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From: Cartagena, Nicholas (ELECTIONS)
Sent: Thursday, March 23, 2023 3:55 PM
To: ethics.sm.PublicHearing
Subject: Public Hearing Testimony

Categories: Written Comment

Below, please find testimony for myself and the Co-Executive Directors of the New York State Board of Elections for the March 29th public hearing.

Can I appear via remote video conference? I have to be home on the morning of the 29th to let delivery people in to install a dishwasher.

Thank you for the opportunity to submit this.

Nick

TESTIMONY

My name is Nicholas Cartagena and I am the ethics officer for the New York State Board of Elections. Please accept this testimony on behalf of myself and the Co-Executive Directors of the New York State Board of Elections in response to the commission's March 6, 2023 hearing notice.

First and foremost, I want to express my deep appreciation for the New York State Commission on Ethics and Lobbying in Government and the critical work that you do. I understand the significant challenges presented by the recent amendment requiring ethics training for all staff hired after July 9, 2022. From an agency perspective, keeping track of new hires, monitoring attendance at trainings, and verifying financial disclosure requirements can be a time-consuming and complex process, particularly when ethics officers are juggling other primary duties. While I appreciate that the Commission is actively working on developing a system to manage these challenges, I urge that the system be designed with ease of use in mind, so that ethics officers can more efficiently fulfill their duties and ensure that all staff are receiving the training they need to uphold ethical standards in our government institutions.

I appreciate the work that the Commission has done to create a general ethics training for all employees. However, I have found that the current model training is mainly designed for employees who required to file financial disclosure statements and may not be suitable for general employees. In my experience, the training is too technical and dry for the ethics message to resonate with the average employee.

To address this issue, I recommend that ethics officers be granted greater flexibility in editing the model training to suit the needs of their specific agency. Currently, ethics officers are only permitted to add to the presentation, but are not allowed to cut anything out, which limits their ability to tailor the training to their agency's needs. Moreover, the current training presentation is lengthy, at one and a half hours, making it difficult to add additional slides to the presentation.

Fortunately, the recent amendment to Section 94(10)(a) of the Executive Law has eliminated the requirement that the Commission design a two-hour training. I believe this gives the Commission increased flexibility in designing its trainings. I suggest that the Commission design a streamlined training, preferably under one hour, specifically for general employees. The Commission could design the training in a way that makes some slides optional, where the ethics officer could have discretion in swapping out certain slides for agency specific slides. This will allow agencies to

add their own examples and slides, making the training more engaging and relevant for staff. By providing greater flexibility to agencies, the ethics rules we are trying to instill are more likely to sink in and be applied in practice.

As far as legislation, I recommend that the law be further amended to allow for online trainings in addition to live trainings for general employees. If designed correctly, online trainings can be just as effective as live trainings and would be a helpful addition to the current requirements.

In conclusion, I would like to thank the New York State Commission on Ethics and Lobbying in Government for your time and service. I urge you to consider my recommendations to improve ethics training for all staff. Thank you.

CITIZENS UNION OF THE CITY OF NEW YORK

Testimony Before the
New York State Commission on Ethics and Lobbying in Government
March 29, 2023

Good morning members of the Commission on Ethics and Lobbying in Government. My name is Ben Weinberg and I am the Director of Public Policy at Citizens Union. We greatly appreciate the opportunity to testify before the Commission today in its first annual hearing, as established under the law passed last year that created the Commission.

Citizens Union has long focused on the conduct of government officials, attempting to ensure that the public is represented by persons whose behavior is above ethical reproach. In our work, we have joined with other civic groups and advocates, a number of which are also testifying today. We generally support the recommendations of our colleagues, and have chosen to focus on a few of the issues for which we have been advocating.

The history of achieving effective ethics regulation in New York has been fraught, with COELIG being the fourth agency in recent years created to meet that responsibility. When COELIG was being created, we expressed concern that the appointing mechanism still left the responsibility directly with the officials who the commission must regulate, even with the review of appointments by the state's law school deans. We are hopeful that the Commission will demonstrate its independence from those appointees as it pursues its work.

One means of fostering this independence is to assure that there is no ex parte communication between Commission members and those who appoint the commission, or their representatives, with limited exceptions, such as if the person the commissioner is speaking with is a target of, or witness in, an investigation. Disclosure of such ex parte communications involving COELIG's predecessor seriously

undermined its credibility. An ex parte ban would help make clear both to government employees and the public that appointers have no special access or sway over the Commission. We recommend the Commission pass a resolution establishing that ban in its regulations.

Another means of demonstrating independence and credibility is for the Commission to have a firm hold on the procedure for providing advice to elected officials and high-ranking executive and legislative officials. The specter of former Governor Cuomo's book deal hovers over the Commission, though the approval was given under JCOPE. Commissioners cannot leave such decisions solely to the staff. We note this issue is under active consideration by the Commission, and support reexamining the process of rendering advisory opinions to ensure they are done in the public interest.

A further measure of accountability would require legislative change. We believe that, once the Commission determines, after an investigation and staff report, that there is credible evidence of a violation of the laws under its jurisdiction and proceeds to a due process hearing, the hearing should be public. We recognize the importance of maintaining privacy prior to the issuance of such a finding, but believe the balance shifts once a finding is made toward having this quasi-judicial process open to public viewing, subject to appropriate exceptions, as in a judicial proceeding. We note that under New York City's ethics enforcement system, once the New York City Conflicts of Interest Board believes a violation was committed and settlement cannot be reached, the case proceeds to a public hearing at the Office of Administrative Trials and Hearings ("OATH").

A related matter involves disclosures of the status of investigations. We believe the Commission should develop clear rules to regulate when and in what ways it discloses the existence and progress of an investigation. Such rules should balance between the privacy concerns of those involved in the case and the public's (and in some cases, complainant's) right to know.

The Commission must walk the fine line between protecting the privacy of complainants and respondents during the pendency of an investigation, and demonstrating that it is aggressively doing its job. We recognize the Commission is mindful of avoiding drawn-out investigations, and should consider setting expeditious timelines for its procedures.

Two additional legislative proposals are worth the Commission's consideration. First, regarding the Lobbying Law, clients and lobbyists should be required to report if they lobbied in support or in opposition to a matter. This would provide a better idea to the public of how lobbyists and lobbying resources were being used to promote or oppose legislation or other government decisions covered by

the law. In addition, we support pending legislation (S.4152) to include among reportable matters lobbying regarding nomination or confirmation of a nominee that requires Senate confirmation.[1]

We also believe lobbyists should also be required to disclose their fundraising or political consulting activities in semi-annual lobbying reports. Such disclosure can include the names of candidates or elected officials to whom lobbyists provided such services and the amount of money raised in fundraising events organized by lobbyists.

Finally, we are concerned about a major ethical loophole that permits individuals and entities doing business, or seeking to do business, with the state from making sizeable campaign contributions to officials involved in decision-making regarding the business opportunity. Decisions involving hundreds of millions in state funding have been tainted by such contributions, leading a skeptical public to question whether the decisions to spend taxpayer funds are made solely on the basis of merit.

We recommend the Commission consider approaches to curb such contributions. One approach has been adopted in New York City. Those having business dealings with the City are sharply limited in the amount of contribution they can make, including contributing no more than $400 to campaigns for citywide elected officials.[2] Other states also bar individuals or entities that have contributed to campaigns in the recent past from undertaking or seeking contracts from an official for whose campaign the contributions were made. Examples of such systems can be found in New Jersey[3] and Connecticut.[4] We believe either approach would foster more integrity in government.

We look forward to working with the Commission as it pursues its work.

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[1] See text of S.4152: https://www.nysenate.gov/legislation/bills/2023/s4152

[2] NYC Admin. Code 3-703(1-a) and (1-b)(https://www.nyccfb.info/law/act/eligibility-and-other-requirements/). For a fuller description of New York City's pay-to-play regulations see https://www.nyccfb.info/candidate-services/doing-business-faqs/.

[3] NJSA 19:44A:20.14 (https://nj.gov/state/dos-statutes-elections-19-40-49.shtml). The NJ Election Enforcement Commission has recommended changes to the regulatory scheme: https://www.insidernj.com/nj-pay-play-laws-there-should-be-only-one/.

[4] CT Stat. Ch. 155 (Elections: Campaign Financing) Section 9-612(f) (https://www.cga.ct.gov/current/pub/chap_155.htm#sec_9-612)

Summary of CU recommendations

- Pass a resolution banning ex parte communication between Commission members and those who appoint the commission, or their representatives, with limited exceptions, such as if the person the commissioner is speaking with is a target of, or witness in, an investigation.
- Reexamine the procedure for providing advice to elected officials and high-ranking executive and legislative officials, without leaving such decisions solely to the staff.
- Make Commission's due process hearings public (requires legislative change).
- Develop clear rules on disclosing the status of investigations.
- Proposed changes to New York Legislative Law Article 1-A, the "Lobbying Act":
    - Clients and lobbyists should be required to report if they lobbied in support or in opposition to a matter.
    - Include among reportable matters lobbying regarding nomination or confirmation of a nominee that requires Senate confirmation.
    - Require lobbyists to disclose their fundraising or political consulting activities.
- Other proposed legislative changes:
    - Limit certain campaign contributions from individuals and entities doing business, or seeking to do business, with the state.

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Testimony before the Commission on Ethics & Lobbying in Government
March 29, 2023 – New York Law School

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony[1] and to the open-and-shut, *prima facie* EVIDENCE substantiating it and the complaint I will be filing based thereon against you, to you, for your "substantial neglect of duty" and "misconduct in office"[2] from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[3] and of Executive Law §94.10(b) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[4]

The very first complaints the Commission received, upon replacing JCOPE on July 8, 2022, were the eight I submitted on its Day 1 by a single letter. All eight complaints involved the "false instrument" reports by which New York's executive and legislative electeds procured pay raises for themselves – and for judges and district attorneys – embedded in the state budget that they have run "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful governance through massive insertions of non-fiscal/non-revenue producing policy. Surely, no complaint the Commission thereafter received remotely approaches, in magnitude and breadth, any one of these eight complaints, let alone all of them.

The first seven of these complaints were a refiling of complaints I had filed with JCOPE, as to which JCOPE, in violation of its mandatory duty under the Executive Law that established it, had not sent out a single 15-day investigative letter. These seven complaints are the first seven exhibits in CJA's corruption-eradicating lawsuit, *CJA v. JCOPE, et al.*, commenced by a June 6, 2022 verified petition, whose sixth cause of action is to VOID this Commission as enacted unconstitutionally and through fraud, *via* the state budget, for the ulterior purpose of stripping complainants of rights enforceable by mandamus with respect to 15-day letters and, in so doing, to insulate from accountability the seven public officers who appoint the commission members. As for the eighth, completely new complaint, it was against one of those seven public officers, who, with the other six, is a respondent in *CJA v. JCOPE*, namely, Attorney General James, and its basis is her litigation fraud in *CJA v. JCOPE*, in furtherance of her own "false instrument" pay raises – and theirs.

The Commission's original seven commissioners are Cardozo, Groenwegen, James, Austin, Carni, Davie, and Edwards. Six of the seven, if not all seven, knew of these first eight complaints

since at least last August 4th. That is when I sent them an e-mail, which as to now Vice-Chair Austin bounced back, attaching two letters to the 15 law school deans of the Independent Review Committee to which they were *cc*'d. These apprised the would-be commissioners of what the Independent Review Committee had known since my first June 12th letter to its deans, namely, that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, *as a matter of law*. It also alerted the would-be commissioners that the public officers who had appointed them had corrupted the vetting process and that the Independent Review Committee deans were collusive in this and were violating conflict-of-interest protocols, including as set forth by Executive Law §94.3(j).[5]

The second of my two August 4th letters detailed the conflicts of interest, requiring disclosure and disqualification that the would-be commissioners would face, with respect to the eight complaints:

(1) would-be Commissioners Cardozo, Groenwegen, and James had colluded in the public corruption involving the pay raises, the budget, and the AG's *modus operandi* of litigation fraud that are the gravamen of the complaints – and I had furnished their appointing public officers with written comment opposing their proposed nominations, without response from the appointing public officers;

(2) would-be Commissioners Austin and Carni, as former judges, have HUGE financial interests in the complaints because, as beneficiaries of the judicial pay raises that the complaints establish to be fraudulent, they face "clawbacks" of approximately three quarters of a million dollars each;

(3) would-be Commissioners Davie and Edwards are also financially interested in the complaints because Executive Law §94.4(f) ties commissioners' *per diem* allowances to "a salary of a justice of the supreme court" – and the complaints establish the fraudulence of $80,000 of that salary.

And what did the seven original commissioners do in face of this August 4th e-mail – and my subsequent e-mails to them on August 22nd and October 6th as to AG's James' unremitting litigation fraud in *CJA v. JCOPE* [6] and the importance of its verified petition to understanding that JCOPE's corruption in its handling of complaints, rested with its personnel, who remained at the Commission, such as JCOPE Executive Director Berland, a former judge with HUGE financial interests in CJA's complaints. They voted unanimously to make Berland interim executive director at their first September 12th meeting and then permanently at their fifth December 16th meeting, both times by fraud about his performance of his duties and other deceits.[7] Between these two meetings, at the October 25th third meeting, the eight complaints in which they and Berland are all interested were allegedly dumped, but I was not informed of this until three weeks later – the day after I sent the Commission staff a November 16th e-mail inquiring as to when it would be responding to my July 26th FOIL request for the Commission's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints". I was thereupon e-mailed

an unsigned November 17th letter, on a letterhead listing the names of the seven original commissioners and Berland, bearing but a single complaint number and stating: "following a review of your complaint, the Commission voted to close the matter."

Yet, pursuant to Executive Law §94.10(f),[8] the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is "unfounded or unsubstantiated" – by no stretch the case at bar with respect to any of the eight complaints.

Time does not permit me to testify about the odyssey of my July 26th FOIL request, reiterated and expanded by my December 27th FOIL request pertaining to the November 17th letter, such as for records of your compliance with disclosure/recusal mandates of Executive Law §94.10(b), of compliance by Executive Director Berland and Commission staff with comparable conflict of interest protocols, and of the specific provision of Executive Law §94 pursuant to which the Commission is alleged to have "voted to close the matter" – and the basis for the supposed "vote".

Suffice to say that on February 7th, I *cc*'d my FOIL appeal to the seven original commissioners, excepting Vice-Chair Austin whose e-mail address I do not have, plus to the two new commissioners, Whittingham and Carabello. Assumedly they all would have concerned themselves as to the response. It came on February 17th from your FOIL appeals officer St. John– a high-ranking JCOPE holdover that Berland would days later elevate as the Commission's general counsel. According to St. John, the records I had requested "simply do not exist and, therefore, cannot be provided". As to the only record he furnished, it was the conflict-of-interest protocol for Commission staff that Berland, St. John, and other staff had flagrantly violated from the Commission's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.[9]

I conclude with a procedural suggestion with respect to your letters "closing" complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.[10] Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your "Investigations Division".

ENDNOTES

[1] The direct link to CJA's webpage for this testimony is https://www.judgewatch.org/web-pages/searching-nys/celg/march-29-23-testimony.htm, with EVIDENTIARY links under the heading "'PAPER TRAIL' of Correspondence: What the Commissioners Knew, & When".

[2] Executive Law §94.4(c) identifies "substantial neglect of duty" and "misconduct in office" as grounds upon which "Members of the commission may be removed by majority vote of the commission."

[3] This Commission, with three members appointed by the governor, is a "state agency", pursuant to Public Officers Law §74, and the commissioners are, presumably, its "officers" – and reinforcing this is Executive Law §94.3(l) in specifying that "The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law." No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission's paid staff is within the purview of Public Officers Law §74 – and this complaint is also against them, starting with Executive Director Berland and General Counsel St. John.

[4] Executive Law §94.10(b) reads:

> "Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission."

[5] Executive Law §94.3(j) reads:

> "Upon the receipt of the selection members' appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment."

[6] The AG's litigation fraud included a perjurious affidavit of JCOPE's Director of Investigations and Enforcement Emily Logue, who remained in that position for this Commission at least until August 18, 2022 – the date on which it was notarized by St. John (NYSCEF #81). The particulars of this perjury are set forth by my September 3, 2022 CPLR §2214 notice of papers to be furnished the Court (NYSCEF #85, at pp. 2-5) and its last item, "Pertaining to the whole of her affidavit", was for:

> "any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not respond to the particularized allegations in the petition pertaining to JCOPE, most importantly, ¶¶6, 16-26, 27-41, 42-47 – such persons reasonably including JCOPE's last executive director, Sanford Berland, Esq., currently occupying that position at [the Commission]." (at pp. 4-5, underlining added).

See, additionally, my "legal autopsy"/analysis of AG James' fraudulent August 18, 2022 cross-motion (NYSCEF # 88, at pp. 5-7).

Prior to serving as a notary to Ms. Logue, St. John had received from me, *in hand*, the *CJA v. JCOPE* verified petition, etc. on June 23, 2022 – and unlike representatives for all nine other *CJA v. JCOPE* respondents, who I had already served, he refused to furnish me with a signature, on behalf of JCOPE, to prove my service. Fearful that JCOPE would challenge service on grounds of my being a party, I returned with a non-party to effectuate the service upon St. John – and even then he would not give me a signature to acknowledge service. This is reflected by the affidavits of service I was then burdened with making, as to him and him alone (NYSCEF #49, NYSCEF #48).

[7] Although Chair Davie stated at the September 12th first meeting that "the Commission is committed to doing a full search for a permanent executive director" (at 11 mins.), it does not appear that ANY search was done, not even including it in posting for other staff positions (Oct. 6 meeting-posting; Oct 25 meeting-posting-update). At the December 16th meeting, no reference was made to any candidates having been considered for the position when, following an executive session (3 hrs, 48 mins.), Commissioner Cardozo, purporting that the Commission had "carefully considered the question of who should the new executive director of the Commission be… and after a great deal of investigation", he wanted to make "the following proposal and motion":

> "WHEREAS the Commission was created to provide much needed ethics oversight for the New York State government and ensure that New Yorkers have the responsible and ethical government they need and deserve; and
>
> WHEREAS the work of the Commission is both time-sensitive and significant with many outstanding matters needing immediate attention due to a delay resulting from the transition from the previous entity, the Joint Commission on Public Ethics, and the appointment process for the members of this Commission; and
>
> WHEREAS, the Commission requires a permanent executive director in order to properly move forward with its important work, including hiring additional staff; and
>
> WHEREAS, the Commission considered the possibility of a national search for an executive director, but were highly cognizant of the fact that it took two nation-wide searches conducted over a period of nearly two years to find an individual capable of leading the state's previous ethics and lobbying agency, Judge Berland; and,
>
> WHEREAS, based on a thorough review of Mr. Berland, which included examining his background, reviewing his financial disclosures, interviewing Mr. Berland at length and speaking with numerous others who worked with him in his role under the previous

Commission; and

WHEREAS, Mr. Berland has thus far successfully managed the transition from the previous Commission to this Commission; and

WHEREAS based on its dealings with Mr. Berland the Commission has been more than satisfied with his performance; and

WHEREAS the governing statute that created the Commission provides the executive director should be appointed by the Commission to serve a four-year term; and

WHEREAS the Commission needs an executive director immediately given the substantial number of issues with which it must deal and the number of staff vacancies,

IT IS HEREBY RESOLVED, the Commission appoints Sandy Berland as executive director to a term appointment of four years in accordance with Executive Law §94 at a salary of $220,000".

This was seconded by Vice-Chair Austin, with Chair Davie then stating, before the unanimous vote:

> "Let me thank all the Commissioners for their very thorough and diligent review and engagement around the hiring of our Interim Director Berland as the executive director of the Commission, of the agency. Let me reinforce what Commissioner Cardozo's resolution has stated and that is the very competent way in which Mr. Berland has conducted the work of this Commission, at least since my joining it in September and from what we can assess in the very thorough review we did before reaching this decision."

Among the successive lies and deceits by the above is that Berland's hire as JCOPE's executive director resulted from "two nation-wide searches conducted over a period of nearly two years". This is not consistent with his testimony at the August 25, 2021 hearing on "New York State's System of Ethics Oversight and Enforcement" by the Senate Committee on Ethics and Internal Governance:

Senator Salazar:	"Would you mind telling us, just to go back to when you sought the position, when you applied, do you remember how you found out that the position was open in the first place? Did you learn this from someone you know? Do you remember the circumstances?"
Berland:	"Probably the conversation with the former chair, who's someone I've known in various capacities over the years." (Transcript, at pp. 53-54, see also pp. 83-84; VIDEO)

I cited to and substantially quoted Berland's testimony at that August 25, 2021 hearing in my November 2, 2021 complaint against JCOPE and him to the New York State Inspector General (at pp. 10-16) – and it is Exhibit I to the *CJA v. JCOPE* verified petition (NYSCEF #17). This November 2, 2021 complaint is cited and linked in my December 17, 2021 complaint to JCOPE "against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints" – Exhibit B to the *CJA v. JCOPE* verified petition (NYSCEF #8), whose recitation at pp. 4-6 thereof, under the title "BACKGROUND", begins: "JCOPE is already familiar with the essential underlying facts – or at least JCOPE Executive Director Sanford Berland is."

[8] Executive Law §94.10(f) reads, in pertinent part:

> "If, following a preliminary review of any complaint…the commission or commission staff decides to elevate such preliminary review into an investigation, written notice shall be provided to the respondent setting forth, to the extent the commission is able to, the possible or alleged violation or violations of such law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations… The respondent shall have fifteen days from receipt of the written notice to provide any preliminary response or information the respondent determines may benefit the commission or commission staff in its work. After the review and investigation, the staff shall prepare a report to the commission setting forth the allegation or allegations made, the evidence gathered in the review and investigation tending to support and disprove, if any, the allegation or allegations, the relevant law, and a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing. The commission shall, by majority vote, return the matter to the staff for further investigation or accept or reject the staff recommendation."

[9] Pursuant to Executive Law §94.6(a), the executive director may be removed for "substantial neglect of duty" and "misconduct in office", by "a majority vote of the commission."

[10] Appellate Division Rules of Procedure 1240.7(e)(3) reads:

> "Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney's decision declining to investigate a complaint, or of a Committee's dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate."

Commission on Ethics and Lobbying in Government
Written Comments for Hearing on March 29, 2023

Esteemed Commissioners:

I appreciate the opportunity to offer suggestions regarding outside activity approval processes.

1. The Public Officers Law should be modified to give COELIG the authority to regulate the outside activity review process used by public employers. Right now, the law appears to give employers unchecked discretion over employees, who cannot challenge a decision without unduly burdening themselves. Consider that agency denials could have material impacts on the lives of employees, who have no effective recourse to mitigate these effects. Unchecked discretion creates the potential for questionable or even punitive denials of outside activity requests, which seems in conflict with the purpose of the law.

   Under current law, employers can ignore mitigations proposed by employees concerning actual or perceived conflicts-of-interests and can instead always choose to go in the most extreme direction, even imposing harsh conditions on employees that can have financial and other negative consequences. There should be some statutory or regulatory limits on the discretion of employers in conducting reviews of outside activity requests prior to COELIG's review.

2. Periodically audit or evaluate public employers' internal reviews of requests for outside activity. This could identify risks associated with discrimination, litigation, employee dissatisfaction, or other work-related adverse effects. Such a review could also help to build proposals to reform the Public Officers Law.

3. Develop regulations for public employers to apply in the handling of outside activity requests so that information is protected and not directly or inadvertently shared with people who are not involved in reviewing the requests. These internal agency reviews are essentially a personnel matter and the information should be treated as private. Not doing so could lead to adverse consequences for the employee in question, but because it is so difficult for an employee to challenge and modify an agency's decision, these risks are not appreciated or even known.

I welcome any response, including your corrections. Thank you for your consideration.

Cheryl Pahaham
[redacted]

The New York State Commission on Ethics and Lobbying in Government

Public Hearing on COELIG Operations and Regulations

Wednesday, March 29

10:00 AM-2:00 PM

Testimony presented by:

The Empire State Society of Association Executives

Introduction

The Empire State Society of Association Executives (ESSAE) is a nonprofit professional organization for persons engaged in the management of voluntary trade and professional organizations. ESSAE provides quality educational, leadership, and professional development opportunities to association executives and supplier members, to encourage high professional standards in the management of associations. ESSAE membership comprises four-hundred members statewide and is an approved provider of continuing education for those holding the CAE designation.

The Role of Advocacy

Economic and civic activity at every level of our society is championed by thousands of trade and professional associations across this State and the country. These activities, which form the basis of any functioning democratic society dedicated to an open exchange of ideas, often involve direct and indirect contact with governmental and regulatory representatives by professional staff and volunteer members. Constitutional rights guaranteeing freedom of speech and the petition of government, along with the implied freedom of association, form the foundation for all other rights in this country. Associations play a vital role in the continued vibrancy and participation in civic life and ensure a broad spectrum of voices are heard.

Regulation of Lobbying Activities

ESSAE agrees that New York State, through the Commission on Ethics and Lobbying in Government (COELIG), has a compelling interest in the regulation of lobbying activities to help protect the public's trust in government and to illuminate the processes that influence public policy making. Notwithstanding the compelling need to mitigate and prosecute unethical and illegal practices, COELIG and partners in government should always be wary of laws, rules, and regulations that may have the potential to create a chilling effect on public participation in civil discourse.

Unlike individuals whose sole professional focus and basis of compensation is the influence of government actions, association leadership is voluntary and their roles transient. While advocacy is a core function for most associations, it is one of many mission-driven services provided on behalf of members. Associations do not choose to engage in lobbying activities because it generates revenue. Associations and their members engage in advocacy because it is a necessity and the primary conduit for citizens with collective interests to interface with their elected officials and exercise their rights to free speech.

When drafting and implementing new laws and regulations governing lobbying, it is critical for the State and COELIG to recognize the distinction between professional lobbyists and volunteers, and to shape standards accordingly. New York should strive to be a leader in encouraging participation at the voting booth and in civic life—not creating arbitrary obstacles.

COELIG and its partners in government should focus on working collaboratively with all stakeholders to improve education, training, and compliance with the myriad and complex framework of laws, rules and regulations governing lobbying.

Training and Registration of Volunteers

Associations are tasked with numerous federal and state compliance obligations and invest considerable time and resources to educate their volunteer leaders related to their legal, ethical, and fiduciary responsibilities as board officers and directors. Over the past few years, ESSAE was encouraged by the incremental progress being made to make it easier for volunteers to take the Lobbying Ethics Training Course and become certified.

One of the recommendations offered by ESSAE included a train-the-trainer program, whereby trained and certified professional association staff would be authorized to provide the Lobbying Ethics Training Course to members of their respective boards. Further, associations would be responsible for providing proof that the board member received the training and for maintaining the appropriate records for the duration of the certification (three years). Allowing associations to provide the training and manage internal compliance would eliminate the need for volunteers to create their own profile on the Statewide Learning Management System (SLMS) and reduce the amount of duplicate and/or unused login credentials, and most likely alleviate many of the complaints and time spent by the Commission in troubleshooting problems.

The process of signing-up and logging on to the SLMS is a common complaint among association volunteers and it is onerous for associations to manage the process when they do not have access to these individual login credentials. The exclusive reliance on independent training and verification deviates from how organizations provide sexual harassment, bias, orientation, and other types of training to employees and board members. Requiring the submission of credentials on an individual basis can be especially unwieldy for large boards.

As a matter of simplicity, ESSAE recommends providing authority to associations and other organizations registered to lobby, the ability to manage the process of training, certifying, and registering its members throughout their tenure on the board. Providing associations with control over the process would establish clear lines of accountability and help associations track and manage the status of their volunteers.

Conclusion

We would like to thank COELIG for holding this hearing and for the opportunity to present our thoughts and recommendations on current and future regulations governing lobbying activities. As always, we would be happy to engage in follow-up conversations on these issues and identify areas of collaboration and reform.

Testimony of Evan A. Davis

Before the New York State Commission on Ethics and Lobbying in Government

March 29, 2023

Thank you for this opportunity to offer my advice to the Commission.

I have a long history of involvement with public sector ethics.

In the 70's I was a member of the Nixon Impeachment Inquiry Staff of the U.S. House Judiciary Committee and led the Watergate and Coverup Task Force. There was a significant ethical dimension to the Watergate coverup, and the Article of Impeachment based on abuse of power received one more vote than did the Article based on the crime of obstruction of justice. It is often the case that crimes of official corruption will be accompanied by an ethics violation.

In the early 80's I served on the New York City Conflict of Interest Board. In 1987, while serving as counsel to Governor Mario Cuomo, I led the negotiation to create and empower the first of what have turned out to be four ethics commissions established under state law. As manager of the Committee to Reform the State Constitution I am a member of the group of civic organizations that worked to replace your predecessor, JCOPE, with a truly independent commission. I am also a co-editor with Jennifer Rogers of the 2022 edition of the American Bar Association book Ethical Standards in the Public Sector and the author of the opening chapter on the Nature and Purpose of Ethical Regulation.

From this long perspective I venture my views about the two chief reasons why New York State's prior efforts to enforce high ethical standards have failed. The first of these reasons is lack of independence. We have and continue to make appointment to the commission a matter of political appointment by the high level officials whom history has shown exercise the kind of official power that is a breeding ground for misconduct.

The second is the failure of your predecessor ethics commissions to grasp that to succeed they had to become the chief driving force for adherence to high ethical standards in New York State Government. Other state officials or agencies cannot be relied on to be that driving force for the simple reason that they are too often part of the problem.

Countermeasures against these two failings are fairly obvious.

My preference would be that that Commissioners, or at least a majority, were appointed by persons the Commission does not regulate. Vetting by the law school deans does not remove the taint that the motivation of the appointing authority is just as suspect from an appearance perspective as would be that of a utility company appointing members of the Public Service Commission.

In the circumstance that my wish is unlikely to be granted in the near future, the next best countermeasure is for the Commission to bend over backwards to demonstrate its independence. Ethical rules are designed to avoid even the appearance of impropriety so as to secure public confidence in government. The Commission must therefore maintain not just the fact of independence but the appearance of independence.

Doing this requires that the Commissioners adopt a procedure for communications with appointing authorities that would bind all members or staff of the Commission and of the appointing authorities. The procedure would bar all one-on one communicating about the Commission's work with their appointing authority or anyone acting on their behalf. Under the proposed procedure all communications with an appointing authority would have to be directed to the entire Commission.

This procedure would fill gaps in the confidentiality requirements of the statute which cover disclosure by Commissioners and staff about matters under adjudication but do not cover communication to the Commission or its staff about such matters or communications in either direction about programmatic or regulatory issues. A complete bar is needed so that no Commissioner will even appear to be an appendage of their appointing authority.

The answer to the second failing is of course that the Commission actually become a driving force for high ethical standards in New York State Government.

To some extent the terms of your new statute will help you do that. For example, the Commission is now required to review filings of elected officials annually and all other randomly and as part of that review "inquire into any disclosed conflict to recommend how best to address such conflict . . ." This means that whenever a filing discloses interests that appear to be conflicting or appear to compromise independent judgement in the public interest the staff of the Commission must contact the elected official, inquire into the details and make a recommendation how best to manage the conflict. Importantly the Commission and not the Legislative Ethics Commission must do this for Members of the Legislature

Another new provision requires that the Commission establish and advice and guidance unit run by a Deputy Director of Advice and Guidance and to have the staff of that unit give advice to state officers and employees that is confidential to the same extent as is an attorney – client communication under the New York Rules of Professional Conduct. This means that every covered person has effectively their own ethics lawyer from whom they can receive confidential advice.

The Commission, however must do more on its own initiative. In my view Commissioners should participate personally in ethics training by making on site visits to underscore the importance of ethical compliance to effective state government. During these visits Commissioners could correct common misperceptions such as failure to understand the appearance standard, i.e. something that creates the appearance of a conflict is not a potential conflict but an actual conflict; something that creates the appearance that desired official action has been purchased with a gift or business transaction is prohibited even though the recipient is

confident their independent judgment has not been compromised; state officials who ask state employees to volunteer their services for that official's personal benefit have engaged in ethical misconduct whenever it would appear to a reasonable person that such services were not in all cases truly volunteered.

Finally the Commissioners should address the reporting of misconduct. The Commission has a tip line to report misconduct, 1-800-87-ETHICS. The Commission has to make clear that it actually wants people to use it and will protect them if they do so in good faith. On site visits Commissioners could help to do this.

You have a big job ahead of you. I wish you all Godspeed.

ethics.sm.PublicHearing

From: Linda Lemiesz [redacted]
Sent: Friday, March 24, 2023 10:15 AM
To: ethics.sm.PublicHearing
Subject: March 29 hearing

Follow Up Flag: Follow up
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Categories: Written Comment

Dear Mr. Davie:

In response to your request for suggestions as to how to make the administration of COELIG more effective, I would point out that letting the presidents of CUNY colleges appoint the Ethics Officers for the college completely undermines the purpose of having such an officer. Even if the college president is not corrupt, he or she has a vested interest in pretending there are no ethical problems on campus. I would suggest appointing someone who is outside of the institution. Perhaps a local law school or bar association could take this on.

Sincerely,

Linda M. Lemiesz

NYPIRG NEW YORK PUBLIC INTEREST RESEARCH GROUP

TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT
REGARDING
NEW YORK STATE'S SYSTEM OF ETHICS OVERSIGHT AND ENFORCEMENT
March 29, 2023
New York, N.Y.

Good afternoon. My name is Blair Horner and I am Executive Director of the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, not-for-profit, research and advocacy organization. Consumer protection, environmental preservation, health care, higher education, mass transit, voting rights and governmental reforms are our principal areas of concern. We appreciate the opportunity to testify on the need for reforming and strengthening oversight of New York State's ethics laws.

As you may know, NYPIRG did not support the legislation that created the Commission on Ethics and Lobbying in Government ("CELIG" or the "Commission"). At that time, we believed that the legislation more or less followed a well-trod path that would ultimately lead to the failure of it as an institution. Instead of relying on independence as the key tenet of its commission structure, it relied on direct appointments by those whose ethics are subject to its jurisdiction, but with a twist. The twist was the insertion of the state's law school deans to act as a filter between those nominated by the state's top elected officials and the final appointment.

But the insertion of the law school deans carried with it an inherent risk – all deans are involved in institutions that lobby state government and lobbying is overseen by the Commission.

Our critique is not a judgment on the *individuals* who are involved, both the members of the Commission as well as the law school deans. However, it is our experience that effective ethics enforcement cannot rely simply on the honest intentions of individuals appointed to fatally flawed institutions. Instead, we believe that these institutions must be established based on an independent system of commission appointments. (Our criticism applies to the Legislative Ethics Commission and the appointment of the Election Law Chief Enforcement Counsel as well.)

From the public point of view, ethics watchdogs must be independent of all public officials subject to their jurisdiction, or else its actions will always be suspect, undermining the very purpose of the ethics law to promote the reality and perception of integrity in government. The touchstones of independence may be found in commission members of high integrity, who hold no other government positions, are parties to no government contracts, engage in no lobbying of the government, and do not appear before the government in a representative capacity; similarly, their close relationships are free of even the appearance of conflict of interest.

Thus, we recommend that the state law be changed by amending the state Constitution to establish a code of ethics enforced by an independent commission. One model is New York State's Commission on Judicial Conduct. The Commission is established in the state Constitution, which helps limit political pressures on decision making. Under this model, most of the appointments to this new Ethics

Commission would be made by the courts, thus granting it sufficient independence. It is essential that the law protect the budget of an ethics watchdog, so we recommend consideration of funding being perhaps a percentage of the net total expense budget of the state or as a fixed amount with an inflation adjustment.

As you know, the selection process for an ethics entity is critical. Last year, NYPIRG collaborated with a wide range of interested organizations to develop an outline has to how best to ensure that those selected are as independent of the political system as possible. Those recommendations were rejected.

We recognize that this hearing today is to offer members of the public the opportunity to make recommendations that would help the *current* Commission to do its work. What follows are our recommendations based on the relevant sections of law.

Executive Law
As mentioned earlier, we recommend that the current law be overhauled to ensure structural independence. In addition, there must be a clear prohibition on any elected official being appointed to the Commission. Lastly, we recommend that there be a clear prohibition on outside income for statewide elected officials, no "book deals."

Public Officers Law
One such area in need of improvement is the ethics filing itself. Not only are the forms far too often unreadable – either the individual's handwriting is hard to decipher or the scan quality itself is poor – but even when clear, the location of the disclosure is hard to find. Unless a member of the public is willing to find and navigate CELIG's website – as well as hope that the form is readable – the value of the state's disclosure requirements is minimized. In addition, we recommend that candidates' ethics filings (not just incumbents') be made publicly available on the Commission's website.

Legislative Law
Expand the definition of lobbying: New York's lobbying law currently does not require public disclosure of efforts to influence the nomination or confirmation process for positions requiring Senate approval. This loophole allows lobbying to go unreported, and thus allows efforts to influence the appointment of important state positions occur out of the public's view.

This legislation addresses the lack of transparency around this type of lobbying, which has recently been highlighted by the efforts to influence the nomination of a new Chief Justice of the New York State Court of Appeals. Albany's *Times Union* revealed that tens of thousands of dollars were spent to influence this most recent appointment.[1] However, due to the lack of disclosure of such lobbying, the public would have been completely unaware of this effort, if not for the *Times Union.*

The possibility of lobbying to influence nominations for public offices does not apply solely to the Court. The current loophole, for example, would hypothetically allow utility companies to lobby for nominees to the Public Service Commission and be able to do so outside of public view.

Lobbying on efforts to influence nominations should be publicly reported. State agency heads set the regulatory agenda for government agencies and the Court interprets state law. Influencing which individuals are appointed is a clear example of lobbying to impact the policies of New York State. Many

[1] *Lobbying on LaSalle Nomination Shows Apparent Gap in Reporting Requirements, Times Union, 1/30/23*
https://www.timesunion.com/state/article/lasalle-nomination-shows-apparent-gap-lobbying-law-17747192.php

special interests are keenly interested in the outcomes of these nominations and will expend considerable resources to influence these decisions. As such, those activities should *at least* be publicly disclosed.

It is crucial for the public accountability of New York's government that efforts to advance or oppose a nomination be regularly and publicly disclosed. NYPIRG urges your support for expanding the definition as outlined above.

Raise the reporting threshold: The minimum reporting requirement has always existed in New York State law and has been periodically increased due to inflation. In 1977, the reporting requirement kicked in at $1,000. Since that time the reporting minimum has been increased, but other changes to the law have been enacted as well. For example, in the early years the law covered efforts to "influence legislators, the Governor, and State agencies on certain rules and regulations and the outcome of any rate making proceeding by a state agency."[2]

Current law has been expanded to include "the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;" and "the outcome of any rate making proceeding by a state agency; any determination: (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or (B) by an officer or employee of the unified court system, or by a person or entity working in cooperation with an officer or employee of the unified court system related to a governmental procurement; (vi) the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration; (vii) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof; (viii) the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a municipality; (ix) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation; or (x) the outcome of any rate making proceeding by any municipality or subdivision thereof."[3]

In the early years, the reporting of lobbying was confined to quarterly reports, with, as mentioned earlier, less detailed information being required to be disclosed.[4] Under current law, lobbyists must report every two months and report far more advocacy and in greater detail than in years past.[5]

Also in the early years, while enforcement existed, it was episodic and mostly triggered by failures to report or media coverage. Current law now subjects lobbyists to a random auditing process, significant penalties, and a public reporting system that is accessible and searchable on the Internet. Those penalties include a bar on lobbying.[6]

This more sophisticated enforcement structure, coupled with a more expansive definition of lobbying and reporting requirements, has an impact of smaller entities seeking to impact policymaking. As a result, nonprofits today spend more time and resources producing lobby reports. Commenting on the current system, the organization "Nonprofit New York" said: "This effectively takes the voices of organizations

[2] New York Temporary State Commission on the Regulation of Lobbying, "Annual Report 1979," p. 1.
[3] New York State Legislative Law, section 1-c.
[4] New York Temporary State Commission on the Regulation of Lobbying, "Annual Report 1979," p. 1.
[5] New York State Legislative Law, section 1-h.
[6] New York State Legislative Law, section 1-o.

often closest to communities out of the legislative process in New York."[7] *Thus, New York's system can have a chilling effect on these entities' constitutional right to petition the government.*

NYPIRG urges you to consider legislation that *narrowly focuses* on the impacts on the not-for-profit community. An even more targeted approach would focus on charities[8] that are already heavily regulated by the Internal Revenue Service and the state Attorney General's office to ensure that adequate oversight is continued. Given the complexity of New York's current law and the impacts it has having on smaller nonprofits, NYPIRG recommends your support of this legislation.

Campaign activities: CELIG shares jurisdiction with the New York City Office of the City Clerk over individuals and entities that lobby New York City officials and agencies. Although there are many similarities, New York City imposes some disclosure obligations that are not required under State law. Specifically, New York City requires that its lobbyists disclose their participation in political fundraising and consulting activities. NYPIRG recommends that lobbyists disclose their campaign activities and recommends the adoption of a requirement consistent with the New York City law.[9]

Additional lobbying reporting: Clients and lobbyists should be required to report if they lobbied in support or in opposition to a matter. This would provide a better idea to the public of how lobbyists and lobbying resources were being used to promote or oppose legislation or other government decisions covered by the law.

Additional recommendations to improve compliance.

CELIG and its forerunner agency have instituted a number of changes over the years that have made compliance more time consuming and challenging. These would be more than worthwhile tradeoffs, but there do not appear to be benefits to the public in terms of enhanced transparency or boosts to public integrity in government as a result of these changes.

These problems pertain to the lobby activities reporting through the Lobby Application ("LA") reporting system; the lobbyist and CAO training and certification requirements. CELIG should revamp and upgrade its system and streamline certain aspects to reduce compliance time and free up staff from the time spent on addressing user problems – all without any loss in the quantity or quality of information provided or the oversight of the regulated community.

LA Reporting System

The LA reporting system is cumbersome and slow to use. CELIG could make it more user friendly in the following ways.

[7] Nonprofit New York, "A Place at the Table Policy Brief: New York State's Lobbying Act," May 9, 2022.
[8] IRS 501 (c)(3)
[9] New York City Admin. Code Title 3, §3-216.1(a). Fundraising activities include the solicitation or collection of contributions for candidates for mayor, public advocate, comptroller, borough president, or member of the city council. The solicitation and collection of contributions for any public servant who is a candidate for any elective office are also covered fundraising activities.

Problem:
Reporters must input lobby targets ("Parties") one at a time to report individualized Direct, Grassroots or Both contacts. This is time consumer, the platform is sometimes slow to load potential names and prone to freezing.

Solution 1:
Create an autopopulate feature that would allow all state legislators and their staff or all NYC Councilmembers and their staff, for example, to load.

Solution 2:
Remove legislators who have been out of office for years and could not possibly be targeted "Parties" of lobbying for the reporting period. These legacy names slow the data entry process.[10]

Problem:
Legislators and public officials are listed alphabetically by first name in the "Parties" window of the lobby reporting section of the LA reporting system. This makes inputting the names more time consuming. The Assembly, Senate and NYC Council websites, for example, list these public officials alphabetically by last name. Typically public officials are identified and referred to by their title followed by their last name.

Solution:
List public officials by last name or at least have that option for displaying the Parties who are the target of lobbying activities.

Problem:
The LA system is prone to problems with logging on to the system. The LA system also will "time out" and not autosave input data, thereby meaning that you can lose the entries last put into the system.

Solution:
Upgrade the platform to make it more stable and reliable.

Problem:
The lobby training and certification process is unduly complicated and burdensome, requiring that Chief Administrative Officers and lobbyists enter through the NY Government ID portal to do the training and then certify through visiting a dashboard that is glitch prone. The lobby training itself is general, not tailored to the particular needs of the employer/firm/client and depends on self-reporting by the individual, subject to the online attestation. The use of the NY Government ID portal and the certification process are cumbersome and prone to problems.

Solution:
Lobbyist employers and lobby firms should train their own staff and certify that all their staff have gone through an ethics training covering the topics in the current CELIG presentation. Employers, lobby firms and clients all have an incentive to ensure that their representatives are trained. It is efficient to train staff as a group or in groups. This paradigm is what's used for the mandatory sexual harassment training required under New York State law.[11] This would eliminate having to go through the NY Government ID

[10] While some legacy names may appear for those amending prior reports, some names seem to be far out of date. Moreover, those amending much earlier reports can just type in the names of Parties no longer in their government position.
[11] *See* New York State training and reference materials at https://www.ny.gov/combating-sexual-harassment-workplace/employers,

portal and the separate certification step and allow lobbyists to fashion an ethics curriculum that covers the bases but is tailored to their needs. Lobbyists and clients should be required to keep records of the trainings for three years.

Problem:
The lobbyist ethics training certification is for three years; the client and lobbyist registration is on a two-year (odd-even year) cycle basis. This means that lobbyists must recertify their ethics training mid registration cycle.

Solution:
If ethics training must be recertified on an individual basis (instead of by employer/firm/client), then make it every four years on the same cycle as the two-year registration process.

Problem:
The online training materials are cursory and do not allow for questions and answers at the time of review.

Solution:
Do live trainings with question-and-answer sessions. Do them in person and well as online and allow participants to do so anonymously so attendees will ask questions without concerns for opening themselves to scrutiny. (This can supplement any in-house trainings with self-certification as recommended above.)

Thank you for the opportunity to testify.

Testimony to New York State Commission on Ethics and Lobbying in Government (COELIG)

Re: Policy and Legislative Changes Needed to Strengthen NYS Ethics Enforcement

March 29, 2023

Good morning, members and staff of the NYS Commission on Ethics and Lobbying in Government (the "Commission" or COELIG). My name is Rachael Fauss, and I am the Senior Policy Advisor for Reinvent Albany. We advocate for a more transparent and accountable New York government.

First, thank you for holding this hearing, as required by law. We appreciate you making efforts to reach out to the regulated community, and allowing remote testimony. To ensure that future annual hearings are both productive to you and more accessible to the public, we ask you to choose a different day next year when more attendees could be available. March 29th is two days before the state budget is due, and a busy time for those who work with or for the state government.

Reinvent Albany, with our watchdog colleagues, opposed the creation of COELIG in last year's budget, because we felt that it fell far short of a truly independent ethics commission: it is appointed by the very people it is supposed to oversee. We continue to believe that the Legislative Ethics Commission should be abolished, and support creation of a unified, independent state ethics commission.

We recognize the reality that COELIG is here, however, and that those who have agreed to serve as Commissioners have the potential to go above and beyond what is required by the law to increase the independence of the Commission. Below is a summary of our recommendations for the Commission.

Recommendations

1. **Immediate policy changes the Commission can make to increase its independence and build greater public trust**, including:
    a. publishing open data for lobbying and financial disclosure reports already on its website, fully complying with Executive Order 95 of 2013;
    b. prohibiting ex parte communications;

c. requiring Commissioner approval of statewide officials' requests for opinions on matters like outside income; and
d. requiring trauma-informed training for all Commissioners and additional staff.

2. **Changing the law to make state ethics and lobbying laws stronger and more effective**, including:
    a. requiring lobbyists to report whether they support or oppose legislation or other state actions;
    b. requiring reporting of lobbying on nominations subject to Senate confirmation;
    c. requiring lobbyists to report campaign contributions and activity;
    d. requiring campaign finance filings to include employers of contributors;
    e. requiring electronic filing of financial disclosure statements;
    f. expanding prohibitions on who can serve as commissioners to exclude major campaign contributors and state vendors;
    g. expanding the NYS Code of Ethics to require a duty to report and explicitly prohibit harassment and discrimination; and
    h. requiring an independent budget for COELIG.

3. **The need for an independent review to bolster the Commission's request for more budgetary resources** for staffing and Information Technology (IT)

These are only some of the proposals provided in this testimony. For a complete listing, see our full written testimony below. Thank you again for the opportunity to testify today. I am available to answer any questions, or am reachable after the hearing at rachael@reinventalbany.org.

Immediate Policy Changes to be Made By Commissioners

We wrote to you last fall with a number of actionable items that I will highlight again today. We ask that the Commission:

1. **Increase transparency and access to public information through use of open data** for financial disclosure reports, improving the lobbying database, collaborating with the Attorney General's New York Open Government portal, and developing clear guidelines regarding disclosing the status of investigations.
    ➢ The Commission should fully comply with Executive Order 95 of 2013, the state's Open Data Executive Order, particularly now that it is clearly subject to the Freedom of Information Law. There is no reason that data

from reports that are already on the Commission's website are not also posted in open data formats.

- ➢ We recommend that the Commission take a look at recommendations from the Campaign Legal Center in its report, Top 10 Transparency Upgrades, which showcases best practices of other state ethics commissions regarding transparency and use of public data.

2. **Clearly firewall Commissioners from the elected officials (or their representatives) who appointed them (prohibit ex parte communications).** This can be done by the Commissioners adopting a formal resolution, and will help to increase its independence.

3. **Require Commission approval of all advisory opinion requests regarding agency heads and statewide elected officials.** Currently, this is delegated to the Executive Director. From Commission deliberations, it appears that, in practice, Commissioners are being made aware of such requests.
   - ➢ We urge the Commission to formally adopt a resolution limiting delegation. Opinions regarding agency heads and statewide officials should always be approved by the Commissioners. Adopting a formal policy is in both the best interest of Commissioners as well as the public to ensure that senior government officials – both elected and appointed – are held to the highest standards.

4. **Require trauma-informed harassment training for all Commissioners and senior staff.** The new law requires only the Deputy Director for Investigations and Enforcement to receive at least four hours in training in "trauma-informed approaches to investigations and enforcement." We urge the Commission to require all Commissioners, all senior staff and any other staff communicating with victims and/or involved in investigations and enforcement cases to have this training.

Recommended Changes to New York's Lobbying, Ethics and Election Laws

We strongly urge the Commission to recommend changes to the state's lobbying and ethics laws to both improve transparency and allow for better enforcement. Improvements to the laws will make your jobs easier, and provide help build greater public confidence in state government.

Article 1-a of the Legislative Law – Regarding Lobbying

1. Add more specificity to lobbying reporting including whether lobbying is in support/opposition to item, section of budget bill targeted, etc.

2. S4152 (Gianaris) / A5786 (McDonald) - Require reporting of lobbying on nominations subject to Senate confirmation
3. Require lobbyists to report political contributions and fundraising activity (NYC model - see also S2130 (Krueger) / A1391 (Aubry))
4. Clarify that political parties are covered within the definition of clients
5. Permit filers who spend between $5-10K on lobbying to report only semi-annually, rather than bimonthly (authorized in NYC, but not currently in place under NYC Clerk)

Section 14-102 of the Election Law – Reporting of Campaign Contributors

We recognize that changes to the Election Law may appear to be outside of the scope of the Commission, but note that additional campaign reporting complements additional data we have requested about the political activities of lobbyists.

1. S2362 (Rivera) - Requires filers to report the employer of campaign contributors

Section 73-A of the Public Officers Law – Financial Disclosure Statements

Financial disclosure statements allow the public and ethics oversight agencies to see potential conflicts of interest arising from officials' outside business dealings or those of their family members. However, financial disclosures are only so useful as they are complete, easy to analyze through open, machine-readable formats, and inclusive of enough public officials.

We support the following bills that would improve transparency of financial disclosure reporting (links below are provided to our memos of support):

1. A1560 (McDonald) / S3544 (Breslin) - Requires electronic filing of disclosure statements
2. A1609 (McDonald) / S2833 (Breslin) - Requires legislators and candidates for legislature to post financial disclosures statements on campaign websites
3. A2507 (Paulin) / S3574 (Skoufis) - Requires disclosure statements from candidates for statewide office or the legislature be posted on the ethics commission's website
4. A2873 (Kelles) / S5621 (May) - Adds a section to financial disclosure statements for crypto holdings (joint memo with Earthjustice and NYPIRG)
5. S3507 (Skoufis) - Requires members of REDCs to file disclosure statements
6. S1883 (Skoufis) - Requires members of REDCs to file disclosure statements, and subjects them to the Freedom of Information Law (FOIL) and Open Meetings Law

7. S1571 (Gianaris) - Requires online publishing of NYS judges' financial disclosure statements

Section 74 of the Public Officers Law – The NYS Code of Ethics

1. We support adding penalties for violations of additional provisions in the ethics code (modified JCOPE proposal as recommended by watchdog groups)
2. Additionally, we support legislation introduced in 2022 by former Senator Alessandra Biaggi to amend the NYS Code of Ethics (no current sponsors):
    a. S8420A (Biaggi) – Amends state code of ethics to include a duty to report misconduct
    b. S8421 (Biaggi) – Amends state code of ethics to explicitly prohibit harassment and discrimination

Section 94 of the Executive Law – Operations and Enforcement of the Ethics Commission

1. The disqualifications to be a Commissioner should be expanded to include: (1) major campaign contributors and (2) those with major financial interests in state business (contractors and/or vendors); all disqualifications should also apply to spouses/domestic partners and unemancipated children.
2. We support the proposal in the Governor's Executive Budget to stagger the terms of Commissioners. (Part Z, Article VII PPGG)
3. We support a former JCOPE proposal to add accessorial liability for violations of the code of ethics, lobbying laws, or financial disclosure law.
4. Lastly, we support independent budgeting for all enforcement bodies. There are a number of models, including as used in New York City for the Independent Budget Office, which pegs its budget to the Office of Management and Budget. We encourage the Commission to draft a proposal for its own budget, as suggested by Commissioner Edwards in past meetings.

Commission Budget

We have asked that the Commission be proactive regarding investigations, outreach to state employees, and building a culture of state employees actively reporting misconduct. We recognize that the success of these efforts, however, are dependent on having enough resources and funding. Beyond the Commission simply asking for more money, and watchdogs supporting this request, an independent look at the staffing and funding needs of the Commission could help spur further investment.

Given the Commission's broad mission and expanded training requirements, we asked the Legislature to consider an independent evaluation of the technological, staffing and

other funding needs of COELIG. This evaluation could be conducted by a management consultant. The NYS Department of Motor Vehicles did something similar when they had a management and information technology (IT) consultant redesign their workflow and internal and public-facing IT. The Governor and Legislature are requiring COELIG to conduct ten times as many ethics training sessions as it has historically. This huge increase will require new workflows and improved IT.

Evaluators should examine best practices in other large states and cities and, in consultation with COELIG staff, recommend what IT systems are needed to improve lobbying and financial disclosure reporting, both in terms of filings and the public-facing website of the disclosure databases. This evaluation and IT recommendation will then provide the Legislature and Governor with a more informed understanding of what level of funding COELIG should get in the FY 2024-2025 state budget, and what additional technological support the agency will need, either from NYS ITS or an outside vendor.