

**Reinvent Albany
Citizens Union
Committee to Reform the State Constitution
Common Cause/NY
League of Women Voters of New York State
New York City Bar Association-Committee on Government Ethics and State Affairs
New York Public Interest Research Group
Sexual Harassment Working Group**

February 8, 2022

Submitted Via Email

Kathy C. Hochul
Governor, State of New York

Andrea Stewart-Cousins
Majority Leader, New York State Senate

Robert Ortt
Minority Leader, New York State Senate

Carl Heastie
Speaker, New York State Assembly

William Barclay
Minority Leader, New York State Assembly

Re: We urge you to create a new, independent state ethics commission in this year's budget.

Dear Governor Hochul, Majority Leader Stewart-Cousins, Minority Leader Ortt, Speaker Heastie, and Minority Leader Barclay:

Our groups strongly support Governor Hochul's intention to replace the Joint Commission on Public Ethics (JCOPE) with a new, independent ethics commission. The Governor's proposal is easy to understand, realistic, and creates a smaller commission with simple majority voting rules. Plus, the Governor proposes subjecting the new ethics commission to the Freedom of Information Law and Open Meetings Law.

We urge you to adopt the governor's basic framework of having law school deans appoint ethics commissioners to the new commission. However, we think the Governor's proposal needs to be modified by the simple transparency and accountability recommendations below to ensure that the appointment process and commission is truly independent, fair and transparent.

New York State government has a significant and ongoing problem with conflicts of interest, the abuse of power and corruption. It is clear that the Joint Commission on Public Ethics is not designed for – nor capable of – enforcing ethics laws fairly and effectively. JCOPE must be replaced by an independent ethics commission.

Barely a year goes by without an enormous scandal in Albany. Before the sexual harassment, book deal and COVID-19 nursing home death investigations erupted around the former governor, there was the Buffalo Billion bid-rigging corruption, and, before that the Speaker of the Assembly, Attorney General, Senate Leader and various legislators were engulfed in unethical behavior.

New York has repeatedly faced the problem of corruption at the highest levels. Effective ethics enforcement is the first line of defense against corruption and we need a sufficiently independent commission to give confidence that such enforcement will be carried out without fear or favor.

The proposed amendments below will strengthen the transparency and accountability of the commission as proposed by the Governor in Part Z of the [Public Protection and General Government Article VII bill](#), improve New York state's ethics and disclosure laws generally, and start the process of rebuilding trust in our public institutions.

We note that the Governor's proposal does not address the Legislative Ethics Commission (LEC), the New York State Inspector General, or the Governor's Office of Employee Relations. These entities must also be reformed and clarity provided regarding the powers of the new commission with respect to these bodies.

The Senate and Assembly must reform the LEC to bring independent, transparent ethics enforcement to their own houses. Ideally, a truly independent, joint commission would be created, but we recognize that there are constitutional issues that must be addressed before that can happen. We urge the Legislature to start that process.

Our groups urge the Governor, Senate and Assembly to strengthen the Governor's proposal in the following ways:

1. Creating a Transparent Selection Process

- a. More detailed criteria regarding experience, expertise, qualifications, and requirements for diversity of the commission should be provided in the statute.
- b. The Governor's proposal gives the selection committee the responsibility to develop procedures for soliciting and reviewing applications from members of the public to serve as commissioners. This could instead be specified in the statute, or if left to the selection committee, procedures should be issued as proposed rules subject to public review and comment under the State Administrative Procedures Act before they are finalized. The procedures should address:

- i. how members of the public can submit an application to serve on the ethics commission;
 - ii. application of statutory criteria for selection of commissioners, including but not limited to considering diversity, qualifications and expertise of applicants; and
 - iii. the voting process used by the selection committee, including the use of ranked choice voting.
- c. A final list of candidates for the ethics commission should be published 15 days in advance of a public vote of the selection committee to confirm the appointees, and public comment should be accepted on the candidates. This is the current timeframe used by the Judicial Nominations Commission.
- d. The selection committee should publish a report after the conclusion of the selection process that includes detailed information about the vetting process used, including:
 - i. the methods used to publicize and receive applications;
 - ii. the number of applications received;
 - iii. the number of applications rejected because the applicant did not meet the statutory criteria;
 - iv. the number of applications rejected as incomplete;
 - v. the number of applicants interviewed by selection committee; and
 - vi. an aggregate breakdown of the diversity of the applicant pool, including gender, occupational, geographic, and racial and ethnic diversity.

2. Increasing Independence and Effectiveness

- a. There should be express prohibitions on communications between the law school deans and any state elected official during the selection process other than what would be publicly reported as lobbying communications.
- b. Prohibitions should bar commissioners from serving if they or their spouses, domestic partners and unemancipated children have for the last three years been (with regard to New York):
 - i. lobbyists;
 - ii. state vendors or contractors;
 - iii. major campaign contributors;
 - iv. party officials;
 - v. state and local elected officials; and
 - vi. state and legislative officers and employees.
- c. The Governor's proposal that commissioners cannot make campaign contributions to candidates in New York should be expanded to party committees.

- d. The Executive Director should be subject to the same prohibitions as commissioners.
- e. The power to remove commissioners and the Executive Director should rest with the commission, as proposed by the Governor.
- f. The ethics commission should have the power to directly discipline executive branch officials and employees, and recommend discipline of legislative branch officials and employees (as noted previously we believe the Constitution should be amended to allow an independent, joint commission to discipline both branches of government).
- g. It should be clear that the Commission can delegate to the Executive Director the ability to issue subpoenas for documents and depositions without a commission vote in particular matters or classes of matters.

3. Budget and Resources - The independent ethics commission must be fully funded and staffed. The current budget appropriation of \$5.6 million is the same for JCOPE from prior years, for a total full time staff of 47. This should be increased to \$10 million to reflect the state's prioritization of independent ethics enforcement and the new responsibilities of the selection committee to conduct robust outreach to solicit a diverse set of candidates for the ethics commission.

4. Expanding the State Ethics Code - The Ethics Code should be substantially improved by:

- a. Including a duty to report known misconduct and duty to respect the dignity of all persons and not engage in sexual or other discriminatory harassment, specifically linking the code with the NYS Human Rights Law. Initial adjudication of discrimination related claims could be by the Division of Human Rights with the commission as the final arbiter of the appropriate discipline.
- b. Adding penalties for additional sections of the State's Code of Ethics. Some sections are currently without penalties attached.

5. Transparency of Ethics Commission Operations

- a. The commission must be subject to Freedom of Information Law requests, Open Meetings Law and the State Administrative Procedures Act (in Governor's proposal and must be retained by the Legislature).
- b. Ex parte communications should be banned except where the communication is with a target of, or witness in, an investigation.
- c. Breaches of confidentiality should be able to be referred to the Attorney General, not just Inspector General (in Governor's proposal and must be retained by the Legislature).

- d. After a finding of probable cause/a substantial basis finding, any subsequent hearings should be public.
- e. Commission votes should not be confidential.
- f. Substantial basis reports should be released quickly. The current time is 45 days after delivery to the respondent, and the Governor's proposal is 20 days for state officials and employees. A new, reduced period should be the same for both state officers and employees and legislators and legislative staff. Substantial basis reports regarding harassment and discrimination complaints should not include complainants' identifiable information (note that this is current practice by JCOPE).
- g. The commission should hold an annual public hearing to solicit recommendations to improve the ethics laws and operations of the commission (in Governor's proposal and should be retained by the Legislature).

6. Improved Disclosure Reports - Lobbying and financial disclosures reviewed by the ethics commission should be improved to increase transparency and the ability of the commission and public to vet these disclosures for accuracy and conflicts of interest:

- a. Require lobbyists to specify whether lobbying is in support or opposition (or support or opposition with modification) to legislation or other governmental action.
- b. Lobbyists should report political contributions and fundraising activity, as done in NYC.
- c. Political parties should be made explicitly subject to the Lobbying Law.
- d. Financial disclosure filers should be expanded to include economic development entities.
- e. Financial disclosures should be required to be made electronically, with full public disclosures in machine-readable format on the commission's website.
- f. Financial disclosure forms should be streamlined to have only one table of monetary ranges and require more specificity in reporting, including information about filers' domestic partners (the Governor's proposal only added domestic partners).

We thank you for your consideration of these proposals. Should you have any questions, please contact Rachael Fauss, Senior Research Analyst at Reinvent Albany, rachael@reinventalbany.org.

Sincerely,

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