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Center for the Advancement of Public Integrity, Columbia Law School  
Citizens Union  
New York City Bar Association  
Committee to Reform the State Constitution  
Common Cause/New York  
League of Women Voters of the State of New York  
New York Public Interest Research Group  
Reinvent Albany**

## **NEWS RELEASE**

### **CIVIC ORGANIZATIONS RELEASE 50-STATE REVIEW OF STATES' ETHICS BOARDS**

#### **GROUPS URGE NEW YORK ACTION TO REPLACE JCOPE, LEC, AND ADD ETHICS MEASURE TO STATE CONSTITUTION**

(Albany, N.Y.) New York's ethics watchdogs were found to be among the very weakest in the nation when it comes to their independence and public accountability, according to a nationwide survey of states' ethics commission released by a coalition of civic groups.

The survey reviewed each state's ethics commissions and compared it to New York's. The overall finding of the review was that "Few, if any, other states have ethics watchdogs so completely compromised by lack of independence, partisanship, lack of transparency and the other failings described." To bolster the survey's findings, the organizations cited a recent review of state's ethics laws by the Center for Public Integrity. CPI found New York's ethics oversight to be lacking, giving New York a grade of "F" for its oversight. The results of the survey are attached.

In a letter to the state's elected leaders, the groups urged action this session on a constitutional amendment that would add an ethics section as well as create a truly independent and publicly accountable ethics watchdog. The letter is also attached.

The Anti-Corruption Amendment (Senate bill 594/Assembly bill 1282) would create the Commission on State Government Integrity (the "Integrity Commission") to replace the Joint Commission On Public Ethics and the Legislative Ethics Commission. These two bodies lack the independence needed to be effective enforcers of ethics laws.

In many states all three branches, legislative, executive and judicial, make ethics commission appointments. This is the case in New York only for the Commission on Judicial Conduct, which is a well-regarded enforcer of judicial ethics created in the State Constitution. A majority of the

members of the Integrity Commission would be appointed by the judiciary and only a minority by the bodies being regulated.

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## **BACKGROUND ON THE REFORM PROPOSAL**

New York is the only state where the ethics commission does not operate by majority vote. Incredibly two (2) of the Governor's appointees to 14-member JCOPE can veto and investigation or a finding of violation, as can three (3) of the appointees of the legislative leaders. The Integrity Commission would operate by majority vote.

New York is also marked by its division of ethics enforcement responsibility. JCOPE can find a violation by executive branch officials or employees and impose a fine but only the LEC can find a violation by or fine an legislative branch official or employee. The LEC may reject JCOPE's interpretation of the law. In all cases, discipline (admonishment, censure, demotion, suspension or removal) is left to the discretion of entity in which the official or employee works. The Integrity Commission would have full discipline authority over both branches except that as currently only the Legislature could remove an elected official. A constitutional amendment is needed to create a single enforcement body with full sanctioning power.

Nearly half the states give the responsibility for enforcing the campaign finance laws to their ethics commission. New York needs to do the same because the State Board of Elections is controlled by the political parties and therefore is not sufficiently independent to enforce campaign finance laws designed to limit the pay-to-play culture.

Ethics and other rules barring official misconduct are only as good as the mechanism available to enforce them. Without an adequate enforcement mechanism these rules exist only on paper without real world force or effect. "Paper" rules do nothing to combat what far too many see as a culture of corruption and pay-to-play in Albany.

Other key features of the Anti-Corruption Amendment include the following:

- Unlike JCOPE, where the person appointing a member can remove that member for what the appointing authority deems to be substantial neglect of duty, members of the Commission could be removed for cause only through a process by which a majority of the Commission votes to make an application for removal to the Court of Appeals.
- Ex parte communications between Commission members and their appointing authorities and related staff would be barred, and no member could have held office, employment in state government or any political party or been engaged as a lobbyist in the three years prior to his or her appointment or during his or her term.
- Transparency laws would apply equally to the executive and legislative branches.
- All state officers and employees would have an ethical duty to report known misconduct to the Commission and would be protected against retaliation.
- Sexual harassment would be barred as ethical misconduct.
- The Integrity Commission would have full authority to sanction officers or employee of public authorities.

The text of the Anti-Corruption Amendment is available at [www.committee2reform.org/anti\\_corruption\\_amendment](http://www.committee2reform.org/anti_corruption_amendment).

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**New York Public  
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**Reinvent Albany**

May 16, 2019

Governor Cuomo Executive Chamber Capitol Building Albany, NY 12234	Senate Majority Leader Stewart-Cousins LOB 907 Albany, NY 12247	Assembly Speaker Heastie LOB 932 Albany, NY 12248
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Senate Minority Leader Flanagan LOB 909 Albany, NY 12247	Assembly Minority Leader Kolb LOB 933 Albany, NY 12248
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**Re: The Need for Ethics Enforcement Reform**

Dear Messrs. Cuomo, Heastie, Flanagan, Kolb and Ms. Stewart-Cousins:

On behalf of our organizations we write you to take action this legislative session to overhaul ethics enforcement. Attached you will find a review of states' ethics laws which finds that New York State's Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC) fail to follow best practices in ethics oversight due to the inadequate structure of those organizations.

Corruption destroys democracy by undermining the confidence of the people that their elected representatives will put the people's interests ahead of their private financial interests. Strong ethics enforcement holds officials to their oath "faithfully to discharge" the duties of their office. (Constitution Article XIII, section 1). It is the first line of defense against corruption.

As you know, top members of both the executive and legislative branches have in recent years been convicted of corruption. All of these cases were brought by *federal* prosecutors. The groups charge that had *state* ethics enforcers been viewed as independent and fearless, perhaps these scandals would not have occurred.

As seen in the attached, by reasonable standards, both JCOPE and LEC are inadequately structured to be independent, required to operate in an open and accountable manner, and to have the necessary resources to do their jobs.

New York State should demonstrate to the nation how best to both respond to the unprecedented scandals that have plagued government and also to structure an ethics oversight entity that follows the best practices in monitoring public officials' behavior.

## **Call for Ethics Enforcement Reform, Page 2**

From the public's point of view, ethics watchdogs must be independent of all public officials subject to its jurisdiction, or else its actions will always be suspect, undermining the very purpose of the ethics law to promote the reality and perception of integrity in government. The touchstones of independence may be found in commission members of high integrity, who hold no other government positions, are parties to no government contracts, engage in no lobbying of the government, and do not appear before the government in a representative capacity.

There is legislation that achieves those goals. The Anti-Corruption Amendment (Senate bill 594/Assembly bill 1282) would create the Commission on State Government Integrity (the "Integrity Commission") to replace the JCOPE and the LEC.

In many states all three branches, legislative, executive and judicial, make ethics commission appointments. This is the case in New York only for the Commission on Judicial Conduct, which is a well-regarded enforcer of judicial ethics created in the State Constitution. A majority of the members of the Integrity Commission would be appointed by the judiciary and only a minority by the bodies being regulated.

We urge you to take action this session to ensure that New York State's ethics laws are independently and adequately regulated. We urge your support for S.594/A.1282 and act to move the resolution quickly.

Sincerely,

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**ASSESSMENT OF THE JOINT COMMISSION ON PUBLIC ETHICS (“JCOPE”) AND THE LEGISLATIVE ETHICS COMMISSION (“LEC”)**

TOPIC	GRADE	REASONS	OTHER STATES <sup>i</sup>	CENTER FOR PUBLIC INTEGRITY <sup>ii</sup>
<b>Overall</b>	<b>Very Weak</b>	<b>Among the very weakest ethics oversight bodies in the nation</b>	Few, if any, other states have ethics watchdogs so completely compromised by lack of independence, partisanship, lack of transparency and the other failings described below.	New York’s ethics agencies received a grade of F.
<b>Independence</b>	<b>Clear Weakness</b>	<p>All members of both JCOPE and the LEC are appointed by those regulated. Regulated persons are members of the LEC.</p> <p>There is no ban on appointing authority contacting the members it appointed to convey their desires.</p> <p>The JCOPE Chair serves at the pleasure of the Governor and the LEC is co-chaired by legislators.</p>	<p>In 17 states one or more of the regulated bodies do not make appointments.</p> <p>6 states have appointments by persons outside of any of the regulated bodies including by the judiciary.</p> <p>Term appointments for all are the norm.</p>	“Unfortunately for New York's ethics enforcement, the Joint Commission on Public Ethics is far from independent.”

		<p>Executive Director may be, and is, a recent top aide to the Governor.</p> <p>There is no independent check on removal of a commissioner.</p>		
<b>Transparency</b>	<b>Clear Weakness</b>	<p>JCOPE and the LEC operate under very strict secrecy.</p> <p>Votes on investigations, which may involve a veto by a small minority, are not disclosed.</p> <p>Results of investigations are only disclosed if the commission decides to issue a report finding misconduct.</p>	<p>Most states have no special rules of confidentiality that differ from those applicable to other enforcement agencies.</p> <p>A conclusion that an ethics commission has found probable cause is generally disclosed.</p>	<p>“[M]ost of the commission's work is shielded from New York's Freedom of Information Law and is not available to the public, including votes and other procedural details.”</p>
<b>Lack of Political Entanglement</b>	<b>Clear Weakness</b>	<p>JCOPE is highly politicized. Two of the Governor's appointees from his or her political party can veto an investigation.</p> <p>Three of the appointees of either the Republican or Democratic legislative leaders can veto an investigation.</p> <p>No members need be independent of any political party.</p> <p>The Chair of the Commission is likely to be a political supporter of the Governor.</p>	<p>No other state has New York's politicized voting structure.</p> <p>They typically operate by majority vote.</p>	<p>“[J]ust two of the 14 members can veto an investigation. And because of the secrecy surrounding the commission, the public is not entitled to know details about votes and investigations, so there is no documentation of political pressure on the commission.”</p>

<p align="center"><b>Uniform Application of the State Code of Ethics</b></p>	<p align="center"><b>Weakness</b></p>	<p>The LEC is free to adopt a different interpretation of the State Code of Ethics from that adopted by JCOPE and this causes both lack of uniformity and a lack of clarity.</p> <p>The two bodies are free to differ on standards for sanctioning.</p>	<p>Most states have a single enforcement entity covering both the Legislative and Executive branches.</p>	<p>This topic is not covered by CPI report.</p>
<p align="center"><b>Adequacy of Funding</b></p>	<p align="center"><b>Weakness</b></p>	<p>JCOPE has a budget of \$5.6 million and the LEC of \$400,000</p> <p>This amount is not sufficient for JCOPE robustly to discharge its mission. For example it does not review all disclosure forms for conflict issue disclosed on the face of the form. Had it done so it would likely have discovered the misconduct of Joseph Percoco, a top aide to the Governor.</p>	<p>Not studied</p>	<p>JCOPE received a score of 25 out of 100 for adequacy of resources</p> <p>JCOPE has complained about inadequate funding.</p>
<p align="center"><b>Security of Funding</b></p>	<p align="center"><b>Weakness</b></p>	<p>There is no mechanism akin to that in place for the Legislature and the Judiciary to protect against attempts to starve JCOPE into docility.</p>	<p>Several states have mechanisms to protect the security of their ethics commission's funding.</p>	<p>Appropriations "fluctuate from year to year and are subject to negotiations. The agencies' funding is not protected by the state constitution or other New York laws."</p>

<p><b>Majority Voting</b></p>	<p><b>Clear Weakness</b></p>	<p>Lack of majority voting means that warranted investigations will not take place and appropriate sanctions will not be imposed.</p>	<p>New York's veto system is unique</p>	<p>Lack of majority voting is a key reason for assigning a grade of F to New York's ethics agencies</p>
<p><b>Campaign Contribution as Source of Conflict of Interest</b></p>	<p><b>Weakness</b></p>	<p>Large campaign contributions are an important source of conflict of interest that is mitigated by campaign finance regulation yet JCOPE plays no role. The State Board of Elections which administers campaign finance is itself broken and party controlled. It was the author of the LLC loophole.</p>	<p>Sixteen states give a campaign finance role to their ethics commission.</p>	<p>The State Board of Elections gets a score of 0 out of 100 on key factors such as independence, protection from political influence and hiring free of nepotism, cronyism and patronage</p>
<p><b>Adequacy of Available Sanctions</b></p>	<p><b>Weakness</b></p>	<p>JCOPE is limited to imposing a fine for executive branch violations and the LEC is so limited for legislative branch violations.</p> <p>No power to remove, demote or suspend serious offenders.</p> <p>No power to issue an order of public censure which in the context of state government can be a real deterrent.</p> <p>.</p>	<p>11 state let ethics commission impose (5) or recommend imposition of (6) a broad range of sanctions up to and including removal and 6 additional states allow imposition of a public reprimand or censure.</p>	<p>Topic not covered in CPR report</p>

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<sup>i</sup> Based on 50 state survey compiled for the Committee to Reform the State Constitution.

<sup>ii</sup> Report by the Center for Public Integrity, a non-profit news organization, published November 2015 and updated February 2018