New York State Senate Committee on Ethics and Internal Governance

Public Hearing: New York State's system of ethics oversight and enforcement

August 25, 2021

Written Testimony of Judge Sanford Berland

Executive Director, Joint Commission on Public Ethics

Chair Biaggi, Chair Krueger, Ranking Member Palumbo, members of the Committee, I want to thank you for the opportunity to appear before you this morning. On behalf of our commissioners, I am proud to be part of the Joint Commission on Public Ethics, New York State's ethics and lobbying regulator. To be clear, however, I am only speaking today for myself and the staff.

I am Sanford Berland, the Commission's Executive Director, a position I assumed only three months ago. Prior to joining JCOPE, I spent several years on the bench as a Court of Claims Judge sitting as an Acting Supreme Court justice, and also had a long career in private practice and in-house with Pfizer Inc.

While I am still getting up to speed at the Commission, I am immediately struck by the expertise and dedication of our professional staff. There are former prosecutors and FBI agents, lawyers, auditors, accountants, reporters, and educators, all of whom, for the last decade, have provided steady and capable guidance and direction, ensuring that no state official, employee or lobbyist can claim ignorance of the laws we administer or of their obligation to comply with them – and of the penalties they face should they fail to do so. Our staff have shown themselves to be wholly committed to executing the role assigned to the

Commission as part of the Public Integrity Reform Act that the Legislature enacted in 2011.

Under PIRA, we are charged with administering the State's ethics and lobbying laws. In that capacity, we educate, train, issue advice and guidance, and, yes, compel compliance with, and enforce violations of, the law. With over 200,000 state officers and employees under our jurisdiction, as well as Members of the Legislature and Legislative staff, and more than 13,000 individual lobbyists and their clients, we are extremely proud of our record in carrying out our mission.

I understand, of course, that this hearing has been called not so much to catalogue our successes in administering the State's ethics and lobbying laws as to explore whether there are ways in which enforcement of those laws can be both strengthened and made more public. But to do the latter effectively, we have to understand the former.

Our dedicated staff of 50 has navigated this past year remotely, and I am grateful for the work they have accomplished under extremely trying circumstances. This year, we will process some 34,000 financial disclosure statements; issue guidance to thousands of New York State officials, employees, lobbyists and clients; administer more than 50,000 reports by lobbyists and their clients; and investigate hundreds of complaints against state officers, lobbyists and clients.

In addition to these day-to-day tasks, the Commission this year alone completed two major initiatives that provide immediate benefits to the state and the public: our online lobbying filing system and updates to the comprehensive lobbying regulations, which together not only have improved compliance with the Lobbying Act's filing requirements, they have increased public access to real-time data by light-years. Lobbying filings are available the moment they are submitted, and the new regulations improve the quality of the data itself – requiring more specific detail about who is being lobbied, as well as the subject matter and the bills being promoted.

While projects like these don't generate headlines, they do represent enormous advancements in transparency in government.

As I said, I am proud of the work JCOPE has accomplished, and I am excited to now be at the helm of the ship.

I am here neither to speak for or against the ideas that have been proposed for changing the structure and composition of the Commission and for altering the ways in which its mission is carried out. But I do want to speak about the laws that currently govern our work, because without an understanding of that, proposals for change are at least as likely to miss the mark as to hit it.

As you know, our confidentiality rules are strict and the penalties for violations are severe – criminal misdemeanors, in fact. Those rules were deliberately imposed by the Legislature when it enacted PIRA, and as staff, we must operate

within them. But that does not mean that, given the choice, we would necessarily choose to operate in this fashion. Nonetheless, although much of what we do is in the service of transparency and sunlight, there are aspects of our work that cannot be made public.

Our critics misconstrue that forced silence as evidence of inaction and assume, without basis, that important cases are being ignored. Neither assumption is correct. To attempt to rectify this misperception, the Commission just adopted a policy to confirm publicly the general status of certain high-profile matters to the extent permitted by law.

We process over 200 investigative matters every year. However, we are not a law enforcement agency – like the FBI – or a prosecutor's office – like a District Attorney or a United States Attorney, and when those prosecutors are pursuing an investigation parallel to ours, typically they will ask that we "stand down." We accede to such requests – that is, hold our matter in abeyance until the corresponding criminal matter has been pursued – because doing so best serves the public interest. Our proceedings, and the penalties we impose, are civil, not criminal. We are not empowered to run covert investigations, seek wiretaps, or grant immunity to witnesses. We can't execute search warrants and we don't have the resources to hire forensic accountants. In fact, we are required to *notify* the subject at the start of the investigation.

Simply put, even in our investigative and enforcement functions, we are not a substitute for the traditional law enforcement agencies to which we will ordinarily defer while the criminal investigation runs its course. Yes, this means that often –

and whether we like it or not – we are compelled to wait until the end of the criminal process to complete our proceedings, sometimes enforcing violations years after the misconduct occurred. But our quiet patience in ensuring that misconduct is ultimately dealt with completely and to the full extent permitted by law should not be confused with inaction or a sign that important matters are being ignored. They are not. Remember, our main functions are to educate, monitor and guide – that is, to bring about compliance with the ethics and lobbying laws that fall within our purview – and, when we discover or become aware of violations (whether through our own investigative means or by information brought to us), to investigate and enforce those laws. In our view, we do all of these things very, very well, despite the constraints within which much of our work must be conducted.

And even within these boundaries, we have moved major cases. Among the notable public examples, we prosecuted the first ethics action ever against a sitting Assembly member, as well as a series of actions against legislators for sexual misconduct against their staff. We have also imposed hundreds of thousands of dollars in sanctions against lobbyists for seeking improperly to influence public officials and for failing to follow the Lobbying Act's filing requirements. These are just a few examples of the major cases we have prosecuted, despite the constraints within which we operate. So however the laws are written, I can assure you that we will continue to administer and enforce them to the best of our abilities.

Again, Madam Chairs, Mr. Ranking Member and members of the Committee, I appreciate the opportunity to be here today, and I look forward both to your questions and to your suggestions. Thank you.