



M U L T I S T A T E

More Than Three Thousand Campaigns Violated Campaign Finance Law. The State Board of Elections Brought Enforcement Actions Against Zero. (New York)

Thousands of political campaigns have violated campaign finance law but faced no consequences, according to the official in charge of the state Board of Elections' enforcement arm.

“I can't sugarcoat it: it's zero,” Michael Johnson, the board's chief enforcement counsel, [said in January](#), when asked how many enforcement actions his office had taken against campaigns that failed to file required financial disclosure reports.

Johnson, who was appointed to the position by former governor Andrew Cuomo and took office in July 2021, blamed the lack of enforcement on difficulty hiring staff and a backlog left by his predecessor in the role.

The enforcement counsel position was created in 2014 with the aim of promoting greater adherence to New York's [frequently-violated](#) election laws. In the years since, though, it has had little success enforcing disclosure requirements, according to the election board's annual reports and meeting minutes reviewed by New York Focus.

In the absence of any enforcement, campaigns across the state have broached [campaign finance disclosure requirements](#) with impunity. The biggest offender was the campaign of Governor Kathy Hochul, which [failed to make required disclosures](#) regarding the individuals behind over \$400,000 in corporate contributions, as New York Focus first reported earlier this month.

In all, 3,451 campaigns have violated the disclosure law, Johnson said at an October 2021 meeting of the SBOE.

“The way in which the office is set up has been problematic from the beginning, because there really is no accountability,” Susan Lerner, executive director of Common Cause New York, said of the position of enforcement counsel. “The real question is what enforcement, if any, is taking place.”

Johnson did not respond to a request for comment for this article.

“A waste of time”

The office of enforcement counsel, which works under the aegis of the state Board of Elections but is legally independent of it, was created [in response to a scathing 2013 report](#) from the anti-corruption Moreland Commission which found that when it came to enforcing election law, the state Board of Elections had struck a “bipartisan agreement to do nothing.”

State legislators gave the new office control over its own staffing and free rein to investigate potential violations of election law. That independence was meant to insulate it from the [inherent partisanship](#) of the state Board of Elections, which by law must have an equal number of Democratic and Republican commissioners.

Risa Sugarman, who served as enforcement counsel from 2014 until 2021, brought a handful of successful enforcement challenges against [high-profile campaigns](#) and donors from [both major parties](#).

But Sugarman faced internal and external criticism for not taking action against the large number of campaigns statewide that either filed deficient financial reports or failed to file such reports entirely.

“She thought suing and fining people for failing to make filings was a waste of time and only did so selectively,” John Conklin, the Board of Elections’ director of public information, told New York Focus.

Sugarman could not be reached for comment.

The board’s [2019 annual report](#), obtained by New York Focus through a freedom of information request, reveals just how many campaigns Sugarman’s office declined to take enforcement action against.

In 2019, the most recent year for which data is available, the board’s compliance unit referred 5,537 non-filing campaigns to the enforcement counsel. By the time the 2019 year-in-review report was prepared, 4,248 of those cases were still outstanding, or 77 percent.

When the enforcement counsel receives a referral, it has the option of bringing the case before a hearing officer, requesting a referral to an outside prosecutor, or ignoring it. In 2019, the

enforcement counsel referred only two cases to one of its hearing officers for further investigation, and did not refer any violations of campaign finance law to prosecutors.

Data for 2020 isn't available, because the board has not yet prepared its annual report for that year. (Conklin attributed the year-long lag to the pandemic.)

“This unit is supposed to be independent”

Government watchdog groups argue that the enforcement counsel's process for pursuing non-filers makes meaningful enforcement effectively impossible. For the enforcement counsel to issue monetary penalties against a campaign, it must first hold an administrative hearing, presided over by one of its staff hearing officers, to determine whether a violation occurred. Only then can it bring a civil suit against the campaign in state court. For an office whose staff numbers [barely a dozen](#), this process severely limits the number of penalties it can pursue.

Douglas Kellner, the co-chair of the state Board of Elections, said that these burdensome requirements are directly responsible for the office's lack of enforcement of campaign finance law.

“Even more limiting than the staff is the current statutory structure where they first have to bring a proceeding before the hearing officer, then after the hearing office rules, they have to start over again in supreme court,” he told New York Focus.

At a recent meeting of elections board commissioners, Johnson, the chief enforcement counsel, explained that his office does not have the resources to pursue the thousands of cases against campaigns that fail to file required disclosure forms.

During the October 4 meeting, Johnson said that he was aware of 3,451 campaigns that had violated the disclosure requirements. He said that his office was in the process of determining how to handle the sheer scale of the violations, but expressed doubt that it would ever be possible to address all of them.

Even triaging cases and focusing only on the 550 serial non-filers would likely be beyond the capabilities of the enforcement counsel's staff, Johnson said: “To disperse that among five hearing officers, I don't see how that's going to work.”

At the January meeting, Johnson blamed the Division of the Budget, the agency in charge of administering state funds, for blocking his attempts to bolster the office's staff. Johnson said

that he was still “waiting for DOB to approve the hiring” of additional investigators. “This unit is supposed to be independent,” he said. “I guess I’m a little confused as to, why does DOB need to weigh in?”

Shams Tarek, a DOB spokesperson, told New York Focus that “requests are approved in a timely manner and DOB recently approved several that they sent over quickly.”

“People feel like they can get away with it”

Disclosure laws play an important role in preserving the health of the state’s democracy, said Blair Horner, the executive director of New York Public Interest Group, a government watchdog.

“The public has a right to know who’s funding elections, so that they can have an informed opinion on who to vote for,” he said. “That’s the whole point of reporting campaign donations.”

But because of the lack of enforcement, campaigns feel little pressure to obey the law’s disclosure requirements, Horner said: “People feel like they can get away with it. Filers don’t believe they ever get punished for not complying with the law.”

One possible solution, [advanced by the good government group Reinvent Albany](#), is to streamline the system by allowing either the elections board or the enforcement counsel to fine campaigns without first requiring an administrative hearing or civil lawsuit. That would place the burden of proof on campaigns to contest the violations, rather than on the board to prove them.

“A motorist receiving a traffic ticket must pay a fine or contest that ticket in a hearing – but it is the responsibility of the motorist to contest the ticket. Similarly, election enforcement staff should be able to issue fines for routine violations, just as police do,” argued Reinvent Albany policy analyst Tom Speaker in 2019 testimony to the Public Campaign Financing Commission.

In the meantime, the board’s leadership is pushing the enforcement counsel to begin enforcement of at least some campaign finance violations as soon as possible.

“How do we get to a position where in a couple of years we will be bringing enforcement proceedings against every committee that doesn’t file?” Kellner asked Johnson at the board’s October meeting.

Kellner told New York Focus that Johnson has indicated to him that the enforcement counsel’s office will begin bringing actions against delinquent campaigns within the next few months.

“The end of March, beginning of April would probably be when he does it,” Kellner said.

But many campaigns may still be let off the hook, as Kellner acknowledged at the October meeting: “For the time being you may need to triage cases and write off 2,000 of them.”

[Campaign finance violation complaint against Attorney General Phil Weiser is dismissed](#) (Colorado)

A complaint filed with the Colorado deputy secretary of state against Attorney General Phil Weiser, alleging that he violated campaign finance laws at a fundraising event in Hawaii, has been dismissed.

An order of dismissal was filed Tuesday, following an investigation by the Enforcement Team with the Elections Division of the Colorado Secretary of State’s Office. Investigators found that there wasn’t sufficient evidence to support the complaint’s allegations.

“Having reviewed and considered the Motion and the contents of the file in this matter, the Designee now grants the Motion and dismisses the matter,” the dismissal order, signed by Secretary of State Chief of Staff and Strategy Michael Whitehorn, the designee, said.

Defend Colorado, a dark-money political group that funds conservative causes, [filed the complaint](#), alleging Weiser, a Democrat, committed the state violations while on a trip to the Attorney Generals Alliance’s annual meeting at the Grand Wailea Resort in Hawaii on June 14-18, 2021.

The complaint alleged that at a June 15 fundraiser event:

- Weiser failed to report a campaign contribution
- Failed to report, or accurately report, a campaign expenditure
- Accepted a prohibited contribution
- Violated reporting and acceptance of gifts by an incumbent.

“In this case, Respondents (Weiser and his campaign — Phil Weiser for Colorado), hosted a fundraising event at the Resort and reported a \$437.50 expenditure for the food and beverage consumed at the Event. Respondents provided ample evidence to verify the actual amount charged by the Resort for the Event,” the dismissal order said. “There is no evidence that Respondents incurred expenses in hosting the Event that were not reported on the campaign’s expenditure report.”

The Banquet Event Order form for the event quoted an estimated cost of \$963.54, according to the dismissal order, and confirmed that there would be no “Food and Beverage Minimum” or “Meeting Room Rental.”

The event, scheduled for 45 minutes, was attended by about 30 people and included bar service for beer, bottled water, and individual pretzel snack bags, the dismissal order said. “The Resort charged Respondents \$437.50 for the food and beverage consumed at the Event.”

The complaint also alleged that the Weiser campaign was provided the Grand Dining Room at the resort at a reduced rate or no cost.

“The investigation revealed that Respondents hosted the event in a portion of the Resort’s Grand Dining Room, in a bar area between the Resort lobby and an outside balcony area, which remained open to the public,” the dismissal order said. There is “no evidence that Respondents rented or used the Grand Dining Room in the manner alleged in the Complaint.”

The use of the resort space for the Weiser event was also deemed acceptable because “the Resort allows free use of its space, including the area where the Event was held, to other entities in attendance at the Resort in the usual course of its business.”

The use of the space for the event was not a campaign contribution, according to the dismissal order.

The dismissal of the complaint by the Colorado deputy secretary of state has no impact on the complainant’s ability to file with the Colorado Independent Ethics Commission, according to the dismissal order.

[Ohio’s campaign finance laws permit use of peer-to-peer payment systems](#) (Ohio)

If you are thinking about using Venmo to accept campaign donations, you now have guidance from the Ohio Elections Commission to permissibly do so.

The Ohio Elections Commission [advised](#) that the use of peer-to-peer payment systems such as Venmo are permissible under Ohio’s campaign finance laws. However, to comply with Ohio Revised Code §3517.10(D)(3), the peer-to-peer account needs to be specifically set up for the campaign committee and separate from the personal account of the possible beneficiary of the campaign fund.