



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony before the Senate Ethics Committee

New York State's system of ethics oversight and enforcement

August 25, 2021

Citizens Union appreciates the opportunity to testify before you today regarding New York's ethics system. Unfortunately, that system is broken and needs a complete reinvention. JCOPE, the agency charged with enforcing state laws regarding ethics, has been structurally burdened since its inception a decade ago, and enough questions and concerns about its ability to perform the needed function have surfaced to make clear a major change is necessary. We believe JCOPE should be replaced by a constitutionally established, independent ethics agency. Others are testifying today with extensive specifics as to how JCOPE has not fulfilled the objective of upholding the State's ethics laws and enforcing those laws against wrongdoers, and so we will not restate those here.

The major flaw of the JCOPE framework is the ability of the Governor or a political party in the Legislature to block an investigation. Indeed, if certain appointments are not made, it could be impossible to launch an investigation against a member of a particular political party because not enough commissioners from a party or official would be in place to vote for an investigation. However, there is much more wrong.

Any effective ethics agency must be able to operate independently of those it has been tasked with regulating. Yet JCOPE is widely viewed as lacking independence. We recognize that at least many of the JCOPE staff and commissioners are hard-working and conscientious.

Nevertheless, that cannot overcome the leaks, failures to pursue well-publicized ethical lapses and the perception that the Governor, and to a considerable extent the legislative leaders, have an outsized influence over the agency.

Citizens Union has been working with other concerned groups to develop a constitutional amendment to replace JCOPE with a far more independent agency, and to make other structural and operational improvements. Much of what we would like to accomplish is in the constitutional amendment (S.855/A.1929) sponsored by Senator Krueger and Assembly Member Carroll, and we applaud them for their leadership on this issue. We recognize the key to a truly independent agency is in how the commissioners and staff are selected. To that aim, we and others are working to develop a proposal to better enhance that independence. Citizens Union understands the need for the solution to be practical, and that public credibility is essential to the agency's success. Government employees and the public must feel they can approach the agency with confidence that their concerns will be effectively and fairly addressed.

A strong ethics proposal must strive to establish a new ethics commission seen as accountable, whose members are both capable and independent. This involves creating an appointment procedure to achieve those aims. The commission should be much smaller than the current 14-member JCOPE. Means of creating independence include a role for the judicial branch. This branch would provide a different perspective to that of the executive and legislative branches. In addition, judicial conduct is overseen by the state Commission on Judicial Conduct and would not be included under the new ethics agency.

Consideration should be given to joint appointments of individual commissioners, to avoid having a commissioner seen as the one representing a particular official's interest. And one commission member can be appointed by the remaining members, to further remove that commissioner from perceived fealty to an individual.

We recognize the complexities in designing an independent framework and are looking to other sources, including commissions in other states, for insights.

Independence also involves insulating the commissioners from the appointing authorities during their term of service. This can be done by assuring they can be terminated only for cause, and not leaving that decision to the officials who appointed them but rather to the commission. In addition, commissioners might be limited to only one perhaps six-year term, so that their reappointment would not be a concern. Commissioners, however selected, should have certain qualifications, such as not holding or recently having held elected or party office, and should have expertise in relevant areas.

While we believe a constitutional amendment is necessary to fix this broken system, there are legislative changes that would be helpful now; for example, to eliminate the blocking provisions and allow for more disclosure of investigations in certain circumstances, balancing the need for confidentiality against the importance of transparency. Such measures are before the Legislature.

Citizens Union welcomes today's hearing for inviting public input as to how to improve the process. We encourage those who testify or otherwise provide input to the Committee, in addition to identifying the failings of JCOPE, to recommend constructive solutions to the problems. In addition, we look forward to additional hearings to further explore how to achieve real ethics reform.

We urge first passage of a constitutional amendment in 2022 and second passage in 2023, so that the amendment can be placed on the ballot in November of that year. We also believe this is an opportune time for the Legislature to review more broadly the State's accountability and oversight structure and process.

We cannot allow the current system to continue. It's not fair to state employees or the public. The Legislature and Governor must make ethics reform a priority and act during the next session to create substantial, meaningful reform.

Citizens Union testimony delivered by Alan Rothstein, Board Member and Co-Chair of the Policy Committee