



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 Jersey³ 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.

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.shtm>). 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":
 - o Clients and lobbyists should be required to report if they lobbied in support or in opposition to a matter.
 - o Include among reportable matters lobbying regarding nomination or confirmation of a nominee that requires Senate confirmation.
 - o Require lobbyists to disclose their fundraising or political consulting activities.
- Other proposed legislative changes:
 - o Limit certain campaign contributions from individuals and entities doing business, or seeking to do business, with the state.