COMMITTEE ON NEW YORK CITY AFFAIRS

ABBE R. GLUCK
CHAIR
435 W. 116TH STREET
OFFICE 929
NEW YORK, NY 10027
Phone: (212) 854-0679
Fax: (212) 854-7946
agluck@law.columbia.edu

ALAN H. SCHEINER
SECRETARY
1185 Avenue of the Americas
17th Floor
New York, New York 10036
Phone: (212) 308-6100
Fax: (212) 308-8830
ascheiner@llf-law.com

REPORT OF THE NEW YORK CITY AFFAIRS COMMITTEE
NEW YORK CITY BAR ASSOCIATION
June 3, 2011

On January 3, 2006, Jack Abramoff pleaded guilty to three felony counts for conspiracy, fraud, and tax evasion related to his lobbying activities in Washington, D.C. from 1995 to 2004.

On February 16, 2006, Mayor Bloomberg and Council Speaker Quinn announced a comprehensive overhaul of the City's lobbying and campaign finance laws. Mayor Bloomberg said, "We are not going to wait for the lurid tinge of scandal to hit before strengthening the integrity of City government." Speaker Quinn said, "We've seen the effect of lobbyists gone wild in Washington and Albany. Today, we are making sure that will not happen at City Hall."

"We're not waiting for the next Jack Abramoff to arrive," Mayor Bloomberg said somewhat later.

The new Lobbying and Campaign Finance Laws were approved by the City Council on May 25 and signed into law by the Mayor on June 13, four months after having been announced.

The overall objective of ensuring that City government is not tainted by scandal is unarguably laudable. However, the new Lobbying Law cast a significantly wider net than the previous lobbying law, encompassing within its regulation a much broader range of actions and actors. It also established extensive new and more detailed requirements for registration and reporting, including the creation of a new electronic filing system. The new Lobbying Law

doubled the fines for non-compliance and mandated increased oversight by the City Clerk's office. Little discussed at the time was the amount of City resources that would be required to implement, operate and maintain this new regulatory system. Even less discussed was whether and to what extent these new requirements might translate into higher costs to business and, ultimately, to consumers and taxpayers.

The Mayor, the Speaker and the City Council are to be commended for appointing the Lobbying Commission to assess the Lobbying Law and determine whether it has accomplished its purpose.

We believe the 2006 Lobbying Law is both useful and necessary. However, we also believe that it can and should be made less burdensome, clearer, more focused and thereby more effective. The following is a list of initial recommendations for changes to the Lobbying Law and the rules and procedures by which it is implemented and enforced that help accomplish that goal.

Our Committee had diverse views about the efficacy of the current Lobbying Law and the changes that might improve it. We chose to forward to the Commission only those changes on which we had consensus, but wish to note here that a number of our members believe that additional, much more substantial changes are necessary.

We thank the Commission for its consideration of these proposals and for its service to the City.

The New York City Affairs Committee
New York City Bar Association
Abbe R. Gluck, Chair
Frank E. Chaney, Lobbying Subcommittee Chair

RECOMMENDATIONS FOR AMENDMENTS TO
THE NEW YORK CITY LOBBYING LAW AND CAMPAIGN FINANCE LAW

1. Require lobbyist registration on or before the actual commencement of lobbying (as required by the Doing Business Law) instead of at the beginning of the calendar year as currently required by the Lobbying Law. This would eliminate the need to submit sometimes numerous bi-monthly reports prior to commencement of lobbying merely to report no lobbying activity and no compensation. Having to submit and process such "zero" reports creates an unnecessary burden for both lobbyists and the City Clerk.

2. Raise the monetary threshold for registration and reporting from $2,000 to $10,000. This would exclude many if not most small not-for profit and/or community-based organizations. $5,000 in a calendar year is too low (slightly more than $400/month on average) to filter out many such organizations. The State threshold should also be increased to $10,000.

3. Retain the accrual method of reporting lobbying compensation and expenses. The cash method would be significantly more time-consuming and costly to lobbying firms and would provide no greater transparency than the accrual method. The central issue is the value of the lobbying activity, not the specific month in which it was collected. The accrual method presents a fairer picture of the level of lobbying activity on a period-by-period basis. Because collections vary, the cash method would present an inaccurate, even misleading picture of the level of lobbying activity. Under the cash method, a lobbying registration would have to be kept open and could not be terminated until a client's account was paid in full, sometimes months after the matter was concluded and lobbying had ceased.

4. Amend the Lobbying Law to give the City Clerk the discretionary authority to waive or reduce late fees incurred after the 14-day cure period. Alternatively, a right of appeal might be created. Under the Law and Title 51, Chapter 1 of the Rules of the City of New York, after the 14-day cure period following notification by certified mail of the initial failure to file, late fees are automatic and cannot be appealed. In addition, such lateness is classified as a class A misdemeanor, subjecting the late filer to a civil penalty of up to $20,000. The majority of late filers are clients, individual lobbyists or small firms who are less experienced or knowledgeable as to the filing requirements and penalties and upon whom the mandatory imposition of late fees without possibility of appeal is most burdensome.

5. Not-for-profit organizations as a class should not be exempted from compliance with the Lobbying Law. Doing so would exempt large, well-funded and politically powerful not-for-profit corporations. Raising the monetary threshold for registration and reporting to $10,000 or even $5,000 would effectively filter out many if not most small not-for-profit and/or community-based organizations while still requiring compliance by large not-for-profits.

6. As recommended by Amy Loprest, Executive Director of the Campaign Finance Board, in testimony to the Lobbying Commission on March 15, 2011, remove the provisions of the

lobbying law dealing with public matching funds to ensure uniform treatment of lobbyist contributions under the Campaign Finance Law.

7. Applications to the New York City Planning Commission or the Department of City Planning which are not subject to certification under Section 197-c of the City Charter and are not subject to Section 201 of the Charter (i.e., certifications, authorizations, minor modifications) should be excluded from the Lobbying Law definition of lobbying activity.

   The Lobbying Law defines as lobbying activity "any determination… with respect to zoning or the use, development or improvement of real property."

   However, under the Doing Business Law (Local Law 34 of 2007), "business dealings with the city" include "any application for approval sought from the city of New York *that has been certified pursuant to the provisions of section 197-c of the charter*" [emphasis added]. Section 197-c (Uniform Land Use Review Procedure) of the City Charter contains an iterated list of ULURP applications that require certification and are subject to a mandated seven month public review. Upon the filing of any such application, the Doing Business Law requires that a "Doing Business Data Form" be submitted. The information on that form is then included in the Doing Business Database maintained by the Mayor's Office of Contracts.

   Certifications, authorizations and minor modifications are not included in the iterated list of applications that are subject to certification and public review under Charter Section 197-c and are not otherwise subject to the Doing Business Law. Therefore, such applications are not defined or treated as "business dealings with the city," and a Doing Business Data Form is not required to be submitted with such applications.

   Accordingly, excluding such applications from the Lobbying Law definition of "lobbying activity" would conform the Lobbying Law to the Doing Business Law, which excludes such applications from the definition of "business dealings with the city" so that the same activity would be treated in the same manner under both laws. Moreover, certifications are nondiscretionary and minor modifications by their nature involve small changes. Authorizations often also are relatively non-significant.

   In addition to the above, certain appearances before community boards should be excluded from the definition of lobbying. Somewhat incongruously, under the current law, appearances before the BSA, whose determination is final and legally binding, are not lobbying and therefore exempt from registration and reporting, but appearances before the community board, whose recommendation is merely advisory with no legal force or effect, are considered lobbying and therefore require registration and reporting. To bring coherence to the law, appearances before a community board with respect to BSA applications and applications for certifications, authorizations and minor modifications should also be excluded from the definition of lobbying. Applications for zoning changes and special

permits, which are subject to City Council and Mayoral approval, would continue to be defined as lobbying.

8. The e-Lobbyist system should be modified to automatically enter against a client the amounts of compensation and reimbursable expenses reported by lobbyists for that client in the lobbyists' bi-monthly reports. bi-monthly reports. The e-Lobbyist system currently does not have that capability so that at the end of the calendar year, the City Clerk has no way of knowing whether a client has exceeded the monetary threshold and is therefore required to submit a client annual report. Accordingly, if the client did not file an annual report because they did not exceed the threshold amount and were therefore not required by the Lobbying Law to do so, the City Clerk nevertheless sends the client a Notice of Violation and requires that the client either submit an annual report or a letter stating that the monetary threshold was not met. This often leads to much confusion and trepidation on the part of the client and creates additional unnecessary work for both the client and the City Clerk. Clients should not have to accommodate the deficiencies in the e-Lobbyist system by being required to do what the law clearly and affirmatively provides that they not be required to do.

9. The City and State should jointly develop a single web site through which information can be inputted once and designated for upload to the State and/or City databases. Alternatively, the City and State web sites should be given the capability of importing/exporting data to each other. At the very least, both web sites should share a common design and functionality.

10. Any changes to the Lobbying and/or Campaign Finance Law, including the ones recommended by this report, should be informed, to the greatest extent possible, by a comprehensive examination and analysis of the current regulatory regime. To that end, the Independent Budget Office should conduct a study to identify and quantify the individual and aggregate costs to the city of creating, implementing and maintaining the current system and to businesses of complying with the system's registration and reporting requirements. In addition, such study should include a comparative analysis of all lobbying activity, compensation and expenses reported through the e-Lobbyist system since 2006 and all campaign contributions reported to the Campaign Finance Board since 2006.