



Testimony to New York State Commission on Ethics and Lobbying in Government (COELIG)

Re: Policy and Legislative Changes Needed to Strengthen NYS Ethics Enforcement

March 29, 2023

Good morning, members and staff of the NYS Commission on Ethics and Lobbying in Government (the “Commission” or COELIG). My name is Rachael Fauss, and I am the Senior Policy Advisor for Reinvent Albany. We advocate for a more transparent and accountable New York government.

First, thank you for holding this hearing, as required by law. We appreciate you making efforts to reach out to the regulated community, and allowing remote testimony. To ensure that future annual hearings are both productive to you and more accessible to the public, we ask you to choose a different day next year when more attendees could be available. March 29th is two days before the state budget is due, and a busy time for those who work with or for the state government.

Reinvent Albany, with our watchdog colleagues, [opposed the creation of COELIG](#) in last year’s budget, because we felt that it fell far short of a truly independent ethics commission: it is appointed by the very people it is supposed to oversee. We continue to believe that the Legislative Ethics Commission should be abolished, and support creation of a unified, independent state ethics commission.

We recognize the reality that COELIG is here, however, and that those who have agreed to serve as Commissioners have the potential to go above and beyond what is required by the law to increase the independence of the Commission. Below is a summary of our recommendations for the Commission.

Recommendations

- 1. Immediate policy changes the Commission can make to increase its independence and build greater public trust, including:**
 - a. publishing open data for lobbying and financial disclosure reports already on its website, fully complying with Executive Order 95 of 2013;
 - b. prohibiting ex parte communications;

- c. requiring Commissioner approval of statewide officials' requests for opinions on matters like outside income; and
 - d. requiring trauma-informed training for all Commissioners and additional staff.
- 2. Changing the law to make state ethics and lobbying laws stronger and more effective**, including:
- a. requiring lobbyists to report whether they support or oppose legislation or other state actions;
 - b. requiring reporting of lobbying on nominations subject to Senate confirmation;
 - c. requiring lobbyists to report campaign contributions and activity;
 - d. requiring campaign finance filings to include employers of contributors;
 - e. requiring electronic filing of financial disclosure statements;
 - f. expanding prohibitions on who can serve as commissioners to exclude major campaign contributors and state vendors;
 - g. expanding the NYS Code of Ethics to require a duty to report and explicitly prohibit harassment and discrimination; and
 - h. requiring an independent budget for COELIG.
- 3. The need for an independent review to bolster the Commission's request for more budgetary resources** for staffing and Information Technology (IT)

These are only some of the proposals provided in this testimony. For a complete listing, see our full written testimony below. Thank you again for the opportunity to testify today. I am available to answer any questions, or am reachable after the hearing at rachael@reinventalbany.org.

Immediate Policy Changes to be Made By Commissioners

We [wrote to you last fall](#) with a number of actionable items that I will highlight again today. We ask that the Commission:

- 1. Increase transparency and access to public information through use of open data** for financial disclosure reports, improving the lobbying database, collaborating with the Attorney General's New York Open Government portal, and developing clear guidelines regarding disclosing the status of investigations.
 - The Commission should fully comply with [Executive Order 95 of 2013](#), the state's Open Data Executive Order, particularly now that it is clearly subject to the Freedom of Information Law. There is no reason that data

from reports that are already on the Commission’s website are not also posted in open data formats.

- We recommend that the Commission take a look at recommendations from the Campaign Legal Center in its report, [Top 10 Transparency Upgrades](#), which showcases best practices of other state ethics commissions regarding transparency and use of public data.

- 2. Clearly firewall Commissioners from the elected officials (or their representatives) who appointed them (prohibit ex parte communications).** This can be done by the Commissioners adopting a formal resolution, and will help to increase its independence.
- 3. Require Commission approval of all advisory opinion requests regarding agency heads and statewide elected officials.** Currently, this is delegated to the Executive Director. From Commission deliberations, it appears that, in practice, Commissioners are being made aware of such requests.
 - We urge the Commission to formally adopt a resolution limiting delegation. Opinions regarding agency heads and statewide officials should always be approved by the Commissioners. Adopting a formal policy is in both the best interest of Commissioners as well as the public to ensure that senior government officials – both elected and appointed – are held to the highest standards.
- 4. Require trauma-informed harassment training for all Commissioners and senior staff.** The new law requires only the Deputy Director for Investigations and Enforcement to receive at least four hours in training in “trauma-informed approaches to investigations and enforcement.” We urge the Commission to require all Commissioners, all senior staff and any other staff communicating with victims and/or involved in investigations and enforcement cases to have this training.

Recommended Changes to New York’s Lobbying, Ethics and Election Laws

We strongly urge the Commission to recommend changes to the state’s lobbying and ethics laws to both improve transparency and allow for better enforcement.

Improvements to the laws will make your jobs easier, and provide help build greater public confidence in state government.

Article 1-a of the Legislative Law – Regarding Lobbying

1. Add more specificity to lobbying reporting including whether lobbying is in support/opposition to item, section of budget bill targeted, etc.

2. [S4152 \(Gianaris\) / A5786 \(McDonald\)](#) - Require reporting of lobbying on nominations subject to Senate confirmation
3. Require lobbyists to report political contributions and fundraising activity (NYC model - see also [S2130 \(Krueger\) / A1391 \(Aubry\)](#))
4. Clarify that political parties are covered within the definition of clients
5. Permit filers who spend between \$5-10K on lobbying to report only semi-annually, rather than bimonthly (authorized in NYC, but not currently in place under NYC Clerk)

Section 14-102 of the Election Law – Reporting of Campaign Contributors

We recognize that changes to the Election Law may appear to be outside of the scope of the Commission, but note that additional campaign reporting complements additional data we have requested about the political activities of lobbyists.

1. [S2362 \(Rivera\)](#) - Requires filers to report the employer of campaign contributors

Section 73-A of the Public Officers Law – Financial Disclosure Statements

Financial disclosure statements allow the public and ethics oversight agencies to see potential conflicts of interest arising from officials’ outside business dealings or those of their family members. However, financial disclosures are only so useful as they are complete, easy to analyze through open, machine-readable formats, and inclusive of enough public officials.

We support the following bills that would improve transparency of financial disclosure reporting (links below are provided to our memos of support):

1. [A1560 \(McDonald\) / S3544 \(Breslin\)](#) - Requires electronic filing of disclosure statements
2. [A1609 \(McDonald\) / S2833 \(Breslin\)](#) - Requires legislators and candidates for legislature to post financial disclosures statements on campaign websites
3. [A2507 \(Paulin\) / S3574 \(Skoufis\)](#) - Requires disclosure statements from candidates for statewide office or the legislature be posted on the ethics commission’s website
4. [A2873 \(Kelles\) / S5621 \(May\)](#) - Adds a section to financial disclosure statements for crypto holdings (joint memo with Earthjustice and NYPIRG)
5. [S3507 \(Skoufis\)](#) - Requires members of REDCs to file disclosure statements
6. [S1883 \(Skoufis\)](#) - Requires members of REDCs to file disclosure statements, and subjects them to the Freedom of Information Law (FOIL) and Open Meetings Law

7. [S1571 \(Gianaris\)](#) - Requires online publishing of NYS judges' financial disclosure statements

Section 74 of the Public Officers Law – The NYS Code of Ethics

1. We support adding penalties for violations of additional provisions in the ethics code (modified [JCOPE proposal](#) as [recommended by watchdog groups](#))
2. Additionally, we support legislation introduced in 2022 by former Senator Alessandra Biaggi to amend the NYS Code of Ethics (no current sponsors):
 - a. [S8420A \(Biaggi\)](#) – Amends state code of ethics to include a duty to report misconduct
 - b. [S8421 \(Biaggi\)](#) – Amends state code of ethics to explicitly prohibit harassment and discrimination

Section 94 of the Executive Law – Operations and Enforcement of the Ethics Commission

1. The disqualifications to be a Commissioner should be expanded to include: (1) major campaign contributors and (2) those with major financial interests in state business (contractors and/or vendors); all disqualifications should also apply to spouses/domestic partners and unemancipated children.
2. We support the proposal in the Governor's Executive Budget to stagger the terms of Commissioners. ([Part Z, Article VII PPGG](#))
3. We support a [former JCOPE proposal](#) to add accessorial liability for violations of the code of ethics, lobbying laws, or financial disclosure law.
4. Lastly, we support independent budgeting for all enforcement bodies. There are a number of models, including as used in New York City for the Independent Budget Office, which pegs its budget to the Office of Management and Budget. We encourage the Commission to draft a proposal for its own budget, as suggested by Commissioner Edwards in past meetings.

Commission Budget

We have asked that the Commission be proactive regarding investigations, outreach to state employees, and building a culture of state employees actively reporting misconduct. We recognize that the success of these efforts, however, are dependent on having enough resources and funding. Beyond the Commission simply asking for more money, and watchdogs supporting this request, an independent look at the staffing and funding needs of the Commission could help spur further investment.

Given the Commission's broad mission and expanded training requirements, we [asked the Legislature to consider](#) an independent evaluation of the technological, staffing and

other funding needs of COELIG. This evaluation could be conducted by a management consultant. The NYS Department of Motor Vehicles did something similar when they had a management and information technology (IT) consultant redesign their workflow and internal and public-facing IT. The Governor and Legislature are requiring COELIG to conduct ten times as many ethics training sessions as it has historically. This huge increase will require new workflows and improved IT.

Evaluators should examine best practices in other large states and cities and, in consultation with COELIG staff, recommend what IT systems are needed to improve lobbying and financial disclosure reporting, both in terms of filings and the public-facing website of the disclosure databases. This evaluation and IT recommendation will then provide the Legislature and Governor with a more informed understanding of what level of funding COELIG should get in the FY 2024-2025 state budget, and what additional technological support the agency will need, either from NYS ITS or an outside vendor.