. I am not full of indignation
25 of the wording of the draft. Improvements have been made.

1 I believe that -- my understanding is that the Senate is --
2 is not satisfied. We've heard the lobbyists are not
3 satisfied.

4 And it occurs to me that the Legislature will
5 be in recess past August 1st, and we will be leaving
6 Harrisburg on Wednesday. And it seems to me that since
7 there will be no other business before the General
8 Assembly, we in the Legislature and the lobbying community
9 and the civil liberties community and the ethics community
10 all would have plenty of time to work on reworking these
11 regulations and deal with whatever problems are still
12 remaining.

13 I think the fact that the regulations have
14 gotten better as time has gone on is a sign that would
15 indicate that further work could well be fruitful. So
16 therefore, I would recommend to the committee that if the
17 Senate decides against these regulations that we also
18 decide against them and we do so in a constructive spirit
19 and work very hard to work more regulations in effect by
20 August 1st.

21 CHAIRPERSON GANNON: Thank you, Representative
22 Cohen. Representative Masland?

23 REPRESENTATIVE MASLAND: No.

24 CHAIRPERSON GANNON: Representative Manderino?

25 REPRESENTATIVE MANDERINO: No. Thank you.

1 REPRESENTATIVE COHEN: Thank you.

2 CHAIRPERSON GANNON: Yeah, I wanted to just --

3 REPRESENTATIVE MANDERINO: I'm sorry. This
4 isn't necessarily a question for Mark. But just refresh my
5 recollection on what is our time schedule procedurally with
6 regard to this?

7 CHAIRPERSON GANNON: My understanding that
8 tomorrow, the 15th, is the deadline for the committees of
9 the House and the Senate to either accept or reject. You
10 can either reject, accept, or do nothing. Accepting is
11 accepting and doing nothing is accepting also unless the
12 committees affirmatively reject, and then the regulations
13 go into effect as written.

14 That's my understanding. But I do want to say
15 in follow up to Representative Cohen's comments that there
16 was an awful lot of work done by the committee, the Ethics
17 Committee, the commission that was constructed to draft the
18 regulations, the lobbying community, in terms of getting
19 the regulations to the point that they are now.

20 An awful lot of work was done in a very short
21 period of time. And I think everybody should be commended
22 for the effort that was put into that -- to that work
23 subsequent to the publication of the draft regulations.
24 This was not -- this did not happen in a vacuum.

25 Is Representative Clymer in the room? Okay.

1 The next witness is Mr. Larry Frankel.

2 MR. FRANKEL: Thank you, Chairman Gannon,
3 Representative Masland, Representative Manderino. I'm with
4 the American Civil Liberties Union of Pennsylvania, as you
5 know. As with the other people who have spoken before me,
6 I have no formal written comments.

7 I do have several observations to make with
8 regard to the regulations that are before you. And I would
9 concur with prior witnesses who said these are better than
10 what we originally saw, better than the ones that we saw
11 when there was a hearing back on December 30th of 1998,
12 better than with before the Judiciary Committee when they
13 had their hearing.

14 And while they are better, we believe they can
15 still be improved upon so that there's clarity and
16 certainty for -- not only for lobbyists, but as we
17 expressed at our prior testimony, for organizations that
18 don't hire lobbyists, for organizations that periodically
19 get involved in issues who may be discouraged from getting
20 involved in issues because these regulations are not clear
21 in scope with regard to certain matters that may concern
22 them, who don't hire a full-time lobbyist, who don't retain
23 a contract lobbyist to work for them but maybe have one of
24 their staff people spend 10, 15 percent of their time
25 concerned with legislation.

1 And I don't know that these regulations
2 provide clarity on a couple of points that may have an
3 impact on them. You already mentioned de minimis. De
4 minimis means insignificant. I looked to see if there was
5 a definition of insignificant. I thought I'd see it meant
6 de minimis, but it wasn't there.

7 I think a dollar value would really help if
8 they're going to start referring to de minimis. That will
9 be clear to people. They will know what they're getting
10 into. They will know, you know, whether they want to make
11 the effort or not.

12 What we don't want to see is groups
13 discouraged from being involved not because they aren't
14 going to meet the threshold, but they don't want to have to
15 figure out whether they're going to meet the threshold and
16 then find out they made a mistake and then find themselves
17 in trouble.

18 We believe that organizations should be more
19 involved in the legislative process. And I think these
20 regulations will discourage many good organizations that
21 contact our office in Philadelphia to find out what's
22 happening in the Legislature and should we be doing
23 something or not. I believe we will hear a lot less from
24 them unless that kind of a change is clarified.

25 Similarly with the definition of indirect

1 communication, which the Commission believes they just have
2 to parrot what's in the statute. I believe that leaves a
3 whole lot of openings as to what is indirect or not.

4 And in looking at the definition, I was
5 recalling that just this last weekend, on Saturday, almost
6 100 members of my organization from around the state
7 gathered in Representative Masland's district, not to lobby
8 Representative Masland, but to have our annual conference
9 which we have at the Dickinson Law School.

10 Much of the emphasis of the conference was
11 actually how to be more effective grass-roots lobbyists.
12 We brought in a person from our Washington, D.C. office.
13 One can construe all the expenses for that conference for
14 my organization could be indirect expenses for lobbying
15 activity because we're encouraging people to be more
16 involved in contacting our legislators.

17 I don't know from reading this definition
18 whether I should or should not be including those expenses.
19 We know we have to report anyway. I'd be just as happy to
20 say, Here's the budget for our entire legislative program
21 and this is what we spend and have them laugh and say,
22 Well, you're small fish.

23 But it concerns me when I think about other
24 groups that put on conferences as well. What if they put
25 two hours of their conference to talk about current

1 legislative matters? Does that become the kind of
2 expenditure that should be listed? And it's not clear from
3 the definition of indirect legislative -- indirect
4 communication.

5 In fact, you could even say a letter to the
6 editor of a newspaper urging people to write their
7 legislators is a form of indirect communication. Do they
8 need to include that or not? I can't tell from the
9 definition. And I think that the regulation could be more
10 effective if they would make it clear or not so that
11 individuals or organizations would know whether they're
12 getting caught up in this kind of activity.

13 I also would point to the question about the
14 religious exemption. It no longer -- the language of the
15 regulation was amended slightly in the final form. And I'm
16 not sure of the impact. And I know the Senate has pointed
17 that out in their letter.

18 But I also know that not only the ACLU, but
19 the Pennsylvania Catholic Conference -- two allies
20 sometimes frequently on opposite sides of the issue,
21 including the big issue before the Legislature this week --
22 both raised concerns with the fact that we don't know
23 exactly how much is covered by religious exemption.

24 Will we all find out after the fact when the
25 Commission decides to take action? Will they try and

1 clarify religious exemption? Will they try and clarify it
2 in such a way to minimize the interference of people
3 lobbying for the free exercise of religion?

4 I don't think the regulations help clarify
5 those issues one way or the other. And I would just note
6 that I guess we're -- we're on equal standing with the
7 Catholic Conference in this in that the Commission
8 dismissed our concerns saying we're only copying what the
9 statute says, when in fact they're not even copying what
10 the statute says.

11 There is some linguistic differences that may
12 be of some significance. Also, again, it was noted in the
13 Senate letter that in the burden of proof or the standard
14 of proof for the imposition of the most extreme sanction,
15 the prohibition on lobbying doesn't say what standard they
16 use. While in other sections where the Commission makes a
17 determination, it says clear and convincing evidence.

18 And I think that's particularly significant.
19 And I'm reminded that I was asked diligently at the hearing
20 last December whether the ACLU is going to sue in this
21 case, you know, sue on these regulations. And I said if a
22 principal as opposed to a lobbyist was going to have a
23 prohibition on lobbying imposed on them with insufficient
24 due process protections built into the regulations, yes, we
25 would seriously consider suing, especially with what they

1 ran afoul of was indirect communications are not clearly
2 enough defined.

3 I think you need a definition of, I would
4 assume, clear and convincing evidence to impose that most
5 extreme sanction, particularly on a principal. Lobbyists
6 are doing this for a living, but the organizations or the
7 business that might hire the lobbyist should have some
8 clear standards so that they know what trouble they may or
9 may not be getting into.

10 We agree with the Pennsylvania Association of
11 Government Relations with respect to the audit issue.
12 Nobody should be audited as a result of somebody else being
13 audited. There should be some clear standard to trigger an
14 audit in those cases.

15 In closing, I would suggest that -- or would
16 hope that the committee would take the necessary action to
17 kind of encourage or require that these regulations be
18 further refined before they are finalized so that some of
19 these lingering issues can be resolved and so that not just
20 the lobbyists but the organizations that I know contact my
21 office will have more clarity before they start deciding
22 whether or not they're going to continue their advocacy
23 before the Legislature. Thank you.

24 CHAIRPERSON GANNON: Thank you, Mr. Frankel.
25 Representative Masland, any questions?

1 REPRESENTATIVE MASLAND: No.

2 CHAIRPERSON GANNON: Representative Manderino?

3 REPRESENTATIVE MANDERINO: I noticed -- with
4 regard to grass-roots organizations and your concern that
5 they not be discouraged, those were comments that you
6 shared with the Ethics Committee the first time around.
7 And they were rejected, if I'm remembering correctly, with
8 a committee decision not to adopt them because you were
9 complaining about something that, if I'm remembering
10 correctly, they kind of said that's not within their
11 purview to -- to adopt because they had to follow what the
12 statute was.

13 Do you disagree that that's not what the
14 statute is saying? Do you understand?

15 MR. FRANKEL: Yes, I understand your question.

16 REPRESENTATIVE MANDERINO: They were comments
17 about --

18 MR. FRANKEL: I know what you're referring to,
19 Representative. And unless you want to find the specific,
20 I can respond to your question. We believe that the whole
21 purpose of having the regulations is to clarify the
22 ambiguities that are in the statute; that at times, the
23 Commission has found -- or the committee -- I'm not sure
24 which we're actually referring to at this point. -- has
25 found it within their power to add additional definitions

1 or modify definitions in the statute.

2 Other times they say it's not our role, we
3 can't do it. We believe that under principles of
4 administrative procedure, the agency does have the power to
5 further refine terms that are unclear. If the statute was
6 perfectly clear with regard to the definition of what is
7 indirect communication, then maybe they would be limited.

8 If the agency can further clarify at least in
9 their eyes what they think is an indirect communication so
10 that the world knows what an indirect communication is and
11 if the Legislature disagrees with that definition and they
12 can take actions, that would be fine.

13 Similarly with regard to the religious
14 exemption which is the other area where they raised it.
15 There are some examples of what would be considered the
16 free exercise of religion. Dispute over the day care
17 regulations. Some people feel that the lobbying activity
18 they're engaged in over the day care regulations involves
19 the free exercise of religion. Other people may disagree.

20 And we don't know where the Ethics Commission
21 ends up. And I don't know that I have specific wording to
22 recommend, but I think it leaves an area very ambiguous.
23 And therefore, at least until some decisions are made as a
24 result of opinions requested or complaints that are filed,
25 I don't think that the clarity that I would like to give --

1 let's say, for example, we are contacted by a small
2 religious organization who is thinking of putting together
3 a day care program and have seen these regulations and
4 feels it will interfere with what they believe their free
5 exercise of religion is and we agree.

6 Maybe I'm just speculating a requirement.
7 There's certain kinds of immunization before children can
8 attend the day care center. And this group is, you know,
9 opposed to immunizations of all kind; and therefore,
10 they're opposing the regulations on that basis.

11 Is that the free exercise of religion or not
12 if the employee of the church wants to comment? I can't
13 tell them under the regulation whether it would be or not.
14 I can give some advice, but I thought the responsibility in
15 developing the regulations would have been to clarify that.

16 REPRESENTATIVE MANDERINO: Okay. Let me ask
17 it -- because sometimes with regard to indirect
18 communication or even the religious exemption, they're
19 reflecting back on the statute and kind of saying that's
20 sufficient enough.

21 But with regard to the nonprofit organizations
22 and -- and whether or not this will hinder them, they're
23 telling you their only comment is the true target of this
24 comment is the statute. So this isn't even applicable to
25 something you ought to decide. Obviously, you disagree.

1 But let me ask the question this way: Right
2 now you register as a -- under the current act, you
3 register as a lobbyist. But Joe Smith from the Jobs Policy
4 Network which -- his primary area of responsibility is
5 getting folks jobs. But there's a particular piece of
6 legislation that is impacting his ability to get people
7 jobs, and so he decides to get active and voice an opinion
8 on that piece of legislation.

9 He right now doesn't necessarily register as a
10 lobbyist. Why is that? And I guess what I'm saying is --
11 I guess what I'm saying is, is the definition of who must
12 register as a lobbyist in and of itself enough to define
13 who these would or would not apply to?

14 And if you're spending your time being a
15 lobbyist in such a way that you come under the requirements
16 for registry, this would apply to you. But somebody who --
17 whose, again, main job is doing something else and they may
18 just, you know, put together a grass-roots organization on
19 a particular bill, isn't registering as a lobbyist, does
20 the law give them that discretion?

21 Or can we say that there's ambiguity in the
22 current law with regard to registry? And is the concern
23 that the ambiguity that no one seemed to have a problem
24 with in the past is going to be a problem now because of
25 the penalties potentially involved?

1 MR. FRANKEL: Well, I would suggest --
2 although, I'm not an expert on the current law. -- that
3 many people do not register because the current law is not
4 enforced. I think that's a problem that's generally
5 acknowledged and one of the reasons that even many
6 lobbyists, including myself, think that further, you know,
7 lobbying disclosure and regulation may need to be
8 appropriate because of the inequities in the system.

9 And some of those inequities will persist even
10 after the -- I mean, they were in the statute. And, you
11 know, they were there; and they will be there for lots of
12 good reasons. But they probably didn't even have to think
13 of the question because, one, there wasn't enforcement; but
14 also the kind of reporting.

15 I think the bigger issue is really the
16 reporting that's under the act. Mere act of registry is
17 not burdensome. It's do I now have to set up a separate
18 book, you know, books and what kind of records do I have to
19 keep and how much extra am I going to have to pay the
20 bookkeeper who comes in once a week to do the books to make
21 sure that we comply?

22 And groups should have to do that if they are
23 engaged in significant -- if they are engaged in real
24 lobbying. I don't want to say insignificant to make you
25 think I mean one word. They're two separate words. In --

1 separate word -- significant lobbying. They should.

2 But most of these groups do not engage in
3 ongoing continuing significant lobbying, and they probably
4 don't do gifts and entertainment because they can't afford
5 it. But they're paying a salary, a portion of a salary,
6 they're paying a portion of expenses.

7 And once they realize there's this new law in
8 place -- and hopefully people will be trained in the new
9 law. -- then they're going to have decisions that they
10 have to make about what to do and what not to do. And it's
11 our belief that the lack of clarity on some of the
12 definitions that relate to what has to be reported may
13 discourage them from even getting involved because the
14 mistake they made with regard to reporting may prohibit
15 their organization for years as a result of that. And
16 that's the change with the new law.

17 We believe that more disclosure regulation is
18 appropriate, but it should be done. Keeping in mind,
19 though, not everybody who lobbies the State Legislature is
20 a contract lobbyist or works in the law reform or, like
21 myself, works full time at the job.

22 Some of them are managing a whole host of
23 other activities. And sometimes I know that many
24 legislators benefit from the input that these organizations
25 can give because they deal with a practical problem. And

1 we don't want to discourage that.

2 And I think that the regulations as drafted --
3 I know that I will get calls because they'll call me
4 because they won't figure out who else to call and say,
5 What do we do? And I'll send them the regulations. And
6 they'll call me back and say, Fine. What do we do?

7 And I can't really advise them clearly or
8 responsibly. I don't need a malpractice suit from any of
9 them.

10 REPRESENTATIVE MANDERINO: Thank you, Mr.
11 Chairman.

12 CHAIRPERSON GANNON: Thank you, Representative
13 Manderino. Would it be fair to say that from the
14 standpoint of the American Civil Liberties Union, they
15 would not necessarily want -- they do not necessarily
16 support an exemption for any individual or group
17 irrespective of whether or not they're doing something
18 purely religious or non-religious that would be lobbying or
19 petition the Legislature to change the law?

20 MR. FRANKEL: Conceiving we're going away from
21 the regulations and really to the statute now, I will say
22 we are troubled by the fact that certain individuals or
23 organizations are exempt while others are not. And when I
24 think about some of the specific issues that my
25 organization lobbies on, how we have to report and register

1 whether it is on abortion or on tuition vouchers or the
2 whole host of issues where we're sitting on the other side
3 of the table on the Pennsylvania Association of District
4 Attorneys where they don't have to report or register but
5 we do.

6 I mean, that is troubling. That goes back to
7 the statute. And, you know, I mean, you could tell -- my
8 board could be mad at me. Why didn't you do something when
9 the statute was going through? And I mean, because, I
10 mean, part of it is what you stated to Mr. Kauffman. It
11 went through in one of those manners where it was a little
12 more difficult to impact on the legislation.

13 But those equal protection problems are
14 inherently there in the statute. And we believe if you're
15 going to regulate people, regulate them. But we also have
16 the concern -- which some of it has been addressed by these
17 latest round of regulations -- there is something different
18 with regard to attorneys and clients; that there are other
19 factors out there that -- other privileges that exist under
20 the law, whether it's attorney/client, physician/patient,
21 you know.

22 I don't know that any -- I'm having a hard
23 time figuring out how a psychotherapist and a client
24 actually engage in any indirect communication on lobbying.
25 But those privileges would still exist. And I'm happy to

1 see that the Commission finally did acknowledge that, you
2 know, what attorneys say to their clients is just as
3 privileged whether they're engaged in lobbying a lawyering
4 activity.

5 But aside from those privileges, everybody
6 should be treated equally who wants to come up to the
7 Legislature if they meet the threshold requirements.

8 CHAIRPERSON GANNON: Let me just give you a
9 hypothetical on it and just see if you can offer, if you
10 wish, an opinion. There was a newspaper article that
11 appeared in the Philadelphia Inquirer. It was written by
12 one of its commentators, I guess, one of their persons that
13 writes Op-Ed articles.

14 In that Op-Ed article, he was very specific.
15 He said, Write or call Tom Gannon and tell him to get House
16 Bill, whatever the number was -- we'll say it was 123. --
17 out of his committee. As a result of that article, my
18 office received a number of phone calls and a number of
19 letters.

20 Would that be indirect lobbying, and who would
21 be the principal? You don't have to answer the second
22 question if you --

23 MR. FRANKEL: No. It would be indirect
24 communication, I think, under the definition of indirect
25 communication because they're obviously trying to influence

1 people to take action with regard to a letter. But I
2 believe there's an exemption in the statute for
3 journalists, newspapers, if I recall correctly.

4 But that's also pretty open and notorious.
5 And people know what's going on to the extent this is about
6 disclosure. Now, what would be more troubling is if that
7 same reporter had called you and either explicitly or
8 implicitly said if you don't move the bill out, this is the
9 story I'm going to write.

10 Then that would strike me as pretty close to
11 lobbying the legislator on a bill in a very unclear manner.
12 I'm not saying that any newspaper reporters have ever
13 engaged in such activity. And who is the principal? The
14 principal would be the publisher and editor of the
15 newspaper.

16 And I know that there are some members -- some
17 elected officials who I have read on occasion do believe
18 that newspapers, sometimes their editorial or the content
19 of their stories is based on their own particular financial
20 interest. But there is the First Amendment which permits
21 freedom of the press. And trying to regulate that kind of
22 activity would run afoul to the Constitution.

23 CHAIRPERSON GANNON: Well, petitioning the
24 Legislature is also a constitutional right. And we're
25 regulating that activity. Not that I'm advocating

1 regulation of the First Amendment. But I thought everybody
2 under the amendments was -- should be treated equally.

3 But arguably, the publication area of the
4 Philadelphia Inquirer is limited to Philadelphia and the
5 five surrounding counties. So it wouldn't necessarily be
6 the people in Pittsburgh or Erie or other areas of the
7 state were aware of that communication.

8 And as you said before, the purpose of this is
9 to make sure that everybody knows who is communicating to
10 the Legislature and how much they're paying to do that and
11 what they're communicating. None of the letters that I
12 received -- unless I guess they directed them to the editor
13 to be published in the paper -- were published. So they
14 turned out to be private communications directed to me.

15 I just think in my own mind it just created an
16 interesting scenario that -- that it was a direct attempt
17 to influence legislation by the article itself and then
18 also asking readers of the paper to contact my office. And
19 then we say, Well, that's not regulated yet because it's a
20 First Amendment right and maybe for some other reasons.

21 But it's just kind of interesting. And I'm
22 glad you, you know, you took -- were willing to offer your
23 view on that.

24 MR. FRANKEL: Well, I may sound like the
25 ultimate cynic, but I'll go ahead. Because so many of us

1 in the profession of legislating and lobbying are creative
2 lawyers, we'll probably find creative ways to evade the
3 regulations and engage in lobbying activity that isn't
4 specifically defined under the statute.

5 I think one has to be realistic about that.
6 There is incentives to do so, and the vacuum will be
7 filled. And I think that attempting to create disclosure
8 is probably useful and revisiting it often to make sure
9 disclosure really occurs.

10 However, with regard to your example, all the
11 people in the Philadelphia area might be reading those
12 stories over the electronic communications available. It
13 really is open and available to anybody who wishes to. And
14 the distinction that would be made is that at least it is
15 open and out there and visible as opposed to -- I think
16 which is the greater concern of the average citizen -- the
17 kind of communications that aren't open, that aren't
18 visible, that nobody really knows about.

19 And those will occur. They undoubtedly will
20 occur. And certainly, you know, if I saw somebody who I
21 was friendly with and I was an elected official on the
22 street and I come and talk to them for 10 minutes and at
23 the end I say, Good bye, I know you're voting on X issue
24 tomorrow and I hope you do the right thing, you know, I'm
25 lobbying.

1 There's no doubt about it. But will that be
2 covered by the regulations? You know, I doubt it.

3 CHAIRPERSON GANNON: Well, just a comment to
4 follow up on what you had stated a little bit earlier.
5 Without clarity and certainty, there's definitely going to
6 be litigation. And we have a very contentious piece of
7 legislation possibly coming before the Legislature this
8 week.

9 And I'm certain that the proponents or the
10 advocates, irrespective of who lose -- presuming that the
11 losers will litigate, number one, as to whether it's
12 constitutional; and then they'll litigate whether or not
13 the process was followed.

14 And then something like this, they'll litigate
15 as to whether or not there was some violation of the
16 lobbying law because of some of the terminology that's not
17 certain and precise and clear, that that would lead to
18 other -- other litigation that certainly I think everybody
19 would want to avoid.

20 And it just seems to me that they're
21 disenchanted irrespective of whether they are going to use
22 every possible hook, as arguably they would, to challenge
23 anything that happens up here. And without clarity and
24 certainty, then that's just one more issue that becomes
25 available or one more item that becomes available in the

1 courts.

2 MR. FRANKEL: And just to respond to that and
3 to pick up on what Mr. Tive said, some of that litigation
4 is diminished when there is inclusion in the process.
5 That's just as a matter of politics. If you want to avoid
6 some of the arguments that somebody may make in court, you
7 include them in the process; in this case, in developing
8 the regulations.

9 And it may be just that they have some
10 insights that will, you know, clarify some of the
11 ambiguities. A lot of losses result because there are
12 ambiguities. It's not because somebody has bad
13 intentions.

14 If the process is one where the effected
15 interests are included in it, in developing the final
16 product, you may reduce the volume of the litigation. And
17 there's no guarantee that you're going to eliminate all of
18 it because there are a lot of lawyers out there, and there
19 are a lot of issues that are probably considered now.

20 But certainly a process that is inclusive
21 rather than one that is just handed down upon people
22 minimizes the amount of litigation.

23 CHAIRPERSON GANNON: Speaking of litigation,
24 we have been provided with copies of pleadings and also an
25 opinion of the Commission with respect to the litigation

1 that's outstanding on the statute itself. I haven't had a
2 chance to read those papers.

3 And I don't know what the ultimate outcome
4 will be. However, I believe there is language in the
5 statute that if it is effectively challenged by someone
6 who's practicing law on that basis, that they are a lawyer,
7 that the statute itself becomes null and void.

8 And I have always been a proponent for full
9 disclosure regulation, some regulation of our lobbying
10 activity here in the General Assembly. And if that occurs,
11 if the court does agree with the litigants in this case
12 that the statute is invalid because of the attempt to
13 regulate the practice of law, that I for one will work very
14 speedily to replace it with something very quickly; that we
15 will not be in a vacuum here in Pennsylvania and not have a
16 situation where we will not have regulation of -- some
17 regulation of lobbyists until something more permanent can
18 be put into place. But I will not live -- not see a void.

19 MR. FRANKEL: If I may, for one, we are not
20 parties to the litigation. And I didn't mean to imply that
21 we were. But two is, just to put you -- in the spirit of
22 including myself in any work you may do, we would be
23 concerned, if the court were to rule that this particular
24 statute regulates the practice of law, that any subsequent
25 enactment not let lawyers off the hook from regulation and,

1 therefore, create yet another equal protection problem
2 whereby nonlawyers who act as lobbyists are regulating in
3 ways that lawyers are not except to the extent that you got
4 attorney/client privilege kinds of issues.

5 CHAIRPERSON GANNON: Well, that would probably
6 be the nexus of what would be done is to develop something
7 that would pass constitutional muster with respect to
8 applying to everyone across the board irrespective of who
9 they are. Thank you.

10 MR. FRANKEL: Thank you.

11 CHAIRPERSON GANNON: We have another witness
12 on our -- oh, wait. Representative Clymer is here. And he
13 had asked to make some comments to the committee.
14 Representative Clymer. Welcome, Representative Clymer.
15 You may proceed when you're ready.

16 REPRESENTATIVE CLYMER: Thank you. Thank you,
17 Mr. Chairman. I'm very pleased to be here this morning and
18 to offer these comments. My colleagues Representative
19 Masland, Michlovic, Senator Jubelirer and former Senator
20 Heckler, the members of the House State Government
21 Committee, lobbyists, principals and other interested
22 people and organizations devoted a great deal of energy and
23 time to crafting the Lobbying Disclosure Act last session.

24 I should point out that this is an effort that
25 has been going on for about 10 years. When we started this

1 process in 1997, there was a great deal of agreement across
2 the -- across the board that Pennsylvania's Lobbying
3 Registration and Regulation Act was a weak law.

4 That was our starting point, a very weak law
5 with inadequate enforcement and a large loophole which many
6 believe led to significant under-reporting of lobbying
7 expenses over the years. And I think we can document that
8 that is indeed the case.

9 We have made great strides since then, I
10 think, in presenting a very balanced -- in a very balanced
11 and reasonable way. In drafting the Lobbying Disclosure
12 Act, the goal was to maximize disclosure without
13 interfering with the lobbyists' and the principals' right
14 to petition his or her government and without overburdening
15 lobbyists and principals with the detailed reporting of
16 each and every expense.

17 The intent of the Lobbying Disclosure Act
18 drafters was to show the public the big picture, the big
19 picture of the interplay between lobbying and legislation.
20 The intent of the drafters was not to punish a lobbyist for
21 having dinner with a legislator nor to punish a legislator
22 for accepting the dinner, but rather, to demonstrate the
23 extent of the principals' lobbying efforts and to provide
24 more information about significant expenditures and the
25 recipients.

1 The drafting of the Lobbying Disclosure Act in
2 both the House and the Senate was an open process. The
3 State Government Committee held a public hearing on this
4 proposal as well as a number of workshops which were open
5 to the public. And we took those work -- at those
6 workshops, every suggestion, every recommendation was
7 reviewed by the members who were at that workshop. So no
8 suggestion or recommendation was ever ignored.

9 The regulation drafting process was also open.
10 The Lobbying Disclosure Committee, which was charged with
11 drafting the regulations, solicited comment from the public
12 via meetings and the regulatory review process. The
13 Judiciary Committee held public hearings and is holding
14 this informational meeting as well.

15 Additionally, many comments from and concerns
16 of legislators were forwarded to the Lobbying Disclosure
17 Committee through the auspices of the Judiciary Committee.
18 I compliment all of you on your strong effort to be open
19 and responsive, particularly in the light of the rapidly
20 approaching deadline for implementation of the regulations.

21 There are detractors on both sides of this
22 issue: Those who say the law is too weak, that it does
23 nothing to change the culture in Harrisburg, and others who
24 say that it imposes a huge recordkeeping and paperwork
25 burden on lobbyists and principals.

1 Following the enactment of the Lobbying
2 Disclosure Act, Representative Al Masland reminded us that
3 perfection is the enemy of the possible. He can see that
4 the law is not perfect and, at the same time, expressed his
5 pleasure that the law makes great strides in improving
6 public disclosure of lobbying activities.

7 The regulatory review process has revealed
8 that many concerns and questions remain and that there is
9 room for improvement. I understand that the Lobbying
10 Disclosure Committee has been very responsive to the
11 concerns of legislators and has incorporated most, if not
12 all, of the standing committees' suggested changes into the
13 final form regulations.

14 Particularly noteworthy changes suggested by
15 the standing committees include a shift to county or
16 quarter reporting periods; clarifications as to the burden
17 of proof; and the number of Ethics Commission members
18 required for the Commission to find a violation, impose a
19 civil penalty or impose a prohibition against lobbying; and
20 the exclusion and the inclusion of several different
21 methods of valuing gifts and hospitality.

22 As for the lawyer lobbyist issue, the drafters
23 of the Lobbying Disclosure Act spent many hours
24 anticipating the issues and concerns that are being raised
25 now, particularly in relation to the recent lawsuits. From

1 these discussions drew the act's partial severability
2 clause and careful consideration of the terms
3 administrative action and legislative action and what it
4 means to lobby.

5 I understand that the Lobbying Disclosure
6 Committee and the standing committees have been weighing
7 this issue carefully and that the final form regulations
8 contain language which explicitly excludes privileged
9 communications between attorney and clients from the law's
10 reporting requirements.

11 As we focus on the particulars of the
12 regulations and attempt to anticipate every possible
13 scenario involving interactions among lobbyists,
14 principals, legislators, staff and other public officials,
15 we must keep in mind our starting point, one of the weakest
16 lobbying laws in the nation, according to the Center for
17 Government Studies, and the effort that has been put forth
18 into making the Lobbyist Disclosure Act and the regulations
19 fair and balanced.

20 We must also keep in mind the General
21 Assembly's intent which is expressed in the act itself
22 which reads, The ability of the people to exercise their
23 fundamental authority and to have confidence in the
24 integrity of the process by which laws are made and
25 enforced in this Commonwealth demands the actions of the

1 General Assembly and the Executive Department be publicly
2 and regularly disclosed.

3 I believe that the final form regulations
4 before you today with the many changes and corrections
5 incorporated therein uphold this intent and are consistent
6 with the provisions of the Lobbying Disclosure Act. Thank
7 you, Mr. Chairman, for this opportunity to be here today.

8 CHAIRPERSON GANNON: Thank you, Representative
9 Clymer. Representative Masland?

10 REPRESENTATIVE MASLAND: No.

11 CHAIRPERSON GANNON: Representative Manderino,
12 any questions?

13 REPRESENTATIVE MANDERINO: Paul, if you feel
14 you can comment, one of the things that I guess troubles me
15 a little bit about this morning's discussion are some
16 comments that Mr. Frankel had raised -- I don't know if you
17 were in the room. -- with regard to indirect communications
18 and who comes under the act and its potential chilling
19 effect on grass-roots organizations becoming involved on an
20 issue basis, something that I would not like to see.

21 Do you share that concern? Do you think that
22 concern is -- is not something that we need to worry about?
23 I would just like to hear your thoughts on that.

24 REPRESENTATIVE CLYMER: I was here when he was
25 making testimony, but I was not listening to all the

1 discourse that was undertaken. I feel that the regulations
2 before us are balanced, are fair. And I'm not really -- I
3 would not share those concerns as he has shared them with
4 you today, again, not looking at all the details and his
5 points of argument.

6 REPRESENTATIVE MANDERINO: And again, you may
7 not be prepared to comment now. But since you've been more
8 involved in the process that I am, maybe if I could pose
9 the question and you can get back to me. If a grass-roots
10 organization, whether it's an association or some nonprofit
11 organization, which doesn't hire a lobbyist or pay a staff
12 person to be a legislative person or a lobbyist but decides
13 that a particular law or proposed law is something that's
14 going to very much affect their clients or their work
15 decides to become active on that particular issue, I'd be
16 interested in your opinion as to whether or not these
17 regulations as they currently stand in their current form
18 would bring them under the lobbyist reporting requirements.

19 REPRESENTATIVE CLYMER: Uh-huh. Okay. We
20 have a staff person here, Susan. Correct me if I'm wrong,
21 but I thought that we allowed those groups to participate
22 without having to form a -- disclose themselves. And that
23 was the intent, that they could come forward and
24 participate maybe once in 12 months that they had a reason
25 to be here, that they had a reason to -- to come to

1 Harrisburg and they were lobbying.

2 I don't see that -- where that would be a
3 problem. That was -- we're not here to -- to prevent the
4 grass-roots organizations from coming in and doing their
5 thing. And also, there is a provision of a dollar amount.
6 We maximize the dollar amount in the law as well as far as
7 reporting your income.

8 REPRESENTATIVE MANDERINO: And I guess what
9 I'm saying is I would agree with you with regard to that is
10 the intent that we want to have. And if you would, kind of
11 with that question posed, go back and look at the
12 regulations particularly as they define direct and indirect
13 communications and what constitutes lobbying and then what
14 would constitute reporting, see if you think those kinds of
15 situations are still, as you intended, not covered by the
16 disclosure reporting of the -- under this -- these proposed
17 rules.

18 REPRESENTATIVE CLYMER: Representative
19 Manderino, we will do that. And you raised some important
20 issues. But one of the things we also did is we looked at
21 what other states act. And we did not -- we wanted to
22 avoid any problems that they were encountering.

23 And so when the -- those who crafted the
24 legislation, which I just pointed out -- and I know that
25 Representative Masland has left. -- but we looked at their

1 legislation to make sure that -- that we will not deny any
2 person their right to lobby and make it more difficult for
3 them to do that; that there is a layer of red tape for that
4 group that wants to come to Harrisburg once in a blue moon
5 to offer legislative -- to offer comments on legislation.

6 To prevent them from doing it by an
7 intimidation through a network of red tape, that was never
8 our intent. And I'm pretty sure the law addresses that
9 issue. But we'll be -- we'll be checking that out to be
10 sure.

11 REPRESENTATIVE MANDERINO: Thank you.

12 CHAIRPERSON GANNON: Thank you, Representative
13 Clymer.

14 REPRESENTATIVE CLYMER: Thank you, Mr.
15 Chairman.

16 CHAIRPERSON GANNON: Since this is an
17 informational meeting, if there's anyone who is here in the
18 room that would like -- oh, I'm sorry. There is one --
19 there was one more witness, Mr. John Contino. And I
20 believe he was just making himself available to answer any
21 questions as opposed to testimony; is that correct?

22 MR. CONTINO: That's correct, Mr. Chairman.

23 CHAIRPERSON GANNON: Yes. Mr. Contino is with
24 the Ethics Commission. I don't have any questions directly
25 myself. I don't know if Representative Manderino may,

1 though.

2 REPRESENTATIVE MANDERINO: Yeah. I noticed
3 that a number of -- and thank you for your participation in
4 the last hearing. And I noticed that many of the comments
5 that -- and concerns that were made were taken seriously
6 and incorporated.

7 I don't know if -- if you have any further
8 thoughts on the discussions you've heard this morning with
9 regard to the applicability of this to grass-roots lobbying
10 efforts by any organized or unorganized group that decides
11 to take up an issue and how you think they are or aren't
12 covered by the reporting requirements?

13 MR. CONTINO: I don't know that I personally
14 have any thoughts. I can certainly relay that was the
15 discussion of the committee. As you well know -- and one
16 thing I guess I will say up front -- and with me today is
17 Assistant Chief Counsel, Robin Hittie. Miss Hittie was the
18 laboring oar for the committee on -- on the regulations and
19 probably is the most informative person on the content of
20 the regulations.

21 In relation to the promulgation of the
22 regulations, one other thing I want to comment on is that a
23 lot of these statements made by individuals today refer to
24 the Ethics Commission. The Ethics Commission was one of
25 seven members of this committee.

1 And the regulations are the product of a
2 committee comprised of the elected officials or their
3 designees in the State, the House, the Senate, the Auditor
4 General, the Attorney General. So there was a lot that
5 went into the regulations in terms of legality, comments
6 from the Auditor General in terms of audit processes and
7 procedures.

8 So it was not the Ethics Commission. I don't
9 know whether that's good or bad, but I just wanted to
10 clarify that.

11 REPRESENTATIVE MANDERINO: But you're the
12 official true and correct copy of the document --

13 MR. CONTINO: That's correct.

14 REPRESENTATIVE MANDERINO: So that's why
15 you're going to refer to it because you're the official
16 body there?

17 MR. CONTINO: In terms of your comment,
18 Representative Manderino, the grass-roots issue was
19 specifically a subject of commentary and discussion about
20 -- I believe it was even specifically -- giving an
21 example, the Kensington Welfare rights, for example, sends
22 bus loads of people to the Capitol to lobby.

23 And it was definitely the intent that that
24 group would not be considered lobbyists; the individuals
25 would not be lobbyists; that unless the thresholds were

1 clearly exceeded in the law, that the principal would not
2 be subject to either the reporting or the registration
3 requirements.

4 During the -- during the commentary of the
5 committee, they specifically placed into the regulations
6 phraseology that if what you're receiving is your
7 compensation, is meals and transportation that are
8 reasonably and necessarily incurred in aid of that
9 grass-roots efforts, that this is not going to qualify you
10 as a lobbyist or the group as a principal.

11 In fact, there's a \$2,500 threshold per
12 quarter. So that group could come up to that threshold per
13 quarter four times a year and still not trigger the
14 reporting requirements or the registration requirements.
15 So it was definitely considered. It was discussed at
16 length, and language was placed in the regulations to try
17 and deal with that concern.

18 REPRESENTATIVE MANDERINO: But if you reach
19 that \$2,500 quarter threshold, you are. So if I am, for
20 example, the Pennsylvania District Attorneys Association
21 and I have a legislative body and I have a staff person
22 that may spend 50 percent of their time on legislative and
23 lobbying related issues, if their salary is more than
24 \$20,000 a year, they're covered because -- right? 2,500
25 times four is 10,000. What a math whiz I am.

1 So if I make more than \$20,000 a year -- if I
2 have one staff person who makes more than \$20,000 a year
3 working half time on legislative matters, he or she is a
4 lobbyist under this act?

5 MR. CONTINO: And you probably become a
6 principal, yes. As long as the -- the thresholds are in
7 the statute, we try to deal with them in terms of the
8 grass-roots issues and meals and transportation coming up
9 here. But the scenario you just gave, I do not see that
10 that would fall within an exception.

11 REPRESENTATIVE MANDERINO: Thank you.

12 CHAIRPERSON GANNON: I just want to follow up
13 on Representative Manderino's remarks that the committee --
14 I don't want to use the word commission. -- that worked on
15 this, I know they worked very, very diligently to bring us
16 to this point. Not everyone agrees with the final product,
17 and that's to be sorted out later on.

18 But I do know that a lot of effort and time
19 was put into assessing the comments and commentaries that
20 were made with respect to the draft regulations. And I
21 appreciate that, and I commend you for the work that was
22 done.

23 MR. CONTINO: Thank you. And I will relay
24 that to the committee and the other staff people who
25 participated.

1 CHAIRPERSON GANNON: Thank you. Are there any
2 other questions? Any questions or comments from anyone in
3 the room? Since this is an informational meeting, do you
4 want to add anything to what we've already discussed? All
5 right. Being no volunteers --

6 MR. CONTINO: Thank you.

7 CHAIRPERSON GANNON: -- this meeting is
8 adjourned.

9 (Whereupon, at 11:56 a.m., the meeting
10 adjourned.)

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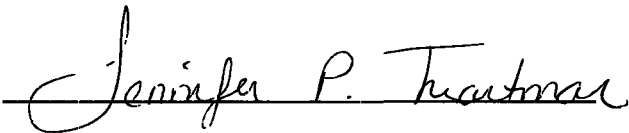
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause and that this is a true and correct transcript of the same.



JENNIFER P. TROUTMAN

Registered Professional Reporter

My Commission Expires:
April 30, 2001

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