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June 27, 2013

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RECEIVED  
IRRC

Ms. Caroline A. Bailey  
Assistant Counsel  
Department of State  
210 North Office Building  
Harrisburg, PA 17120

RE: (IRRC #: 3012) Department of State Regulatory Proposal—Increasing Lobbying Registration Fees

Dear Ms. Bailey,

The Pennsylvania Commercial Action Network respectfully requests that the Pennsylvania Department of State reconsiders its proposed fee increase for lobbying registration. I recognize that the Department believes that it has no authority to exempt principles that only engage in indirect lobbying from the requirement to pay lobbyist registration fees. So, I am writing to plead with you, in the interest of fairness and respect for the First Amendment, to not raise the registration fee from \$100, what it was 4 years ago, to \$700 a couple months from now.

Pennsylvania is one of less than 10 states that regulate indirect lobbying and one of only a couple who charge a registration fee to engage in it. There is a good reason why other states have been slow to burden those who engage in only indirect lobbying: respect for the First Amendment and the judicial branch's interpretations.

In 2007, the Congressional Research Service published, "Grassroots Lobbying: Constitutionality of Disclosure Requirements." Regarding indirect lobbying, the germane section of the *Summary* reads as follows:

*"...in these cases, it would appear that a federal statute that requires only disclosure and reporting, and does not prohibit any activity, and that reaches only those who are compensated to engage in a certain amount of the covered activity, would appear to fit within those types of provisions that have been upheld in judicial decisions when the statute is drafted in such a manner so as not to include groups, organizations, and other citizens who do no more than advocate, analyze, and discuss public policy issues and legislation."*

Clearly, making advocates who engage only in indirect lobbying pay a fee to exercise their First Amendment rights is of questionable Constitutionality and is something only very few states have tried. However, in Pennsylvania not only do we fail to exclude individuals identified by the Congressional Research Service who only engage in indirect lobbying, were this proposed regulation to be implemented, Pennsylvania associations

who engage in indirect lobbying would now have the highest registration fees in the country...by almost double.

These registration fees on grassroots lobbyists are similar to a poll tax, but on speech, and tantamount to prohibiting such activity. As illustration, consider a media day held on the steps of the State Capitol, something many small groups do yearly as the extent of their public engagement. Or, consider a small group that rents a billboard or two to advocate for their policy position. Many small groups will do busses or billboards once a year as a modest way to keep their faces in the public consciousness. Coincidentally, both of these are examples where the indirect lobbying expense can run just over the \$2,500 quarterly registration requirement. A \$700 registration fee on \$2,500 is the equivalent of a 28% tax on speech above and beyond every other tax they pay! Fees this high infringe on freedom of speech and tell groups with a \$3,000 annual budget for indirect lobbying that they need not speak up for their members any more in our Commonwealth.

That we would want to tax in this way should shock the sensibilities, because it is wrong to do so, and the courts would agree. Lobby disclosure serves an important public function and should be publicly funded. The alternative is to tax away the right to speak, which is an unacceptable tradeoff.

As someone who files lobbying disclosures for indirect lobbying, it is also hard to imagine such an automated system costing so much to administer. Perhaps there are other aspects of lobbying enforcement that might require more involved regulation than indirect lobbying does. As such, groups who simply engage in indirect lobbying are paying more than their fair share of the Commonwealth's cost for enforcement activities. In the interest of fairness, they could receive a reduced registration fee.

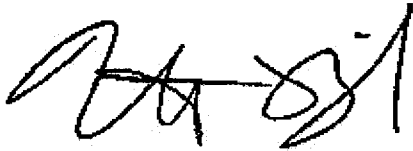
Another easy way to reduce the administrative costs might be simply to double the quarterly exemption to \$5,000 a quarter. This could reduce the number of registrants, and thereby reduce the cost of enforcement without further frustrating the underlying purpose of the disclosure law. If the exemption was doubled and the registration fee remained unchanged, then the tax on speech in the above example would be reduced seven times to 4% ( $\$5000 / \$200$ ).

Finally, although the Department of State is assuming a precipitous increase in registration fees will cut back on many of the prophylactic registrations (registrants who never trigger a reporting requirement), the proposal also assumes inelastic demand in its model for anticipated revenue from mandatory filers—that is to say if the fee to lobby goes up 350%, behavior of those who are required to file will not change very much. This assumption is contrary to sound economic principles that when the price of something doubles, triples, or jumps sevenfold, that the same amount is demanded. This will not happen and needs to be addressed in the DOS analysis—By what method did the Department calculate the number of disenfranchised individuals whose First Amendment rights will be infringed upon by these rate increases? Does it attempt to withstand judicial scrutiny?

There simply will be some who will not exercise their rights because of this fee, and sadly, some who begin to ignore the law because they either feel it is too onerous, or they'll feel justified in not filing because of its unconstitutionality when it concerns grassroots-only speech. Either way, raising the fee this high will frustrate the Department's transparency goal.

On behalf of the Pennsylvania Commercial Action Network and similarly situated organizations, thank you for providing this opportunity for us to voice our concerns. We sincerely hope that the Pennsylvania Department of State reconsiders its proposed fee increase for the reasons stated. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Balazik', written in a cursive style.

Matthew Balazik  
Managing Director, Pennsylvania Commercial Action Network

cc: Hon. Lloyd Smucker, Chairman, Senate State Government Committee  
Hon. Daryl Metcalfe, Chairman, House State Government Committee  
Silvan B. Lutkewitte, III, Chairman, Independent Regulatory Review Commission  
Fiona Wilmarth, Director of Regulatory Review, IRRC  
James Smith, Regulatory Analyst, IRRC