



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony before the Senate Ethics Committee
New York State's system of ethics oversight and enforcement

250 Broadway
December 9, 2021

Dear Chair Biaggi and members of the Senate Ethics Committee. My Name is Ben Weinberg, and I am the Director of Public Policy at Citizens Union. We thank you for giving Citizens Union the opportunity to present testimony on New York State's system of ethics oversight and enforcement. Citizens Union is 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.

In our previous testimony before this committee (August 2021), we highlighted the major flaws of JCOPE, the agency charged with enforcing state laws regarding ethics, and the need to replace it with a constitutionally established, independent ethics agency. We noted the political dependency of commissioners on the elected officials who appointed them, which allows the governor or a political party in the legislature to block an ethics investigation. These issues are even more critical today, after former Governor Cuomo resigned following an ethics investigation and as more evidence surfaces about the influence the former governor had on JCOPE decisions. We are encouraged to see that Governor Hochul has promised to make ethics reform her priority. We hope the legislature would push to replace JCOPE with a far more independent agency and make other structural and operational improvements to enforcement.

Today we would like to recommend several other measures that could improve the system of ethics oversight in New York. JCOPE is not the only agency tasked with keeping our government clean. Other relevant enforcement agencies include the Attorney General, the Legislative Ethics Commission, the Inspector General, as well as the Board of Elections, including its Chief Enforcement Officer. Our testimony deals with some of those.

1. Empower the Attorney General to independently initiate investigations and prosecute cases involving public corruption and ethics violations

Current state law does not permit the Attorney General to initiate investigations into public corruption or ethics violations without the direction, request, or permission of the governor or state

agency head. Under Exec. Law § 63(8), the AG may, (1) with approval of the governor or (2) by direction of the governor, “inquire into matters concerning the public peace, public safety and public justice.” The administration of laws, including violations of the Penal Law or the Public Officers Law, is within the meaning of “public justice.” In such inquiries, the AG, or an appointed deputy, has the power to subpoena witnesses to compel examination under oath and any records that are relevant to an inquiry. Under Exec. Law § 63(3), the AG may, similar to public justice inquiries, investigate and prosecute indictable offenses of a state department, authority, division, or state agency by request of the governor or the head of any state body. Under Exec. Law § 70, when the governor has “reason to doubt whether in any county the law relating to crimes against the elective franchise is properly enforced,” the AG may be directed to investigate and prosecute violations of the Election Law.

Citizens Union, good government groups, former Attorney Generals, and Attorney General candidates have been stressing for years that those structural flaws prevent the enforcement of the laws that are on the books, and allow for the troubling and seemingly unending ethical and criminal scandals that have rocked Albany for decades.

In fact, Attorney General Tisch’s investigation into former Governor Cuomo, which has exposed disturbing details on harassment, retaliation, and other ethics violations in the executive chamber, would not have been conducted if it wasn’t for a referral made by the former governor. This referral to the AG, made according to Section 63(8), came only after months of media attention and pressure from other public officials. If it weren’t for this unique political situation that “forced” the former governor into making this referral, the public would not have known about the scope of misconduct exposed in the investigation.

This case only stresses the need for the Attorney General to be able to begin investigations on their own accord. Expanding the authority of the Attorney General in this regard would help to create a more ethical environment with greater accountability in Albany.

2. Restore the State Comptroller’s authority to review state contracts before they are executed

Over the last ten years, the New York State Comptroller Office's powers to independently review state contracts have been slowly eroded. Through a series of budget laws and executive orders, critical procurement audits were lost for SUNY, CUNY, centralized contracts of the OGS, including construction contracts, specific programs related to health services, gun prevention, public transportation, and other areas. Some of these powers have been restored, but only under an MOU between the executive chamber and the comptroller’s office, which can be easily pulled out of in the future.

The oversight of the State Comptroller prevents corruption, saves the state millions of dollars, and does not slow down critical procurement. Its powers must be codified in state law to maintain this critical function. This would require amending relevant sections of the Finance Law and the Education Law.

3. Replace the Legislative Ethics Commission with an independent body

The Legislative Ethics Commission (LEC) suffers from the same problem as JCOPE – its leaders are appointed by the people it is meant to oversee. Legislative leaders appoint all nine members of the LEC, and four of them are sitting legislators. It would be difficult to argue that this quasi-agency can issue independent penalties for unethical actions made by legislators and legislative employees when the people who adjudicate such issues are the colleagues, bosses, or opponents of the subjects of investigations. The structural lack of independence discourages lawmakers and staffers from seeking opinions or filing complaints for fear of breaches of confidentiality and retaliation.

Any effective ethics agency must be able to operate independently of those it has been tasked with regulating. Because of legal challenges, an independent state ethics watchdog with the power to address ethical issues in the legislature seems like it can only be established by amending the state constitution. This newly formed body should replace both JCOPE and the LEC. The constitutional amendment (S.855/A.1929) sponsored by Senator Krueger and Assembly Member Carroll accomplishes that, and we applaud them for their leadership on this issue.

Close the legal gaps that increase the chances for ethics violations and prevent oversight

Establishing effective and independent enforcement bodies that are empowered to investigate possible ethics violations is essential. But a robust system of ethics oversight also requires having laws and rules that limit the opportunities of such violations from occurring. Citizens Union recommends implementing the following solutions to strengthen the prevention of misconduct.

4. Improve the public accountability of state spending and reduce nonspecific funding in the budget

A significant portion of funds set out in every annual budget has no real criteria for spending, no indication of who controls funding decisions, and little reporting requirements to tell whether money has been well spent or spent at all. This nonspecific funding invites misuse and corruption, raises serious concerns about the integrity of state spending, and makes it hard for oversight and enforcement bodies to identify and investigate misconduct. Notably, former legislative leaders Dean Skelos and Sheldon Silver were both indicted on corruption charges related to their control over opaque state funds. Joseph Percoco's conviction was also related to his involvement in state spending decisions. An analysis of the 2019 proposed budget by Citizens Union found at least \$11.7 billion in these nonspecific, opaque funds.

To improve the public accountability of state spending, the budget process should be reformed to

- a. publicly post comprehensive information regarding the distribution of nonspecific lump sum funds, including detailed purposes, criteria for spending decisions, and who requested the spending;

- b. require that elected officials who seek to make awards from lump sum appropriations or reappropriations affirm that the contract or grant is for a lawful public purpose, there are no conflicts of interest and the elected official has not and will not receive any financial benefits, and that the elected official is in compliance with all disclosure requirements; and
- c. require comprehensive online disclosure of all grants and contracts awarded under nonspecific lump sum appropriations and reappropriations.

5. Create a Doing Business Database to track entities involved in economic agreements with the state, and limit contributions from people on the database

Regulations incorporated in New York City's system, which set very low contribution limits for those "doing business with the city," as well as establish a Doing Business Database to track entities involved in economic agreements with the city, has proven to be a useful tool for reducing cases of pay-to-play. New York State should establish a similar system for entities doing business with the state. It would not only reduce the possible influence of campaign contributions on procurement decisions, and the real or perceived conflicts of interest, but it would also allow lawmakers and the press to track the thousands of contracts, franchises, and subsidies provided by the state. The new public campaign finance system provides another incentive to incorporate such provisions.

Lobbyists should be part of this database and under similar contribution limits, like in the city's system. Donation bundling by lobbyists and other fundraising intermediates should also be restricted.

Even former Governor Cuomo proposed a first step in that direction, proposing that the campaign finance reform include certain contribution bans individuals or entities that are in the process of bidding for or that have been awarded a contract with a state governmental entity. There are several bills that address different parts of this problem, including S483 (Myrie)/A5839 (Galef) that passed the Senate and is co-sponsored by Chair Biaggi and other members of the Ethics Committee. Other relevant bills include S1671 (Skoufis)/A7081 (Paulin), S940 (Krueger)/A2437 (Aubry), S4135 (Gounardes), and S6932 (Rath).

6. Significantly limit outside compensation earned by state legislators, and eliminate their stipends

The 2018 special compensation commission recommended adopting the congressional model: a cap of 15% of the legislative base salary on income earned from employment outside of legislature and a complete prohibition on outside income from employment where the legislative member has a fiduciary relationship to the employer or client. It also recommended eliminating most of the stipends given to lawmakers today, effectively folding stipends into an increased base salary. Currently, New York pays out 160 special stipends based on legislators' positions and roles, the highest number in the country. However, the compensation commission decision was invalidated by a 2019 New York state Supreme Court decision, which held that the Commission did not have the power to limit legislators' outside income.

Outside income limitations are standard ethics practices, and they help maintain a clean and transparent government and improve the public's trust in public officials. Eliminating stipends reduces the impact of a significant financial benefit, which is given by legislative leaders at an almost complete discretion. Enacting such provisions would also make the job easier for enforcement bodies, which currently must track disclosure of outside income and possible conflicts of interest caused by the lax rules. The legislature should adopt the 2018 recommendations.

7. End the use of campaign funds to pay for the costs of defending against civil and criminal investigations or prosecutions alleging violations of state or federal law

Although it is illegal for candidates to use campaign funds to pay for fines or penalties imposed by JCOPE, they can still use those funds to pay for attorney's fees, litigation costs, or settlement fees. Campaign funds are not raised for the legal defense of an elected official investigated for ethics violations (unless the expenditure is exclusively related to the candidate's campaign). This loophole hurts the public's trust in the system of ethics and discourages participation. Several bills attempt to close that loophole, including S4458 (Krueger)/A8329 (Simon); S682 (Hoylman)/A4174 (Lavine), S741 (Biaggi)/A53 (Quart), and they should be explored by lawmakers.

Citizens Union commends Senator Biaggi for convening today's hearing – as well as the August one – and for inviting public input as to how to improve ethics oversight. It is unfortunate that many oversight and enforcement agencies refused to come before this committee. We look forward to exploring the next steps to achieve real ethics reform in New York.