

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 Chair and 14 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 barely two 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 and the Governor signed in 2011.

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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.

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.

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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 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.

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.

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Our critics misconstrue that forced silence as evidence of inaction and assume, without basis, that important cases are being ignored. Neither assumption is correct. In fact, 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

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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 examples, we prosecuted the first ethics action against a sitting Assembly member, as well as a series of actions against legislators for sexual misconduct against their staffs. 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. And 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.



Testimony of Reinvent Albany to Senate Standing Committee on Ethics and Internal Governance

Good afternoon Senator Biaggi and members of the Senate Ethics and Internal Governance Committee. My name is Rachael Fauss, and I am the Senior Research Analyst for Reinvent Albany. We advocate for open and accountable New York government. Thank you for holding this important hearing and inviting us to testify.

We are here today to make four points:

- 1. New York State government has a serious and ongoing corruption problem.**
- 2. The Joint Commission on Public Ethics (JCOPE) is worse than useless and must be replaced.**
- 3. The legislature must pass a constitutional amendment replacing JCOPE with an independent agency. This should be considered further in an additional public hearing this fall.**
- 4. The legislature must pass legislation making fixes to JCOPE and better protecting state employees from harassment—another form of abuse of power.**

New York State government has a serious and ongoing corruption problem.

New York has had more public officials prosecuted for corruption than any other state.¹ At one point, New York state senators were more likely to lose their seats due to a corruption investigation than to losing an election.² Since 2000, nearly 50 public officials have been accused of misdeeds, including three governors, three legislative leaders and the state attorney general.³ Many more state officials have been investigated by federal authorities.

¹<https://gothamist.com/news/new-york-is-the-1-most-corrupt-state-in-america>

²<https://www.chicagotribune.com/news/ct-xpm-2013-04-04-sns-rt-us-usa-politics-newyork-corruptionbre933019-20130404-story.html>

³https://www.syracuse.com/news/2015/01/troubled_ny_politicians_a_list_of_arrests_scandals_misdeeds_and_controversies.html

Barely a year goes by without a massive scandal in Albany. Before the sexual harassment and COVID-19 deception investigations erupted around the Governor, there was the Buffalo Billion bid-rigging scandal in which hundreds of millions of taxpayer dollars were awarded to the Governor's donors because of bribery and pay-to-play.⁴ As a result, four of the Governor's donors and two of his allies – including his top aide, Joseph Percoco – were found guilty on corruption-related charges.⁵

Corruption and abuse of power are not victimless crimes. Corruption hurts vulnerable New Yorkers the most. When state funds are awarded and laws passed because of pay-to-play and conflicts of interest, the richest and most powerful are rewarded, not the neediest or most deserving.

The Joint Commission on Public Ethics (JCOPE) is worse than useless and must be replaced.

Federal prosecutors and the State Attorney General, not JCOPE, have conducted the fight against corruption in state government. The highly politicized JCOPE often appears to serve to protect those in power. JCOPE has handed out permission slips to the Governor of New York allowing him to receive millions in outside income for his book deals, without the deal receiving approval from JCOPE commissioners.⁶ JCOPE has done nothing about the Governor's alleged use of state staff and resources to write and edit a book that netted him millions of dollars.⁷

JCOPE is built on a quicksand of conflict of interest. Consider the alleged leak of former commissioner Julie Garcia's vote in January 2019. Because of laws prohibiting disclosure of votes on JCOPE investigations, these votes are supposed to be confidential.⁸ However, shortly after the vote took place, Garcia alleges that she received a phone call from Speaker Carl Heastie's Counsel Howard Vargas saying that the Governor had complained about the votes of the Speaker's appointees (Garcia was appointed by the Speaker). On June 29, 2021, JCOPE voted not to seek an investigation into the leak – largely because Governor Cuomo's commissioners all voted against doing so.⁹ If Garcia's account is true, then JCOPE, which is supposed to enforce ethics laws, instead reinforced corruption.

⁴ <https://www.nytimes.com/2018/06/18/nyregion/buffalo-billion-corruption-kaloyeros-cuomo.html>

⁵ <https://spectrumlocalnews.com/nys/binghamton/news/2018/07/13/buffalo-billion-reaction->

⁶ https://buffalonews.com/news/state-and-regional/seven-months-later-cuomo-administration-divulges-details-about-his-covid-19-book-deal/article_e2ba30ba-9275-11eb-9642-83fedbd461fc.html

⁷ <https://www.nytimes.com/2021/04/19/nyregion/andrew-cuomo-book-investigation.html>

⁸ <https://www.timesunion.com/news/article/Inspector-general-probed-alleged-ethics-panel-s-14832610.php>

⁹ <https://www.timesunion.com/news/article/JCOPE-votes-down-criminal-probe-into-Cuomo-leak-16285265.php>

Ethics enforcement agencies are supposed to be independent of the public officials that they police, but JCOPE commissioners are nominated on the basis of their political connections, not their independence. As a result, commissioners vote to protect their own appointers. This has been common in the case of Governor Cuomo and his allies.

Governor Cuomo's appointees wield so much power because JCOPE's dysfunctional voting rules enable a minority of commissioners to protect their appointer. Under the rules, an investigation into a statewide official can be blocked without support from two of the Governor's appointees. Similarly, investigations of legislators cannot take place without two votes from appointees of the legislator's party. This is supposedly intended to prevent partisan investigations, but instead it prevents *any* investigations.

JCOPE is so dysfunctional that in 2015, the State Integrity Investigation gave NY's Ethics Enforcement Agencies an "F" grade, placing the state 38th in the nation.¹⁰ One factor in the failing grade was a 25/100 score on the perceptions that "in practice, the ethics entity/ies operates with independence and is protected from political interference" and "independently initiates investigations and imposes penalties on offenders."

The legislature must pass a constitutional amendment replacing JCOPE with an independent agency. This should be considered further in an additional public hearing this fall.

JCOPE can only be replaced with a constitutional amendment, which must be passed by the legislature in two consecutive legislative sessions then approved by voters.

Throughout the state's history, the problem with New York ethics enforcement has been that elected officials choose their own police. The question is, how do we establish an ethics enforcement commission that is truly independent from elected officials?

Reinvent Albany is working with other advocates and legal experts like Evan Davis, former counsel to Mario Cuomo, and Ed Murray at the NYC Bar Association to develop an appointment process for a new, independent ethics enforcement agency. This work builds on the important constitutional proposal to replace JCOPE introduced by Senator Liz Krueger and Assemblymember Robert Carroll. Some of the options being considered involve joint appointments from officials, so that one single official does not hold sway over a commissioner, and the development of a publicly released pool of qualified nominees from which elected officials can choose. These ideas and others should be considered further by the Legislature in an additional public hearing held this fall on ethics oversight and reform.

¹⁰<https://publicintegrity.org/politics/state-politics/state-integrity-investigation/new-york-gets-d-grade-in-2015-state-integrity-investigation/>

The legislature must pass legislation making fixes to JCOPE and better protecting state employees from harassment—another form of abuse of power.

Amending the constitution to replace JCOPE will take until 2023 at the earliest, so in the meantime the legislature can improve JCOPE and better protect state employees from harassment—another form of abuse of power—by passing the following bills:

1. [S6964A \(Biaggi\)](#) – This omnibus legislation passed the Senate this year, but currently has no Assembly sponsor (the individual components are also present in separate legislation sponsored by Assemblymembers Hyndman and Simon). The omnibus bill:
 - a. Removes the requirement that in order to initiate investigations, two commissioners voting in favor are from the suspected individual’s political party and/or branch of government.
 - b. Removes partisan voting requirements for appointing or removing JCOPE’s executive director, instead requiring a simple majority.
 - c. Changes the appointment process so that each legislative leader nominates two commissioners to JCOPE.
2. [S6364 \(Gounardes\)/A7512 \(Hyndman\)](#) - This bill allows JCOPE to keep complainants informed of investigations, and disclose the status of investigations to the public under certain circumstances. This bill has not passed either house.
3. [A5825 \(Cruz\)/S1096 \(Liu\)](#) – This bill includes legislative and judicial employees under state civil service law whistleblower and anti-retaliation protections. This is a proposal from the Sexual Harassment Working Group’s 2021 Legislative Agenda.¹¹ This bill has not passed either house.
4. [A2483B \(Niou\)/S3395A \(Gounardes\)](#) – This legislation ensures that employees of elected and appointed officials are better able to hold state government accountable and are protected under NYS Human Rights Law’s anti-discrimination and harassment provisions. This bill passed the Senate, and is a proposal from the Sexual Harassment Working Group’s 2021 Legislative Agenda.

Thank you again for the opportunity to testify. Please contact Rachael Fauss at rachael [at] reinventalbany.org should you have any questions.

¹¹ <https://www.harassmentfreealbany.com/home>

TESTIMONY OF EVAN A. DAVIS¹ BEFORE THE SENATE COMMITTEE ON ETHICS AND INTERNAL GOVERNANCE

JULY 12, 2021

Thank you for inviting me to testify at today's hearing.

When the statute creating JCOPE and the LEC was enacted in 2011, it was hoped that ethics enforcement in state government would become more consistent and rigorous as a result of unifying the investigative function in a single entity. Unfortunately, that benefit has been more than negated by the failure in 2011 to structure the new entity in a way that would assure its independence from those who appoint the members of the commission.

The result is that as things stand JCOPE is doing more harm than good. Rather than promoting confidence in state government, JCOPE is reducing it. JCOPE MUST GO and be replaced by a single independent enforcement agency for the Executive and Legislative branches of state government.

There are at least eight ways in which JCOPE lacks the independence needed to do its job.

1. Public officials who are regulated by JCOPE get to appoint "their person" to JCOPE and no appointments are made by an unregulated person such as the Chief Judge. This is in contrast to the Commission on Judicial Conduct a majority of whose members are appointed by non-regulated persons.
2. The JCOPE Chair is appointed by the Governor and serves at the Governor's pleasure.
3. As few as two of the Governor's appointees to the 14 member Commission can veto an investigation or adverse finding about the Governor or his direct appoints. As few as three legislative appointees have this veto power. No other state has a comparable provision.
4. There is no two-way ban on communications between appointing authorities and their appointees. Commissioners and JCOPE staff in theory may not disclose confidential proceedings but appointing authorities are free ex parte to urge directly or through agents the outcome they want to see.
5. Appointing authorities can act unilaterally to remove their appointees for what they deem to be good cause.
6. The Executive Director may be, and frequently has been, a person closely associated with the Governor.
7. The JCOPE budget is totally in the discretion of the Governor and the Legislature without the kind of protection afforded by the Constitution to the legislative and judiciary budgets.

¹ I am the Manager of the Committee to Reform the State Constitution which supports the Constitutional Amendment to replace JCOPE and the LEC with an independent entity modeled on the Commission on Judicial Conduct. See S855/A1929. My work in the ethics field includes service on the New York City Conflict in interest Board, as Counsel to Governor Mario Cuomo where I led negotiation of legislation to require financial disclosure, bar legislators from appearing before state agencies, and subject party leaders to ethical regulation and as a member of the Second Circuit Disciplinary Committee and the New York State Bar Committee that drafted the NY lawyers' Code of Professional Responsibility. Relatedly I led the Watergate and Cover-up Task Force of the Nixon Impeachment Inquiry House Judiciary Committee Staff and served as President of the New York City Bar Association.b.

8. There is no duty to report ethical misconduct to JCOPE. There is a duty to report to the Inspector General but the IG reports to the Secretary to the Governor who is unlikely to take action that reflects badly on the Governor.

These are JCOPE's structural flaws. These flaws have led to repeated instances in which JCOPE commissioners have appeared more concerned about serving the interests of the person who appointed them than in serving the interests of the people.

A prime example is JCOPE's handling of allegations that a senior aide to the Governor, Joseph Percoco, misused state resources and that other state officials likely knew that fact. During his trial for receiving over \$300,000 in bribes in return for official favors, it became clear that while on leave to manage the Governor's reelection campaign, Percoco continued to work out of the Governor's Office in Manhattan. Investigative reporting by the *Times Union* showed that from his desk at that office he made calls to his partner in crime, Todd Howe, as well as to campaign fundraisers and state officials. All told 837 calls were made from his phone.

JCOPE should have investigated these allegations, but it now appears that by a close vote JCOPE decided not to. That vote occurred only because a Court ordered it. JCOPE had refused to even consider the complaint on the specious ground that it was based on trial testimony and not personal knowledge.

We now know that at least two of the Speaker's three appointees voted in favor of investigating. Even though it is a crime for commissioners or commission staff to disclose this information, almost immediately the Governor was informed of their vote and immediately called the Speaker to complain. Obviously the Governor felt the Speaker should have done a better job of controlling his appointees.

JCOPE recently voted not to refer this matter for potential prosecution and the identity of the person who informed the Governor remains unknown.

Another example of excessive accommodation of the political needs of the Governor is JCOPE'S handling of its approval of the governor's \$5.1 million agreement to write a book about the State's handling of the Covid-19 Pandemic. The approval was handled at the staff level when this massive monetization of public service deserved to be escalated to the full commission. There is a substantial question under the State Ethics Code whether such monetization can be taken by a currently serving state officer without violating the duty not to use official authority for personal gain. Awareness of this problem is indicated by the fact that contrary to JCOPE'S own regulations, the letter of approval did not state the amount of the compensation.

The letter did warn that the Governor could not use state resources to help write the book. Nonetheless there are credible allegations that this is exactly what happened. The Comptroller has asked the Attorney General to investigate. However misuse of state resources is squarely within JCOPE's jurisdiction and had it the requisite independence it would have initiated its own investigation.

What is to be done? Clearly JCOPE must go. Given the importance of independent ethics oversight as check and balance mechanism, it should be enshrined in the State Constitution just as is the Commission on Judicial Conduct. All of the indicia of lack of independence outlined above should be eliminated. Two way negotiations with the Assembly need to begin immediately.

And one other thing. This Committee could do a great service by using its subpoena power to get a clear picture of how JCOPE actually works including asking the Governor who told him about the vote on a Percoco investigation question. It's an embarrassment that we still don't know.



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THE LEAGUE OF WOMEN VOTERS *of New York State*

PUBLIC HEARING: NEW YORK STATE'S SYSTEM OF ETHICS OVERSIGHT AND ENFORCEMENT

TESTIMONY TO THE NEW YORK STATE SENATE STANDING COMMITTEE ON ETHICS AND INTERNAL GOVERNANCE

July 12, 2021

Held Remotely Via Zoom

Introduction

Thank you for the opportunity to testify. Since the creation of the Joint Commission on Public Ethics (JCOPE) in 2011 and the Legislative Ethics Commission (LEC) in 2007, countless state legislators, high ranking state employees, and even the incumbent Governor have been accused of corruption and sexual harassment without any sort of repercussions for their actions. The most extreme cases of corruption have been prosecuted by Federal prosecutors primarily, but almost all offenders have managed to get away unscathed by either state enforcement agency. Although the League and our good government partners have long called for reformation of JCOPE and the LEC, ethics violations continue to persist in our state government.

JCOPE and LEC have failed to deter corruption, but not for lack of trying, the agencies were designed to fail. One of the most obvious design flaws of New York's current enforcement operations is that there is no single agency to investigate accusations of corruption and harassment. Executive and Legislative branch employees should be subject to the jurisdiction of one agency, not two. A more organized structure would combine JCOPE and the LEC to create a single Commission. This would ensure consistent enforcement in both branches of government and mirror a single agency structure similar to what the majority of states have.

The League believes that JCOPE and the LEC need to be replaced with one effective and independent ethics enforcement agency. This single entity should aim to achieve the greatest level of transparency and accountability, and should have a meaningful mechanism to punish bad actors. A more effective watchdog agency would be completely independent of the elected officials and staff it was meant to oversee, and would give whistle blowers a clear process to report corruption and harassment to the agency.

While the proposed constitutional amendment to create a New York State Integrity Commission (S.855 (Kreuger)/A.1929 (Carroll)) addresses some of these concerns, it has several flaws that the League believes must be addressed. The current amendment does not adequately address the League's concern for independence in the appointment process, each Commissioner is appointed by an elected official or a judge that was appointed by an elected official. The proposed amendment does not address how it would interact with the new Public Campaign Finance Board as the new campaign finance authority. The League is also concerned that the amendment does not adequately address the critical need to ensure funding and staff support for such a robust agency. Many state Commissions are doomed to fail before

they even begin their work because of a lack of independent funding and support.

The League believes the bill sponsors should consider the following areas for improvement before moving forward with this amendment.

Reform Recommendations

I. Commission Independence

JCOPE and the LEC lack needed independence and protection from political control. All Commission members are appointed by the officials they regulate and the four members of the LEC are incumbent legislators. It's easy to see why this structure is problematic; legislator and party appointees have an innate bias because of their relationship with the very legislators and staff they are meant to be regulating.

While the amendment attempts to address the need for impartiality, the proposed Commission appointment structure still allows heavy influence from seated legislators. Although Appellate Judges are elected, the Chief Judge of the State of New York and the Presiding Justices of the Appellate Division are appointed by the Governor. The remainder of the appointments are directly appointed by the Legislative Leaders or Governor.

A truly independent Commission would be citizen led with qualified New Yorkers volunteering to serve as Commission members. We understand this structure would be difficult to achieve but the proposed structure in the current amendment does not even come close to achieving the level of independence we would wish to accomplish.

II. Campaign Finance

The proposed amendment states that the new Commission will oversee all campaign finance enforcement, removing the Board of Elections (BOE) as the chief campaign finance authority. Although it would be beneficial to take away this burden from the BOE it is unclear if removing this power from the agency will impact the newly implemented Public Campaign Finance Board. Not only does the BOE and Public Campaign Finance Board share a designated office space, the two agencies are directly intertwined. The four Board of Elections Commissioners serve as part of the Public Campaign Finance Board Commission, and both agencies are charged with ensuring proper campaign finance reporting.

Removing the BOE as the campaign finance oversight authority would almost add a third agency to the new State Integrity Commission. The BOE has an entire division dedicated to following up with non-filers and ensuring candidates are properly completing their disclosure forms. The new public campaign financing system is even more complicated and would add a major burden to the Commission. We urge the bill sponsors to make clear in the memo of this amendment the specific role of the New York State Public Integrity Commission in relation to campaign finance enforcement.

III. Funding

In order for this new agency to function it is critical that the constitutional amendment ensure adequate funding is provided. Many new Commissions, including the New York State Public Campaign Finance Commission and Independent Redistricting Commission, struggled to begin their work because promised funding was delayed. The Independent Redistricting Commission also had dedicated language within the State Constitution mandating that the legislature provide funds. Even with this declaration, it took over a year for the Commission to be properly funded.

Including language in the amendment to mandate the legislature provide funds may not be enough. The League would urge that the bill sponsors consider adding stronger implementation language to ensure that

funding will be given in a timely manner.

IV. Office Space, Staffing, and Public Accessibility

Similar to funding issues, both the Public Campaign Finance and Independent Redistricting Commissions have had issues hiring their staff, securing office space, and allowing for public accessibility by establishing a website and government email addresses. While we understand that these administrative functions can be written into implementing language for the Commission, we urge the sponsors to begin considering the need for this support before the amendment is passed.

Citizen led Commissions in other states, such as California's Redistricting Commission, often designate a pre-established agency to support the Commission until it is fully functioning. The New York State Integrity Commission may benefit from the support for an outside agency while it sets up its initial structure.

Conclusion

Though we have cited several criticisms of the proposed amendment, it cannot be understated what an improvement this amendment would be over the current structure. The amendment will give the enforcement office the teeth it needs to route out corruption and make New York State a model for ethics reform. We hope that the bill sponsors will consider addressing the four areas of concerns we have raised and ensure that the New York State Integrity Commission is truly independent, with the proper funding and support to be effective. Given the important and complex issues raised in the above recommendations, particularly the independence of the Commission, we urge an additional public hearing this fall on reforming ethics oversight.



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony before the Senate Ethics Committee

New York State's system of ethics oversight and enforcement

July 12, 2021

Citizens Union appreciates the opportunity to testify before you today regarding New York's ethics system. Unfortunately, that system is broken and needs a complete reinvention. JCOPE, the agency charged with enforcing state laws regarding ethics, has been structurally burdened since its inception a decade ago, and enough questions and concerns about its ability to perform the needed function have surfaced to make clear a major change is necessary. We believe JCOPE should be replaced by a constitutionally established, independent ethics agency. Others are testifying today with extensive specifics as to how JCOPE has not fulfilled the objective of upholding the State's ethics laws and enforcing those laws against wrongdoers, and so we will not restate those here.

The major fatal flaw of the JCOPE framework is the ability of the Governor, or a political party in the Legislature, to block an investigation. Indeed, if certain appointments are not made, it could be impossible to launch an investigation against a member of a particular political party because not enough commissioners from a party or official would be in place to vote for an investigation. However, there is much more wrong. Any effective ethics agency must be able to operate independently of those it has been tasked with regulating. Yet JCOPE is widely viewed as lacking independence. We recognize that at least many of the JCOPE staff and commissioners are hard-working and conscientious. Nevertheless, that cannot overcome

the leaks, failures to pursue well-publicized ethical lapses and the perception that the Governor, and to a considerable extent the legislative leaders, have an outsized influence over the agency.

Citizens Union has been working with other concerned groups to develop a constitutional amendment to replace JCOPE with a far more independent agency, and to make other structural and operational improvements. Much of what we would like to accomplish is in the constitutional amendment (S.855/A.1929) sponsored by Senator Krueger and Assembly Member Carroll, and we applaud them for their leadership on this issue. We recognize the key to a truly independent agency is in how the commissioners and staff are selected. To that aim, we and others are working to develop a proposal to better enhance that independence. Citizens Union understands the need for the solution to be practical, and that public credibility is essential to the agency's success. Government employees and the public must feel they can approach the agency with confidence that their concerns will be effectively and fairly addressed.

A strong ethics proposal must strive to establish a new ethics commission whose members are both capable and independent. This involves creating an appointment procedure to achieve that aim. For example, including a role for the judicial branch would check the dominance of the other two branches. We recognize the complexities in designing such a framework and are looking to other sources, including commissions in other states, for insights.

Independence also involves insulating the commissioners from the appointing authorities during their term of service. This can be done by assuring they can be terminated only for cause, and not leaving that decision to the person who appointed them but rather to the commission. In addition, commissioners might be limited to only one perhaps six-year term, so that their reappointment would not be a concern.

While we believe a constitutional amendment is necessary to fix this broken system, there are legislative changes that would be helpful now; for example, to eliminate the blocking provisions and allow for more disclosure of investigations in certain circumstances, balancing

the need for confidentiality against the importance of transparency. Such measures are before the Legislature.

Citizens Union welcomes today's hearing for inviting public input as to how to improve the process. We encourage those who testify or otherwise provide input to the Committee, in addition to identifying the failings of JCOPE, to recommend constructive solutions to the problems. In addition, we urge that additional hearings be held, involving both houses of the Legislature, to further explore how to achieve real ethics reform.

The goal should be to achieve first passage of a constitutional amendment in 2022 and second passage in 2023, so that the amendment can be placed on the ballot in November of that year. We cannot allow the current system to continue. It's not fair to state employees or the public. We urge the Legislature to make ethics reform a priority and act during the next session to create substantial, meaningful reform.