



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the New York Ethics Review Commission
October 14, 2015

Good day Chair Volker and Commissioners. My name is Dick Dadey, and I am Executive Director at Citizens Union of the City of New York, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform.

Thank you for holding this hearing to gather feedback from the public about ethics oversight in New York State government. Citizens Union also appreciates that we had the opportunity to meet with the Commission regarding the activities and performance of the Joint Commission on Public Ethics (“JCOPE”) and the Legislative Ethics Commission (“LEC”). We are pleased that this commission is webcasting this hearing, and hope that this commission will continue to model best practices for transparency and accountability.

Citizens Union has been continually engaged in improving ethics oversight in New York State, and has offered legislative and policy solutions over the years to ensure independent and effective enforcement of our state’s evolving ethics laws. Specifically regarding JCOPE and the LEC, we have closely followed their work since the enactment of the Public Integrity Reform Act in 2011, as the act represented a promising change to create a more unified oversight system between the legislative and executive branches.

Understanding that your focus is on the commissions’ operations and how they can be improved under existing law, our recommendations today will first emphasize changes that could be accomplished outside of the legislative process. We will also touch upon legislative reforms that are essential to ensuring that ethics oversight in New York State holds officials and lobbyists accountable.

I. Operations and Management of Ethics Oversight

A. Budget and Resources

Goal: to provide JCOPE with sufficient resources to fulfill its mission.

1. Provide JCOPE with independent budgeting, by linking its appropriations to the appropriations of another state agency or public entity. This would ensure that legislators, who are regulated by JCOPE, cannot target JCOPE for budget cuts as a means of affecting the commission’s performance of its duties.
2. Invest further in JCOPE’s information technology, most notably its website and databases, to ensure that data collection allows for meaningful analysis and oversight of lobbyists and officials (details below). We understand that JCOPE is currently updating its databases, but this effort must be iterative, adjusting to changing reporting schemes.

3. Bolster staffing and personnel, by:
 - a. Opening the search for JCOPE's executive director and other staff with public job listings.
 - b. Empowering JCOPE's executive director to hire staff without micromanagement by commissioners, while retaining the ability of the commissioners to set personnel policies.

B. Accountability and Transparency

Goal: to allow the public to discern how JCOPE and the LEC make decisions, and assess whether such decisions are made with political independence.

1. Encourage JCOPE and the LEC to adhere to the Freedom of Information Law and Open Meetings Law, to avoid short public sessions and long executive sessions.
2. Publish JCOPE commissioners' vote tallies:
 - a. For decisions to issue a substantial basis report, JCOPE should publish vote tallies and the name of a subject within seven days, rather than 45 days as currently required.
 - b. For instances when a minority of three blocks an investigation or report, JCOPE should publish vote tallies.
3. Establish protections to ensure that JCOPE members operate with independence, such as an internal, enforceable firewall between JCOPE members and entities who appoint them.

C. Oversight of Lobbying Activities

Goal: to ensure that lobbyists are given the tools to best follow laws governing their activities.

1. Standardize reporting requirements and webforms through which lobbyists enter financial disclosures and what predetermined subjects they lobbied on, to ensure that data can be validated, compared, and analyzed. This would allow the public to follow the activities of individual lobbyists and officials, and also to track how lobbying and campaigning evolves over time. Suggestions to updating online forms include:
 - a. Providing clearer directions.
 - b. Establishing selectable options to ensure that data is validated and standardized, e.g. dropdown menus.
 - c. Requiring greater specificity regarding:
 - i. who is being lobbied within various offices, by pre-entering names of officials and staffers.
 - ii. what positions are being lobbied on legislation.
 - iii. what money goes to public education versus advocacy.
2. Improve guidance to lobbyists regarding spending, by clarifying what is public education, advertising, or advocacy – including grassroots lobbying.

D. Oversight of State Officials, Officers, and Employees

Goal: to ensure that officials are given the tools to best follow laws governing their activities.

1. Improve guidance to elected officials regarding ethics requirements, by clarifying requirements set forth in ethics legislation and regulations requirements, which may be interpreted differently by JCOPE and LEC, and thus confuse attempts to observe the law. Such guidance is especially needed on the subjects of:
 - a. Public trust violations and duty to report misconduct.
 - b. Avoiding the appearance or actuality of officials' connections to certain campaign donors.
2. Alter the method and utility of financial disclosure statements for elected officials, to:
 - a. Require public officials to file all financial disclosure statements electronically.
 - b. Reevaluate the financial disclosure statement form to make sure it is an effective tool for holding officials accountable, and that it focuses enforcement on filers with a greater risk of conflicts of interest: those who are mandated to file solely on account of their income, and not only because they hold policy-making positions.

E. JCOPE Complaint Response

Goal: to urge proactive and timely investigation and findings regarding complaints.

1. Encourage the practice of investigating complaints and other matters when concerns are raised early – and not merely when a story is covered by the press.
2. Reduce JCOPE's response times to complaints and to guide agencies and actors which it regulates.

II. Critical Legislative and Regulatory Reforms

Noting that this is outside the scope and directive of this commission, Citizens Union submits the following proposals for legislative and regulatory reforms. The Ethics Review Commission should seize the opportunity to go beyond the expressed mandate, to serve the public interest by independently and proactively suggesting changes that will reinforce the goals and recommendations outlined above, creating even more meaningful oversight of public ethics.

A. Composition and Structure

Goal: to maximize commissions' political independence and effectiveness, and ensure that they are truly joint and balanced.

1. Composition and Appointments
 - a. Change the number of JCOPE commissioners from the unwieldy 14 to create a streamlined commission of 7 or 9 members, with an odd number to account for tie votes.
 - b. Provide the New York State attorney general and comptroller with appointments to JCOPE.

- c. Bar elected officials currently in office from serving as commissioners.
 - d. Establishment nomination and appointment process similar to the Court of Appeals, with a pool of qualified nominees.
2. Voting Structure
 - a. Eliminate the rule that three commissioners of the same party and branch as a subject of investigation may block either an investigation or issuing findings.

B. Jurisdiction and Scope

Goal: to ensure meaningful enforcement and reporting.

1. Grant JCOPE complete jurisdiction to hold enforcement hearings and to make findings of fact and conclusions of law.
2. Clarify respective roles of JCOPE and LEC to ensure that they are not working at cross-purposes.
3. Require JCOPE to broaden the scope of its annual report.

For further information about Citizens Union's position on JCOPE and LEC, please see the attached materials: 2015 Position on New York State Ethics Reform, and 2013 Recommendations on JCOPE Voting Procedures and Disclosure.

Citizens Union believes that these changes are crucial to JCOPE's ability to perform its ethics oversight role. New York State needs comprehensive ethics reform to address not only our oversight procedures, but also the structures and laws that allow corruption to proliferate. We urge the New York State legislature to convene for a special session to address ethics reform this fall, and we hope that this commission will join us in this call.

We look forward to your report on November 1st, and hope you will incorporate our recommendations within it. Thank you for the opportunity to testify today, and I will be happy to answer your questions and continue the discussion.