



# Threat Assessment 2024

RISKS AND CHALLENGES  
FACING STATE ETHICS  
COMMISSIONS

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# Contents

|           |  |
|-----------|--|
| <b>1</b>  | <b>ACKNOWLEDGMENTS</b>                         |
| <b>2</b>  | <b>PURPOSE</b>                                 |
| <b>3</b>  | <b>EXECUTIVE SUMMARY</b>                       |
| <b>4</b>  | <b>NATIONAL TRENDS</b>                         |
| <b>5</b>  | <b>2024 THREATS</b>                            |
| <b>8</b>  | <b>ENFORCEMENT POWER THREATS</b>               |
| <b>16</b> | <b>SUBJECT MATTER<br/>JURISDICTION THREATS</b> |
| <b>23</b> | <b>EXISTENTIAL THREATS</b>                     |
| <b>28</b> | <b>POSITIVE LEGISLATION</b>                    |
| <b>33</b> | <b>CONCLUSION</b>                              |
| <b>34</b> | <b>SUMMARY TABLE</b>                           |

## ACKNOWLEDGMENTS

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Campaign Legal Center (CLC) is a nonpartisan legal nonprofit dedicated to solving the wide range of challenges facing American democracy. Founded in 2002, we fight for every American's freedom to vote and participate meaningfully in the democratic process, particularly Americans who have faced political barriers because of race, ethnicity, or economic status.

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# Purpose

The purpose of this CLC report is to inform ethics commissions of the national trends in legislative efforts and litigation designed to undermine the effectiveness of ethics commissions.

**Specifically, this project highlights three types of threats ethics commission faced in 2024:**

- Enforcement power threats
- Subject matter jurisdiction threats
- Existential threats

CLC reviewed pending litigation and proposed legislation in all 50 states in 2024 to find the most common types of threats mounted against ethics commissions. Armed with this information, including considerations for combating these challenges, ethics commissions and the public can be prepared if faced with these threats in their state.

This report also features positive developments in states where ethics commissions have had their powers expanded and their efficacy bolstered. These examples offer potential countermeasures to threats and provide a blueprint for how ethics commissions can protect their missions for years to come.



# Executive Summary

## Ethics commissions serve a fundamental role in democracy.

They provide accountability for public officials by enforcing laws and rules intended to preserve the public's trust in government, including laws regulating lobbying, requiring campaign finance disclosure, and preventing conflicts of interest. Ethics commissions also uphold transparency principles that inform public officials of the laws that govern their public service. Essentially, the ethics commissions work to fulfill voters' right to know that their elected and appointed officials are working for the good of the public.

Their critical role in upholding the public trust on which our democracy relies means threats to ethics commissions can constitute a threat to democracy itself. This report collects information about the most critical and common outside threats to ethics commissions and provides considerations for combating these threats.

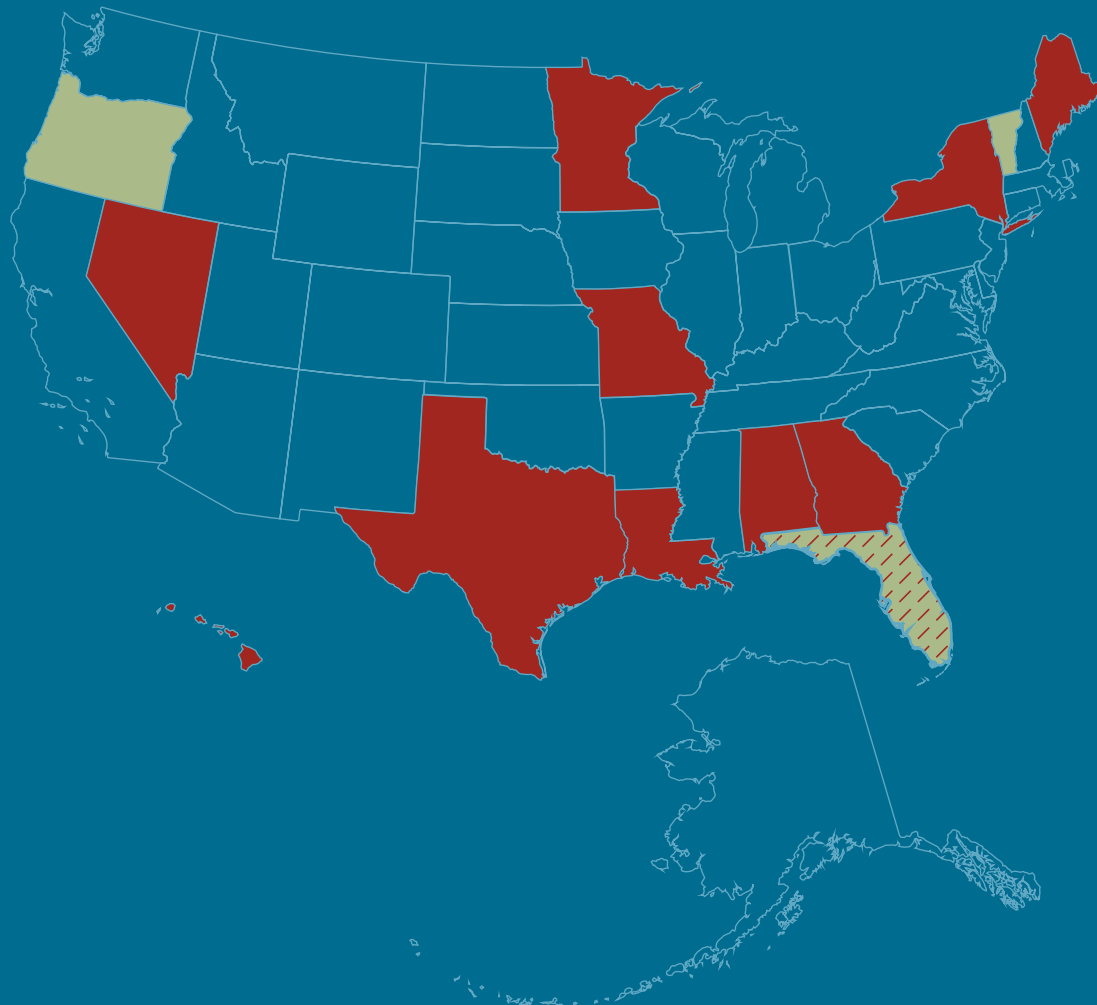
Ethics commissions face the same logistical and administrative challenges as any other government agency. Sometimes, lawmakers will introduce legislation that impedes the commission's mission or diminishes its authority. Ethics commissions also face litigation disputing their authority to administer or enforce certain laws.

## Ethics commissions faced threats in three major categories in 2024:

- Enforcement power threats
- Subject matter jurisdiction threats
- Existential threats

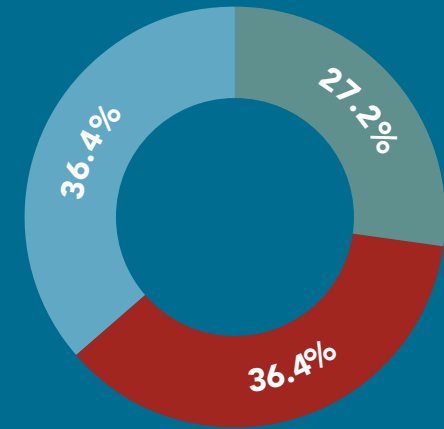
CLC researched legislative and litigation threats to ethics commissions in all 50 states for 2024. This report compiles active litigation and legislation threatening ethics commissions across the country. This report does not include every action or legislation pending nationwide; it highlights trends that can help commissions know what to expect.

## National Trends



- Ethics Commission Threatened
- Ethics Commission Strengthened
- Ethics Commission Threatened and Strengthened

## Threats to Ethics Commissions



- Enforcement Authority Threats
- Existential Threats
- Subject Matter Jurisdiction Threats

**42%** of threats were successful

**33%** of threats were unsuccessful

**25%** of threats are still pending

# 2024 Threats

Across the country, those who want to weaken ethics commissions are becoming more creative with how they approach their attacks, and all commissions should be battle ready.

No ethics commission is completely insulated from threats. The more active and proactive a commission is, the more likely it is that it will face litigation and legislation attempting to weaken its powers. Here are important facts about nationwide trends to help ethics commissions assess potential threats:

**WHEN:** Threats to ethics commissions are more likely to occur shortly after new laws are passed or in the wake of high-profile ethics investigations or enforcement actions.

Threats are more likely to occur shortly after the legislature passes a new law expanding an ethics commission's jurisdiction or enforcement powers or in the aftermath of high-profile ethics enforcement.

→ In **Maine**, public utility companies affected by the law prohibiting election spending by foreign-influenced corporations sued five weeks after the legislation passed.

→ In **Nevada**, the governor sued after the ethics commission determined he violated state ethics laws.

→ In **Florida and Missouri**, state and local officials who found themselves bound by new ethics laws sued shortly after those restrictions went into effect.

**HOW:** Both individuals and organizations affected by new ethics laws or who have had ethics laws enforced against them bring threats through litigation and legislation.

Ethics commissions should be on alert for threats from those most likely to see increased enforcement when the legislature passes a new law and from those who have had ethics laws enforced against them. Threats are more likely to come by way of litigation.

→ In **Florida**, municipal and local ethics officials brought a suit against the ethics commission when a new law required them to disclose their financial information on par with the disclosure required by state officials.

→ In **New York and Nevada**, governors who had ethics laws enforced against them sought to delegitimize the ethics commission through litigation.

## 2024 Threats continued

In multiple states, threats came by way of legislation: Legislators fearing investigations by ethics commissions targeted the commissions with legislation limiting their power.

**WHERE:** Threats to ethics commissions occur across the country but are more prevalent in states where Republicans control the executive and legislative branches.

Threats to ethics commissions are occurring across the country, with no geographic concentration representing most threats. However, legislative threats occur more in states where Republicans control both the legislative and executive branches (Alabama, Florida, and Louisiana). Immediate litigation challenges to positive ethics commission-related laws have occurred in both Republican-controlled (Florida and Missouri) and Democratic-controlled (Maine and Minnesota) states.

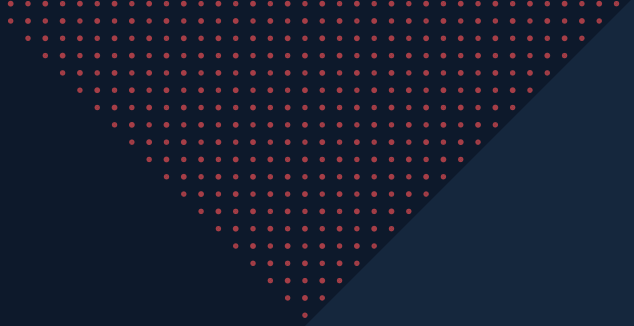
**WHO:** Ethics commissions, new and established, face threats, but established commissions are more susceptible to certain threats.

While it may seem like newer ethics commissions would be more susceptible to threats as they work to establish their nascent powers, established ethics commissions are at an increased risk of challenges.

Ten out of the 11 states that faced threats highlighted in this report have established ethics commissions (formed before 2000). With more practiced investigators, honed processes, and established resources, their ability to hold powerful people accountable and effectively advocate for favorable legislation makes them more attractive targets.

All ethics commissions, regardless of how well-established, should be prepared for increasingly creative threats.





**Ethics commissions will  
always face resistance to  
existing or new enforcement  
powers from those who may  
be subject to that enforcement  
and want less oversight.**



# Enforcement Power Threats

Attempts to weaken enforcement power are efforts to limit the ability of ethics commissions to investigate or penalize violations of the laws under their jurisdiction. Decreased enforcement power results in less accountability for noncompliant officials and diminished confidence in government. In 2024, these threats included litigation and legislation in the following states:



## ALABAMA

- An attempt to remove all criminal penalties from the ethics code, allow the legislature to remove the ethics commission director and commissioner, reduce the number of people ethics laws apply to, and raise gift thresholds.



## HAWAII

- A challenge to the state ethics commission's ability to enforce ethics laws against an agency.



## FLORIDA

- A limitation on who can file complaints with an ethics commission; an attempt to insulate an agency from ethics enforcement by the state ethics commission.
- A constitutional challenge to financial disclosure requirements overseen by the commission.



## LOUISIANA

- A decrease in the fines a commission can impose for filing financial disclosure reports significantly past their deadline.

## SOURCES OF THREATS

Threats to enforcement power generally come from regulated community members in response to enforcement actions taken against them and legislators who either fear possible ethics complaints or oppose increased oversight.

## CONSIDERATIONS FOR DEFENDING AGAINST THREATS

Ethics commissions will always face resistance to existing or new enforcement powers from those who may be subject to that enforcement and want less oversight. For this reason, commissions must understand that positive changes to enforcement powers may come incrementally and face resistance. When threats happen, ethics commissions primarily rely on effective communication strategies to defend themselves, such as:

- ✓ Engaging with legislators, the court, the public, and the media to clearly articulate the public's significant interest in the commission maintaining enforcement powers. For example, some commissions have drafted white papers and engaged with legislators about proposed legislation.

- ✓ Developing a clear message to articulate why independent ethics enforcement bodies are valuable and reasonable that is mindful of the political dynamics surrounding threats to enforcement authority.
- ✓ Maintaining a good relationship with the media, as they are in the best position to communicate to the public why regulations exist.
- ✓ Creating well-reasoned arguments for why existing or increased powers are necessary and ensuring that the resources are available to handle increased agency responsibilities.

**Attempts to weaken an ethics commission's enforcement power may be inevitable, but proper preparation, including crafting messaging that speaks to the important role independent enforcement plays in preserving public trust, can buttress the commission's arguments.**



## EXAMPLE: ENFORCEMENT POWER THREATS

# Alabama

ETHICS REFORM BILL, ALABAMA HOUSE BILL 227  
INTRODUCED FEBRUARY 22, 2024

### SUMMARY OF THREAT

Legislation was introduced that would remove all criminal penalties from the ethics code and authorize the Alabama Ethics Commission (AEC) to impose private censures, public reprimands, civil penalties, and restitution. The bill gives the legislature the ability to remove the ethics commission's director and commissioner. It also reduces the number of people to whom ethics laws apply and raises gift thresholds.

### ORIGIN

The bill was a response to a 2019 report from the Code of Ethics Clarification and Reform Commission, which found that the state's ethics laws needed clarity.

### POTENTIAL IMPACT

The AEC would have less investigative power, and the ethics laws would be weakened.

### ANTI-COMMISSION ARGUMENT

The bill's sponsor claimed that the AEC is "rogue." He argued that separating civil and criminal enforcement would eliminate confusion and streamline advice. He also claimed that allowing legislators to fire the ethics commissioner and executive director provides voters with oversight and accountability of the ethics commission.

### PRO-COMMISSION ARGUMENT

The law is unnecessary because a method of checks and balances already exists in the statute. The current law allows the AEC to recommend cases to the Attorney General or district attorneys if an investigation uncovers a criminal violation but does not allow the commission to carry out that prosecution. Conversely, prosecutors are granted the authority to conduct their own concurrent, independent investigations to bring about criminal ethics charges without a recommendation from the commission. Separating civil and criminal cases is impractical because civil violations often carry potential criminal implications.

### OUTCOME

**Legislature failed to pass the legislation through both chambers, to the commission's benefit.**



## EXAMPLE: ENFORCEMENT POWER THREATS

# Florida

ETHICS LAW, SENATE BILL 7014  
ENACTED JUNE 24, 2024

### SUMMARY OF THREAT

The law requires ethics complaints filed with the Florida Commission on Ethics (FCE) to be based on personal knowledge, a high evidentiary hurdle that most members of the public could never meet.

### ORIGIN

Sponsors of the legislation claimed that anonymous, frivolous complaints could “spiral out of control” and cited the desire to prevent ethics commissions from investigating complaints that could amount to “politically motivated public relations stunts.”

### POTENTIAL IMPACT

The law is expected to significantly reduce the complaints filed with the FCE because very few people have personal knowledge of ethics violations unless they are party to the violation.

### ANTI-COMMISSION ARGUMENT

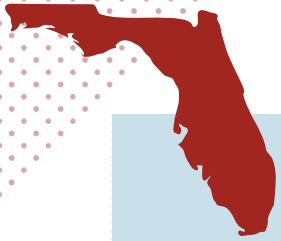
The new higher standard for complaint filings will eliminate frivolous, politically motivated complaints.

### PRO-COMMISSION ARGUMENT

The new law will effectively bar most members of the public from filing complaints, removing an essential part of ethics enforcement in Florida because the FCE cannot initiate an investigation without a complaint. The personal knowledge requirement is a perniciously high standard and is contrary to basic legal principles for filing complaints in any context in Florida.

### OUTCOME

**Passed by Florida  
Legislature and approved  
by the governor, made  
law on June 24, 2024,  
to the commission’s  
detriment.**



## EXAMPLE: ENFORCEMENT POWER THREATS

# Florida

LOPER ET AL V. LUKIS ET AL  
LATEST ACTION: JUNE 11, 2024

### SUMMARY OF THREAT

Municipal and local elected officials filed a lawsuit challenging the constitutionality of a new requirement to disclose detailed information about their personal finances.

### ORIGIN

In 2023, the state legislature passed a law requiring municipal and local elected officials to report additional financial interests to be in line with the disclosure requirements that have applied to the governor and state legislators since the 1970s. The municipal and local elected officials immediately filed this lawsuit, challenging the constitutionality of enhanced disclosure.

### POTENTIAL IMPACT

The Florida Commission on Ethics would be less able to identify abuse of public trust by local officials.

### ANTI-COMMISSION ARGUMENT

There is no compelling state interest in having local officials disclose additional information, and even if there is a compelling interest, there are less restrictive ways to do so.

### PRO-COMMISSION ARGUMENT

Increased disclosure furthers transparency, and citizens in smaller communities are entitled to the same amount of transparency as those in larger communities, as neither is immune to corruption. The new requirement also would help avoid conflicts of interest.

### OUTCOME

**Judge granted a preliminary injunction in favor of the municipal and local elected officials, prohibiting the Florida Commission on Ethics from enforcing the law, to the commission's detriment.**



**EXAMPLE: ENFORCEMENT POWER THREATS**

**Hawai'i**

AKANA V. HAWAII STATE ETHICS COMMISSION  
LATEST ACTION: JULY 16, 2024

**SUMMARY OF THREAT**

Office of Hawaiian Affairs (OHA) trustee filed a lawsuit, claiming that the Hawai'i State Ethics Commission (HSEC) does not have jurisdiction over the OHA to fine the trustee for 47 violations of state ethics code.

**ORIGIN**

In 2019, the HSEC investigated OHA trustee Rowena Akana for accepting illegal gifts valued at over \$21,000, failing to report gifts valued at over \$50,000 in a timely manner, and using her annual trustee allowance for personal benefit or political contributions in violation of the law.

**POTENTIAL IMPACT**

The HSEC would have no oversight over OHA to ensure that they are following ethics rules and laws.

**ANTI-COMMISSION ARGUMENT**

OHA trustees use proceeds from ceded lands, and so they have sole discretion over how they can use those resources.

**PRO-COMMISSION ARGUMENT**

OHA trustees are state employees and have adopted the state ethics code, and the suit is not about OHA's autonomy, only about dealing with violations of the state ethics code.

**OUTCOME**

**Awaiting decision by  
Hawai'i Supreme Court.**



## EXAMPLE: ENFORCEMENT POWER THREATS

# Louisiana

CAMPAIGN FINANCE BILL, HOUSE BILL 740  
ENACTED JUNE 3, 2024

### SUMMARY OF THREAT

The law reduces the ethics board's fines against officials who file their campaign finance reports a month or more past the filing deadline.

### ORIGIN

The sponsor of the legislation introduced it in 2024 because she believed the "fines were absurd." The law decreases late fees from \$60 per day to \$40 per day. It also decreases the total daily fine amount from \$2,000 for legislative candidates to \$1,000 and from \$1,000 for parish-level council seats and the constable position to \$500. Additionally, the law does not count Saturdays, Sundays, and legal holidays when the late fees are calculated.

### POTENTIAL IMPACT

Elected officials may be disincentivized from filing their reports on time because the fines are reduced by half, and the ethics board has decreased ability to effectively enforce financial disclosure reporting laws.

### ANTI-COMMISSION ARGUMENT

Fines were too high; and while officials should be fined for late filing, it should be limited in scope.

### PRO-COMMISSION ARGUMENT

The financial disclosure reports must be filed by a certain day to ensure that elections are transparent; by only decreasing fines for officials and candidates who are more than a month late in filing their reports, the law only benefits extremely delinquent candidates.

### OUTCOME

**Passed by Louisiana  
Legislature and signed  
by the governor, effective  
date August 1, 2024, to the  
commission's detriment.**

**Ethics commissions should  
expect that an increase in  
subject matter jurisdiction  
will likely result in litigation  
challenging the law that  
provides for the additional  
jurisdiction.**



# Subject Matter Jurisdiction Threats

Attempts to decrease subject matter jurisdiction are efforts to limit the kinds of laws ethics commissions have the power to administer and enforce. These types of threats challenge the specific laws under an ethics commission's jurisdiction, usually through claims that the law itself violates the regulated community's constitutional rights.

When ethics commissions have categories of laws stripped from their purview, this results in less transparency and oversight, and as a result, a decrease in public trust. In 2024, these threats included litigation in the following states:



## GEORGIA

→ A constitutional challenge to transparency and campaign finance law.



## MINNESOTA

→ A constitutional challenge to prohibitions on foreign spending in state elections.



## MAINE

→ A constitutional challenge to prohibitions on foreign spending in state elections.



## MISSOURI

→ A constitutional challenge to revolving-door law that would prohibit legislators from lobbying for a set time period.

## SOURCES OF THREATS

Threats to subject matter jurisdiction generally come from members of the regulated community subject to laws under the commission's jurisdiction that impact their influence on elections or legislation.

## CONSIDERATIONS FOR DEFENDING AGAINST THREATS

Ethics commissions should expect that an increase in subject matter jurisdiction will likely result in litigation challenging the law that provides for the additional jurisdiction. Such challenges also occur against long-standing laws by members of the regulated community who the ethics commission has found in violation of the law. To defend themselves against these attacks, ethics commissions should be prepared by:

- ✓ Discussing challenges they foresee being brought against new laws with their legal representation.
- ✓ Looking to see how other states have dealt with similar litigation, finding amici, and reaching out to the drafters of the law.

- ✓ Showing the governmental interest in keeping the law and arguing why the law is appropriately tailored because subject matter jurisdiction laws are often challenged on constitutional grounds.
- ✓ Maintaining thorough documentation of current investigations and enforcement actions, which helps in defending against accusations that the investigative process was improper and needs reform.

**Ethics commissions should expect attempts to reduce their subject matter, but being able to clearly articulate the strong governmental interest in the commission having jurisdiction is necessary to withstand challenges.**





## EXAMPLE: SUBJECT MATTER JURISDICTION THREATS

# Georgia

NEW GEORGIA PROJECT, INC. V. ATTORNEY GENERAL, STATE OF GEORGIA  
DECIDED JULY 8, 2024

### SUMMARY OF THREAT

New Georgia Project (NGP) sued the Georgia Ethics Commission (GEC) and sought to have a federal judge rule that Georgia's Government Transparency and Campaign Finance Act's (GTCFA) registration and disclosure requirements violated their First Amendment rights.

### ORIGIN

NGP conducted express advocacy during the 2018 governor's race. In 2019, it advocated for a specific position during a ballot referendum campaign. The GEC investigated NGP for failing to disclose these political activities under the GTCFA. NGP sued, claiming the GTCFA violated the First Amendment. The district court granted NGP's motion for preliminary injunction and Georgia appealed.

### POTENTIAL IMPACT

The GEC would not be able to regulate any independent committee, which would allow them to flood the state with advocacy without oversight and without any disclosure.

### ANTI-COMMISSION ARGUMENT

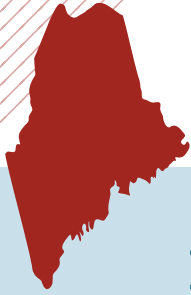
GTCFA's disclosure requirements could not constitutionally be applied to it because its "major purpose" was not nominating or electing a candidate. NGP also argued that the GTCFA was too broad because it regulated all expenditures made "for the purpose of influencing" a nomination or election, even in the absence of "express advocacy."

### PRO-COMMISSION ARGUMENT

Georgia has important interest in promoting transparency and ensuring that voters have necessary information, and the GTCFA's disclosure requirements were substantially related to those interests and were sufficiently tailored. Additionally, under Supreme Court precedent in *Younger v. Harris*, 401 U.S. 37 (1971), the federal court should abstain from exercising its jurisdiction on the grounds that the state's ongoing enforcement action provided NGP an adequate opportunity to uphold their First Amendment rights.

### OUTCOME

**The appellate court vacated the district court's ruling and remanded it with instructions that it dismiss New Georgia Project's action, to the commission's benefit.**



## EXAMPLE: SUBJECT MATTER JURISDICTION THREATS

# Maine

CENTRAL MAINE POWER COMPANY V. MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
LATEST ACTION: OCTOBER 9, 2024

### SUMMARY OF THREAT

Foreign government-owned utility companies based in Maine sued, challenging on First Amendment and preemption grounds an initiative that bars entities owned or influenced by foreign governments from spending to influence state elections.

### ORIGIN

On November 7, 2023, Maine voters passed a citizen's initiative to restrict foreign influence in Maine elections and to correct loopholes that had allowed foreign government-owned domestic corporations to spend money in state referenda and candidate elections. Five weeks after the initiative passed, Maine's two largest electricity utilities and two organizations representing the state's news outlets sued, claiming the law is unconstitutional.

### POTENTIAL IMPACT

The Maine Commission on Governmental Ethics and Election Practices' role in keeping foreign money out of state elections would be curtailed.

### ANTI-COMMISSION ARGUMENT

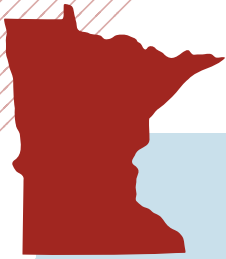
Plaintiffs are challenging three main components of the law: the ban on electoral spending by corporations in which a foreign government has an ownership share of more than 5%; internal "due diligence policies" required for media companies; and transparency measures that require disclaimers on certain communications by foreign government-influenced entities. They argue that the law infringes on their ability to exercise their First Amendment rights and is preempted by federal campaign finance law.

### PRO-COMMISSION ARGUMENT

The U.S. Supreme Court has already approved the federal foreign money ban. Efforts by states to prevent foreign nationals from spending money in state and local elections, and in particular ballot referenda, where voters participate in direct democracy to enact their own laws, provide the compelling interest to withstand constitutional scrutiny. Ten other states have also enacted laws like Maine's to prohibit foreign nationals from spending to influence their citizen-initiated ballot measure processes.

### OUTCOME

**On February 29, 2024, the U.S. District Court for the District of Maine granted the plaintiffs' motion for preliminary injunction, enjoining Maine's ban on campaign spending by foreign government-influenced entities and related provisions in their entirety, to the commission's detriment. Maine appealed to the First Circuit.**



## EXAMPLE: SUBJECT MATTER JURISDICTION THREATS

# Minnesota

MINNESOTA CHAMBER OF COMMERCE V. CHOI  
LATEST ACTION: AUGUST 9, 2024

### SUMMARY OF THREAT

The Minnesota Chamber of Commerce sued to overturn a law prohibiting corporations with foreign owners from spending to influence state elections on First Amendment and federal preemption grounds.

### ORIGIN

In 2023, Minnesota enacted the Democracy for the People Act, which included provisions prohibiting for-profit corporations and limited liability companies with foreign ownership from making political expenditures or contributions in Minnesota elections. The Minnesota Chamber of Commerce filed a lawsuit in July 2023 seeking to invalidate this prohibition on campaign spending by foreign-influenced corporations, arguing that it violated its members' First Amendment rights and was preempted by federal law.

### POTENTIAL IMPACT

Minnesota Campaign Finance and Public Disclosure Board's role in keeping foreign money out of state elections would be curtailed.

### ANTI-COMMISSION ARGUMENT

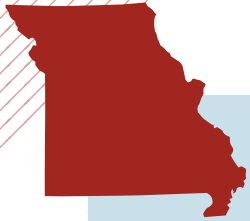
The Federal Election Campaign Act preempts the Democracy for the People Act. The new law is an unconstitutional restriction on political speech by corporations and limited liability companies.

### PRO-COMMISSION ARGUMENT

The U.S. Supreme Court has already approved the federal foreign money ban. Efforts by states to prevent foreign nationals from spending money in state and local elections, in particular ballot referenda, where voters participate in direct democracy to enact their own laws, provide the compelling interest to withstand constitutional scrutiny. State laws seeking to shield state elections from the influence of foreign money are not preempted by federal law and, in fact, are a critical tool to protect elections from foreign pressures and "preserve the basic conception of a political community."

### OUTCOME

**U.S. District Court for the District of Minnesota granted the plaintiffs' motion for preliminary injunction, enjoining Minnesota's ban on campaign spending by foreign government-influenced entities and related provisions pending full litigation, to the commission's detriment.**



**EXAMPLE: SUBJECT MATTER JURISDICTION THREATS**

# Missouri

ROCKNE MILLER, ET AL V. ELIZABETH L. ZIEGLER, ET AL  
DECIDED JULY 29, 2024

### SUMMARY OF THREAT

A former legislator and company that sought to hire him as a lobbyist challenged amendment to Missouri Constitution that imposed two-year ban on lobbying for former legislators and staff.

### ORIGIN

Article III, Section 2(a) of the Missouri Constitution was enacted through a ballot initiative in 2018. The new provision prohibits members of the general assembly and their staff from acting as paid lobbyists for two years after leaving office.

### POTENTIAL IMPACT

Former legislators will be permitted to influence former colleagues, leading to the appearance of, or actual, corruption.

### ANTI-COMMISSION ARGUMENT

The lobbying ban is an unconstitutional burden on the right to freedom of speech and right to petition. The law makes it functionally impossible for a former legislator to act as a lobbyist and for someone to pay them for their services.

### PRO-COMMISSION ARGUMENT

The lobbying ban is a proportional and narrow limit designed to further a most important state interest: combating quid pro quo corruption. It is narrowly tailored to further the interest because it deters public officials from engaging in quid pro quo corruption and only restricts paid lobbying.

### OUTCOME

**The Eighth Circuit ruled in favor of plaintiffs, finding that Missouri’s ban on lawmakers and legislative staff working as paid lobbyists for two years after leaving office is unconstitutional, to the commission’s detriment.**

**Attacks on the existence of  
ethics commissions typically  
occur in litigation with a focus  
on the ethics commission's  
constitutionality.**

# Existential Threats

Existential threats are efforts to strip an ethics commission of all its power. These types of threats are arguably the most serious because they challenge not only a commission's enforcement authority or the laws under the commission's jurisdiction but the very foundation of the ethics commission's existence. In 2024, these threats included litigation and legislation in the following states:



## NEVADA

→ An allegation that the commission's powers violate the constitution because they should be reserved for the executive branch.



## NEW YORK

→ A constitutional challenge to state ethics commission's legitimacy under the state constitution's separation of powers doctrine, and a challenge to the way the ethics commissioners are appointed.



## TEXAS

→ A constitutional challenge to state ethics commission's legitimacy under the state constitution's separation of powers doctrine.



## SOURCES OF THREATS

Existential threats generally come from regulated community members unhappy with enforcement actions taken against them and who are seeking ways to invalidate the ethics commission's mandate.

## CONSIDERATIONS FOR DEFENDING AGAINST THREATS

Attacks on the existence of ethics commissions typically occur in litigation with a focus on an ethics commission's constitutionality. These threats happen most often where an ethics commission's authority is not enshrined in the constitution. When ethics commissions face these attacks, they should take stock of the current legal landscape and prepare for litigation by:

- ✓ Creating a system to track how the commission handles violations of the same kind to show its actions are consistent.
- ✓ Planning for who will represent them during the suit, whether they will use an in-house litigation team or outside counsel, in the event the Attorney General is unable or unwilling to provide representation.

- ✓ Understanding the political dynamics at play that could hinder effective representation when political appointees are tasked with representing the ethics commission in litigation.
- ✓ Finding persuasive arguments by citing the depth of precedent for fair and consistent enforcement across all violators, which can also help with gaining buy-in from the regulated community.
- ✓ Developing public messaging to show the importance of nonpolitical input in ethics commission processes.

**Existential threats to ethics commissions are a common occurrence, and where enshrining the commission in the constitution is not possible, ethics commissions should be prepared to face litigation and work to balance independence and government oversight in their operations.**





**EXAMPLE: EXISTENTIAL THREATS**

# Nevada

LOMBARDO V. NEVADA COMMISSION ON ETHICS  
DECIDED JANUARY 2, 2024

**SUMMARY OF THREAT**

The Nevada governor challenged the Nevada Commission on Ethics' (NCE) authority after it censured and fined him for violating ethics laws that prohibit the use of government resources for personal campaigns.

**ANTI-COMMISSION ARGUMENT**

The ethics law improperly vests the NCE with authority to exercise executive functions and authority. The fact that the legislature appoints half of the commissioners who sit on the ethics commission violates the state constitution's separation of powers provisions.

**OUTCOME**

**Dismissed on procedural grounds, to the commission's benefit.**

**ORIGIN**

In July 2023, the NCE found now governor and former sheriff Lombardo guilty of violating ethics law because he used his sheriff's badge and uniform as part of his campaign, in violation of an ethics law. The governor filed a lawsuit challenging the commission's authority. The suit attempts to permanently bar the commission from conducting any investigations or administering penalties over the governor.

**PRO-COMMISSION ARGUMENT**

The governor failed to notify the NCE that he intended to appeal its decision to censure and fine the governor by serving the suit to the Attorney General's office within 45 days, as required by law.

**POTENTIAL IMPACT**

The NCE could be found unconstitutional.



## EXAMPLE: EXISTENTIAL THREATS

# New York

CUOMO V. NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT  
DECIDED MAY 9, 2024

### SUMMARY OF THREAT

Governor challenged state ethics commission's authority to investigate and charge him with ethics violations after he was found to improperly use state resources to publish a book.

### ORIGIN

Former New York Governor Andrew Cuomo wrote a memoir chronicling his handling of the 2020 COVID-19 pandemic. The New York State Commission on Ethics and Lobbying in Government (COELIG) initiated an investigation to determine whether he improperly used staff time to write the book. Governor Cuomo sued, arguing that the ethics commission's enforcement powers violated the New York Constitution's separation of powers provisions.

### POTENTIAL IMPACT

COELIG could be found unconstitutional.

### ANTI-COMMISSION ARGUMENT

COELIG's enforcement of the ethics laws through civil penalties and forfeiture is the exercise of executive power belonging to the executive branch and is unconstitutionally vested in the commission. When the new ethics commission was created, the new governor reduced the number of members appointed by the governor and created a new vetting process that employed a panel of deans from the state's law schools to make the commission more independent. This process removes enforcement oversight from the executive branch and violates the separation of powers doctrine.

### PRO-COMMISSION ARGUMENT

The ethics commission's enforcement powers are fundamentally different than those of the executive branch and, in any case, the branches of government cannot always be divided neatly. The appointment process of commissioners provides balance and oversight, and law school deans only screen commissioners, not appoint them.

### OUTCOME

**Supreme Court, Appellate Division, Third Department, New York ruled in favor of plaintiff, to the commission's detriment. New York Commission on Ethics and Lobbying in Government has appealed to the New York Court of Appeals.**



## EXAMPLE: EXISTENTIAL THREATS

# Texas

EMPOWER TEXANS V. TEXAS ETHICS COMMISSION  
DECIDED MARCH 8, 2024

### SUMMARY OF THREAT

An individual subject to lobbying laws who faced a fine for failing to register sought declaration that enforcement powers delegated to the commission violated the Texas Constitution's separation of powers clause.

### ORIGIN

In 2014, Michael Quinn Sullivan and his organization, Empower Texans, Inc., initiated a lawsuit to challenge a \$10,000 fine levied against Sullivan for failing to register as a lobbyist. In addition to challenging the fine itself, Sullivan argued that the powers granted to the Texas Ethics Commission (TEC) by the state constitution and the state legislature were unconstitutional.

### POTENTIAL IMPACT

The Texas Ethics Commission could be found unconstitutional.

### ANTI-COMMISSION ARGUMENT

Sullivan argued that, under the Texas Constitution, the TEC should be considered a legislative branch agency and therefore did not have the constitutional authority to enforce laws regarding political expenditures and lobbying. Sullivan also tried to portray Texas as an extreme outlier in its regulation of lobbyists.

### PRO-COMMISSION ARGUMENT

The Texas Constitution Article III, Section 24a was enacted to structure the ethics commission as an independent, bipartisan agency, intended to have enforcement powers from its inception. The Constitution explicitly authorizes the state legislature to delegate to the TEC the "powers and duties" necessary to achieve political transparency and protect the integrity of Texas state government.

### OUTCOME

**Texas Ethics Commission won in the lower courts, and Texas Supreme Court denied certiorari, ending the case and preserving the commission's authority to enforce Texas' ethics and transparency laws, to the commission's benefit.**

# Positive Legislation

Ethics commissions have also experienced positive legislative developments in 2024. The major positive developments occurred in the following states:



## FLORIDA

→ A law increasing civil penalties for ethics violations.



## OREGON

→ A law authorizing the ethics commission to provide formal and informal advice.



## VERMONT

→ A law giving the ethics commission enforcement powers.

## SOURCES OF POSITIVE LEGISLATION

Positive developments for ethics commissions come from advocacy efforts by pro-ethics legislators and the commissions themselves. Positive developments can also come from the public by ballot initiative.

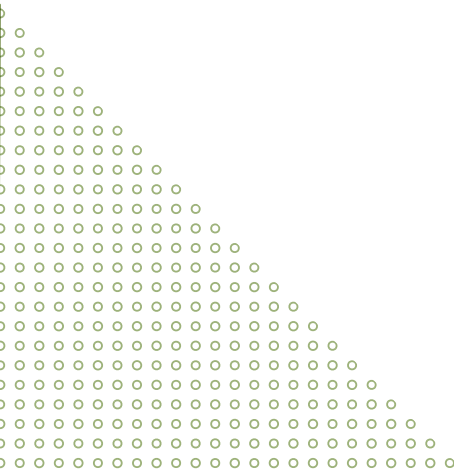
## CONSIDERATIONS FOR PROMOTING POSITIVE LEGISLATION

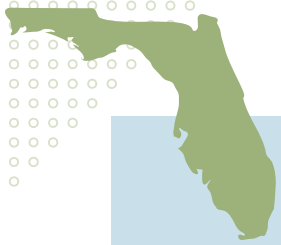
To facilitate the introduction and passage of positive legislation, ethics commissions should be proactive by:

- ✓ Taking the lead on advocating for legislative improvements. This may include drafting proposed legislation or being active participants in the drafting or amendment process.

- ✓ Providing documentation to support whatever changes the legislature proposes and to counter arguments against the commission.
- ✓ Taking a strategic and long-term view of policy changes that affect your agency.
- ✓ Keeping open lines of communication with legislative staff and commissioners who may be advocates for positive changes.

**Ethics commissions can continue to see their authority expanded with concerted advocacy efforts.**





**EXAMPLE: POSITIVE LEGISLATION**

**Florida**

ETHICS LAW, SENATE BILL 7014  
ENACTED JUNE 24, 2024

**SUMMARY OF LEGISLATION**

This law created statutory time frames for processing ethics complaints, increasing civil penalties for ethics violations, and allowing candidates to receive attorneys' fees.

**ORIGIN**

The investigative process for the Florida Commission on Ethics (FCE) took too long. Senate staff met with the Executive Director to determine appropriate, workable time frames. FCE has recommended that the legislature increase penalties for years, as they had not been increased since the 1990s.

**IMPACT**

**The investigatory timeline provides clear expectations for those accused of ethics violations and provides those who file complaints with the knowledge that their complaint is being investigated in a timely manner. Increased penalties serve as a more effective deterrent and can better reflect the seriousness of violations. Allowing candidates to receive attorneys' fees makes it more feasible for them to defend themselves from ethics violations accusations, putting them in the same position as elected officials who could already receive attorneys' fees.**



**EXAMPLE: POSITIVE LEGISLATION**

**Oregon**

HOUSE BILL 4117  
PASSED MARCH 25, 2024

**SUMMARY OF LEGISLATION**

The bill allows the Oregon Government Ethics Commission to give advice on the state's public meetings law. It authorizes the commission to issue written advisory opinions and give oral advice based on actual or hypothetical circumstances.

**ORIGIN**

Legislation in 2023 gave the ethics commission the power to enforce the public meetings laws; prior to 2023, if people were improperly barred from attending public meetings, the only option for recourse was through the judicial system. HB 4117 added to the commission's power the ability to provide advice on the law.

**IMPACT**

**The legislation allows people to seek advice on how to comply with or better understand the public meetings law. The ethics commission received increased staffing to provide guidance and training effectively.**





## EXAMPLE: POSITIVE LEGISLATION

# Vermont

H. 875  
PASSED MARCH 25, 2024

### SUMMARY OF LEGISLATION

The bill establishes a municipal code of ethics that sets minimum statewide ethics standards and authorizes the state ethics commission to provide advisory and training services to municipalities handling ethics complaints. The legislation also gives the state ethics commission the power to investigate violations of the existing ethics laws. Further, it requires county officers to file financial disclosures and state-level officials to disclose some additional financial information, including stock holdings.

### ORIGIN

Beginning in 2017, legislators began having serious discussions surrounding ethics. Vermont was one of the only states in the country to not have an ethics code or an ethics commission. A series of legislative efforts followed reports that Vermont ranked in the bottom 10 states nationwide in the strength of its ethics laws, leading to the creation of the ethics commission. It became clear that the commission saw more ethics complaints against municipal employees than state-level employees, showing a need for more consistency in municipal ethics laws and enforcement.

### IMPACT

**Prior to the bill's passage, there was no uniform ethics code and no statewide standard for investigating ethics violations by municipal officers; the Vermont Ethics Commission was not authorized to handle complaints against municipal employees. Now, not only will municipal employees have clear ethics standards but municipalities will also be able to seek guidance from the state ethics commission. With the addition of enforcement powers for the state ethics commission, Vermont is likely to see better and increased ethics enforcement statewide.**

# Conclusion

Across the country, those who want to see ethics commissions' power diminished are becoming more creative with how they threaten these commissions.

For this reason, it is crucial that ethics commissions take lessons from others and prepare accordingly.

Attempts to weaken enforcement powers of ethics commissions may be inevitable, but proper preparation, including messaging about the important role independent enforcement plays in preserving public trust, can buttress these commissions' arguments. Ethics commissions can prepare for threats to their subject matter jurisdiction by having justifications for their authority at the ready. And while existential threats to ethics commissions are becoming more common, ethics commissions should be prepared to face litigation and work to balance independence and government oversight in their operations.

In the face of these threats, deliberate advocacy efforts by the commission and the public can expand and solidify the commission's authority, ensuring accountability and transparency into the future.



SUMMARY TABLE

# Threat Assessment 2024

| STATE            | LITIGATION OR LEGISLATION | POSITIVE OR NEGATIVE CHANGE | CATEGORY                    | BRIEF DESCRIPTION   | STATUS  |
|------------------|---------------------------|-----------------------------|-----------------------------|---|---|
| <b>Alabama</b>   | Legislation               | Negative                    | Enforcement                 | Bill to remove all criminal penalties from ethics code, allow legislature to remove commissioners and directors, reduce who ethics law applies to, and raise gift threshold | Failed in legislature, to commission's benefit  |
| <b>Florida</b>   | Legislation               | Negative                    | Enforcement                 | Bill to require personal knowledge to file complaint with commission  | Signed into law, to commission's detriment  |
| <b>Florida</b>   | Litigation                | Negative                    | Enforcement                 | Suit challenging law requiring more detailed disclosure for municipal and local elected officials   | Preliminary injunction preventing enforcement of law granted, to commission's detriment |
| <b>Florida</b>   | Legislation               | Positive                    | Positive Legislation        | Increase in civil penalties for ethics violations   | Signed into law, to commission's benefit  |
| <b>Georgia</b>   | Litigation                | Negative                    | Subject Matter Jurisdiction | Constitutional challenge to transparency and campaign finance law   | Vacated and remanded with instructions to dismiss, to commission's benefit              |
| <b>Hawai'i</b>   | Litigation                | Negative                    | Enforcement                 | Suit challenging Commission's jurisdiction over agency  | Awaiting decision by Hawai'i Supreme Court  |
| <b>Louisiana</b> | Legislation               | Negative                    | Enforcement                 | Bill to reduce fines against officials who fail to file financial disclosure reports significantly past deadline  | Signed into law, to commission's detriment  |
| <b>Maine</b>     | Litigation                | Negative                    | Subject Matter Jurisdiction | Constitutional challenge to prohibitions on foreign spending in state elections   | Preliminary injunction preventing enforcement of law granted, to commission's detriment |
| <b>Minnesota</b> | Litigation                | Negative                    | Subject Matter Jurisdiction | Constitutional challenge to prohibitions on foreign spending in state elections   | Preliminary injunction preventing enforcement of law granted, to commission's detriment |

SUMMARY TABLE

# Threat Assessment 2024 continued

| STATE           | LITIGATION OR LEGISLATION | POSITIVE OR NEGATIVE CHANGE | CATEGORY                    | BRIEF DESCRIPTION   | STATUS   |
|-----------------|---------------------------|-----------------------------|-----------------------------|---|--|
| <b>Missouri</b> | Litigation                | Negative                    | Subject Matter Jurisdiction | Constitutional challenge to revolving-door law that would prohibit legislators from lobbying for set period                             | Appellate court held law unconstitutional, to commission's detriment           |
| <b>Nevada</b>   | Litigation                | Negative                    | Existential                 | State constitutional challenge to commission's ability to enforce ethics laws against executive branch                                  | Dismissed on procedural grounds, to commission's benefit                       |
| <b>New York</b> | Litigation                | Negative                    | Existential                 | State constitutional challenge to commission's legitimacy under separation of powers doctrine and challenge to commissioner appointment | Appellate court held commission is unconstitutional, to commission's detriment |
| <b>Oregon</b>   | Legislation               | Positive                    | Positive Legislation        | Bill authorizing commission provide formal and informal advice  | Signed into law, to commission's benefit                                       |
| <b>Texas</b>    | Litigation                | Negative                    | Existential                 | State constitutional challenge to commission's legitimacy under separation of powers doctrine   | Courts found commission constitutional, to commission's benefit                |
| <b>Vermont</b>  | Legislation               | Positive                    | Positive Legislation        | Bill providing commission with enforcement power  | Signed into law, to commission's benefit                                       |



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## ABOUT CAMPAIGN LEGAL CENTER

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