



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony Before the New York State Commission on Ethics and Lobbying in Government, Annual Public Hearing November 13, 2024

Good afternoon, 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. Thank you for inviting us to speak at COELIG's annual public hearing and to comment on your proposed legislative agenda for next year.

At the start, we wish to address the court decisions in *Cuomo v. COELIG*, which challenged the constitutionality of the ethics commission. When COELIG was being created, Citizens Union expressed concern that the appointment mechanism still left the responsibility directly with the officials the Commission must regulate. Now, lower courts found that the Commission is, in fact, "too independent" of elected officials, and specifically the governor. Clearly, we believe these decisions were wrong. Together with other good government and civic groups, we submitted two amicus briefs on the matter, which supported the constitutionality of the Commission's appointment process, the role of the law school deans, and the governor's removal powers. The case is now before the Court of Appeals. New York State should not go back to the days of JCOPE and its flawed structure, which was simply incapable of providing the necessary ethics oversight to promote public confidence in state government.

We appreciate the Commission's public engagement work over the past year, including a stakeholder roundtable, a lobbying survey, and more effective announcements on meetings and actions.

We also applaud the administrative changes COELIG has implemented since the March 2023 public hearing in response to recommendations made by advocates and good government groups.

The recommendations made by Citizens Union and adopted by COELIG include:

- Banning ex parte communication between Commission members and those who appoint the Commission, or their representatives, with limited exceptions: COELIG's Code of Conduct, adopted in Resolution 2024-01, barred commissioners from directly or indirectly communicating, without prior authorization by the Commission, with their appointing authority or someone who reports to them, on matters that is or may come before the Commission.

- Reexamining the procedure for providing advice to elected officials and high-ranking executive and legislative officials, without leaving such decisions solely to the staff: Resolution 2023-02 required guidance for statewide elected officials and heads of agencies, commissions, boards, or authorities to be approved by commissioners.
- Developing clear rules on disclosing the status of investigations: The regulations adopted by COELIG (Part 941.16) established criteria for disclosing such information if, it is in the public interest, and defined how a complaint and its status could be acknowledged in public.

COELIG Tentative 2025 Legislative Agenda

Citizens Union appreciates COELIG's 2025 legislative proposals to improve transparency and enforcement, specifically as it relates to accessorial liability, new penalties for certain violations, and electronic filing of financial disclosure statements and lobbying reports. We support S9011 (Skoufis)/A10382 (Cruz) and S9009 (Skoufis)/A10302 (McDonald), which would require electronic filings.

Deferred Legislative Priorities

Allowing COELIG to respond if a requester makes public statements about informal guidance

At last year's roundtable event, Citizens Union recommended allowing COELIG to respond publicly in cases when an official misstates, in public, the informal advice they received. As the Commission's legislative agenda states, Executive Law §94(7)(b) already allows it to correct misstatements, but only if such action is needed to prevent a crime or fraud, a substantial threat to public health, or by a court order. We appreciate the Commission's plans to publish a formal advisory opinion addressing this matter and the proposal to issue general ethics guidance. However, we note that issuing only general guidance and clarifications without referring to the case that prompted it or the public official who misrepresented the advice might not deter individuals from misusing the confidentiality of advice. If the Commission believes it is constrained by state law, we recommend it be amended, especially in cases when high-level officials misrepresent guidance in response to media inquiries.

Proposal to disclose lobbyists' fundraising

Citizens Union recommended that lobbyists be required to disclose their fundraising or political consulting activities in semi-annual lobbying reports. We appreciate COELIG's view that broadening the reporting of lobbyists' campaign contributions would serve the interests of transparency, and your support for expanding campaign finance reporting. However, we believe a reporting requirement in lobbying filings is needed. Requiring donors to report whether they are registered lobbyists sheds light on the works of a single campaign or candidate. A different purpose is served by requiring lobbyists to report the candidates or elected officials to whom they provide fundraising services and the amount of money raised in fundraising events they organize. Those disclosures shed light on the activities of lobbying firms, who often leverage the bonds made when serving campaigns to advance their clients and the business they seek before government.

In New York City, lobbyists and lobbying firms are required to disclose information about their political consulting and fundraising activities to the City Clerk in a periodic report that details the individuals providing these services, the candidates receiving such services, the charges for the services, and the amount of money raised for each candidate (Admin. Code § 3-216.1). Reporters and watchdog groups use that information to inform the public about potential conflicts of interest or campaign finance misconduct.¹

Requiring that lobbying filings clarify whether lobbyists support, oppose, or take some other position on bills

Citizens Union reiterates its support for this policy, which would provide a better idea to the public of how lobbyists and lobbying resources are being used to promote or oppose legislation or other government decisions covered by the law. Although we understand the concerns COELIG raised concerning taking nuanced positions on bills, we believe there are effective ways to define types of positions and lobbying activities. Several such models exist; Reinvent Albany's review of the law in other states provides an excellent starting point to address that question.

Expressly adding discrimination claims (in addition to sexual harassment) to the Commission's jurisdiction

We were glad to see that COELIG supports adding sexual harassment to the state Code of Ethics. However, we respectfully urge the Commission to support legislation that explicitly prohibits harassment and discrimination. Citizens Union supports S7137A (Gounardes)/A9279 (Kelles), which would reflect compliance with the state Human Rights Law and require those in supervisory positions to take action against acts of discrimination and harassment. We support the necessary funding to allow these increased powers.

Legislative priorities not in the COELIG agenda

Finally, we reiterate our support for two legislative changes to the lobbying law:

- Include among reportable matters lobbying regarding nomination or confirmation of a nominee that requires Senate confirmation. Legislation achieving this reform passed the Legislature in 2023 but was vetoed by Governor Hochul. A new bill that addresses the governor's concerns on the lookback provision in this bill passed the senate this year. Support from COELIG would help raise awareness to this important issue.
- For organizations that spend \$5,000 to \$10,000 on lobbying in a year, reduce reporting requirements from every 2 months to every 6 months. This would assist smaller filers and reduce administrative burden.

¹ For a recent example: Lobbyists fundraise for Adams 2021 campaign, NY1, May 24, 2023 <https://ny1.com/nyc/all-boroughs/politics/2023/05/24/exclusive--lobbyists-fundraise-for-adams-2021-campaign>