



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony for the 2022 Joint Legislative Budget Hearing

Public Protection and General Government

January 25, 2022

Citizens Union appreciates the opportunity to submit testimony regarding the Public Protection and General Government Article VII Legislation. We will focus on Part Z, the Independent Ethics Commission Reform Act of 2022. The bill would replace the Joint Commission on Public Ethics (JCOPE) with the Independent Ethics Commission (IEC). The IEC would consist of five members selected by the deans of New York's 15 law schools or their designees. The legislation sets forth the IEC's powers and many procedures and contains a number of other useful provisions, including providing for extensive ethics training of state personnel and mechanisms for the IEC to issue informal and advisory opinions which can be relied upon by affected personnel.

We applaud Governor Hochul for making government ethics a high priority and for recognizing that hopes for a substantial reform of the State's ethics system lie in replacing JCOPE rather than trying to fix it, though improvements need to be made to the legislation, which we discuss below.

JCOPE has been at best a major disappointment. Its voting system, designed to allow any leader to stifle an investigation, as well as its performance on a wide range of matters, has failed New Yorkers concerned that governmental decisions are truly made in the public interest. The widespread lack of confidence in JCOPE renders it unable to continue to serve effectively.

The IEC would be a substantial improvement over JCOPE from the outset, by establishing a more independent commission. Having law school deans collectively appoint five members would serve to insulate the Commission from the office holders the IEC would be regulating. Part Z calls for the commission to be diverse, and this must be stressed in the legislation. Having a smaller commission than the 14-member JCOPE should lead to more focused decision-making. The two-term limit on commissioner service would avoid entrenchment and keep the institution fresh.

Commission Selection Process

The process in Part Z for selecting the commissioners is opaque. Given the importance of the position and of maintaining the integrity of the IEC, **the commission selection process needs to be more open**, so the public has awareness of who is being considered, at least in the final round. The deans should hold a public meeting to discuss the selection process. There should be some public vetting process. At the least, once finalists for the commission are identified, it would be useful to publicly announce those individuals and allow a short public comment period before a final vote is taken, and that vote should be done at a public meeting. This is not dramatically different from when the Governor appoints Court of Appeals Judges. In that case, after the Commission on Judicial Nomination submits nominees to the Governor, those names are made public and the Governor may not make an appointment for 15 days, to allow for a public vetting process.

Independence

Part Z sets forth qualifications for service as commissioners, and excludes persons who have been public employees, elected state officials, party chairmen or lobbyists within the past two years. **In addition to those limitations, commissioners and their close family members should not be big political donors or be doing business with the state.**

Part Z also would allow local government officials to serve on the IEC. We believe that is a mistake. **No government official or employee should serve on the IEC**, to keep the process distant from government employees generally. Similarly, the Executive Director of IEC, who would be appointed by the Commission, could be a current state or local employee under Part

Z. While we understand the view that there could be a talented person in government right for the job, we are concerned that someone appointed to the position may have come directly from a key office subject to oversight and not have the perspective and distance to at least be perceived as independent.

We note the commissioners are barred from contributing to candidates for statewide and state legislative office, but the proposed law would not bar them from contributing to political party committees. Funds from these contributions frequently find their way to candidates from those parties, and in any event **the commissioners and executive directors must be seen as entirely nonpartisan. Therefore, they should be barred from contributing to candidates directly or indirectly, including through political parties.** In addition, the Executive Director should have the same contribution restrictions as the commissioners.

The statute should be amended to **bar ex parte communications between IEC commissioners or staff and any government employee or the employee's representative regarding an ongoing or prospective investigation or other adjudication** of the IEC, except in that person's capacity as witnesses (or if the communication is with the subject of the investigation or that person's representative). JCOPE has been tarnished by members' receiving calls from government officials outraged at certain actions that were leaked by someone associated with JCOPE. While Part Z works to bar such leaks, there needs to be the further step of banning communications triggered by such leaks.

Transparency

While we recognize that an investigative agency needs to be able to keep some confidentiality, more transparency is necessary to allow the public to have confidence of the IEC's process. **Certain transparency provisions lacking in the legislation should not be left for the IEC to decide to implement.**

In matters where the IEC investigates wrongdoing, **once the IEC makes a finding that probable cause exists that a violation took place, any subsequent hearing should be made open to the public.** After a finding of probable cause, the public interest in knowing of the proceeding outweighs the privacy interest if the affected government employee. **Determinations**

following such a hearing should be made public promptly, along with the IEC votes. We note that Part Z provides that terms of settlements reached with affected employees should be made public on the IEC's website, which we believe is a very useful change, along with the requirement that IEC hold an annual hearing to receive public input.

The IEC should be subject to the Freedom of Information Law and the Open Meetings Law, to the extent that does not interfere with the investigative and deliberative processes.

Reporting Misconduct

Section 74 of the Public Officers Law, which establishes ethical duties, should be amended to **require government personnel to report promptly to the IEC information not protected by a privilege about activity the individual knows to violate the state code of ethics or other law within the IEC's jurisdiction.** Someone who makes such a report in good faith should be protected from retaliation.

Constitutional Amendment

We support statutory ethics reform this legislative session. In addition, **we support a constitutional amendment to accomplish broader ethics reform.** Only a constitutional revision would allow an ethics body to oversee fully both the executive and legislative branches. In addition, such an amendment would allow for involvement of the judicial branch in any appointment process, and could provide budget protection for the new agency. A proposed amendment can be passed this year and next, and be on the ballot as soon as November, 2023.

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While we have limited our testimony to Part Z, we want to applaud the Governor for proposing legislation to extend the voter registration period to ten days before a general election (Part N), and to provide for polling places on college campuses (Part O). We also have supported a wide range of reforms to other ethics-related laws and the Lobbying Law, and would be happy to work with the Legislature in pursuing comprehensive ethics and lobbying reform.