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Syracuse University
Carey Institute for Government Reform, Wagner College
Center for the Advancement of Public Integrity, Columbia Law School
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**

**END OF SESSION COUNTDOWN: ELEVEN WORKING DAYS UNTIL THE END OF
THE LEGISLATIVE SESSION;
CIVIC ORGANIZATIONS CALL FOR OVERHAUL OF ETHICS ENFORCEMENT TO
RESTORE PUBLIC TRUST IN GOVERNMENT**

**FIRST PASSAGE THIS YEAR OF THE ANTI-CORRUPTION CONSTITUTIONAL
AMENDMENT NOW PENDING IN BOTH HOUSES OF THE LEGISLATURE**

Albany, NY – May 31, 2018 – The clock is ticking as Governor Cuomo and State Lawmakers begin their final push to end the 2018 legislative session and civic organizations today demanded action to respond to New York’s unprecedented scandals. The groups stated that a necessary reform is to create an independent anti-corruption entity before the end of session, which consists of eleven working days. Eight leading reform and education groups have called for first passage this year of a constitutional amendment that would put some teeth into New York State’s ethics enforcement structure, which is widely dismissed as lacking the independence, will and structure effectively to combat corruption.

The Anti-Corruption Constitutional Amendment advocated by these groups is now pending in both Houses of the Legislature – Senate bill 8309 (Krueger) and Assembly bill 10651 (Carroll). If passed by August 7¹, the Amendment can receive second passage in the 2018-2019 legislative session and be submitted to the voters in the high turnout 2020 presidential election. Otherwise it could not be considered by the voters until 2021 at the earliest.

The Anti-Corruption Amendment would create the Commission on State Government Integrity (the “Integrity Commission”) to replace JCOPE² and the LEC³. 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. A constitutional amendment is needed to give this role to the judiciary.

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¹ The Constitution requires that after first passage the proposed amendment must be published for three months prior to the next general election, in this case for three months prior to November 7.

² The Joint Commission on Public Ethics

³ The Legislative Ethics Commission

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Senator Liz Krueger, prime sponsor of S8309, said:

"New York State has become notorious for the number of public officials who have abused the public trust," said Senator Krueger. "It is clear that the current entities entrusted with addressing public corruption have failed, and that we need a truly independent body capable of investigating allegations of misconduct in the legislative and executive branch. This amendment would achieve that goal by establishing an independent, non-partisan Government Integrity Commission in our State Constitution, where it would be protected from the interference of the very officials subject to its oversight."

Assemblymember Robert Carroll, prime sponsor of A10651, said:

"Sunlight is the greatest disinfectant and our proposed amendment would do just that by creating a truly independent Government Integrity Commission to investigate ethical offenses in the legislature and executive branches. Our current ethics commission does not run by majority vote and allows for a small minority of members to stop substantive investigations. Furthermore, our current commission has no direct role in campaign finance violations; thus, leaving it toothless to some of the more precious ethics violations. Having an independent non-partisan Government Integrity Commission, enshrined in our State Constitution, will help generations of dedicated public servants do their jobs, while making it clear to those who have looked towards Albany to serve their own personal interests - that a new day has dawned and that behavior will no longer be tolerated."

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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 a 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 the Legislature could overrule censure⁴ or removal of 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.

⁴ Censure entails the obligation of the violator at his or her own expense to inform all applicable voters that he or she has been censured.

SCANDALS IN NEW YORK

As documented in media reports, New York State has seen unprecedented scandals and controversies since 2000, with over 40 lawmakers sanctioned.¹ Considering that the conviction of the former state Comptroller, the resignations of a governor and an Attorney General, the fine for lying under oath paid by another governor, and the conviction of a top aide to the current governor, the staggering toll corruption has taken on the body politic is clear. According to one national expert, "*I think it's fair to say that New York remains one of the most corrupt states if not the most corrupt state.*"²

Yet the scandals continue. Here is the listing for this year (2018) alone:

Former Cuomo Aide Percoco: A long-time aide to Governor Cuomo, Percoco was charged by federal prosecutors with using his office to enrich himself, convicted in February and will be sentenced this June. The trial evidence showed that government contracting decisions were used to raise campaign contributions from those seeking contracts, top aides used personal emails to discuss governmental decisions, that Percoco used government resources to run the governor's 2014 re-election campaign, among other revelations.

Former State Senator Maziarz: This state Senator was charged with misusing his campaign contributions to pay personal bills of an aide. He pleaded guilty in February.

Former Nassau County Executive Mangano: This case has gone to the jury. Prosecutors have charged Mangano and another top local official with accepting bribes in exchange for favored treatment of an individual seeking government business.

Former Attorney General Schneiderman: While not yet considered to be the result of official actions, the Attorney General resigned due to assault allegations.

Former Speaker of the Assembly Silver: After his conviction last year was overturned due to a change in legal interpretation, his retrial on corruption charges led to a second conviction. Silver was charged with using his power as Speaker to enrich himself.

Former Cuomo Aide Kaloyeros: As part of the "Buffalo Billion" scandal, Kaloyeros has been charged by federal prosecutors with rigging government contracts to benefit companies with whom he had close ties. The case goes to trial in June.

Former Senate Majority Leader Skelos: Skelos was convicted last year of using his public office to benefit himself and his son. His conviction was overturned on a change in legal interpretation (the same as Silver's). He will be retried this June.

Former Assemblywoman Harris: She has been accused of using her public office for private gain in a scheme to illegally divert Superstorm Sandy relief money for her personal benefit. She has resigned from the Assembly and faces trial this July.

And it's only May....

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¹ For a complete listing, see: <http://lohud.nydatabases.com/database/troubled-ny-lawmakers>. A listing over the past dozen years including the executive branch can be found at: <https://www.nytimes.com/interactive/2014/07/23/nyregion/23moreland-commission-and-new-york-political-scandals.html>.

² PoliticFact New York, <http://www.politifact.com/new-york/statements/2016/sep/19/elaine-phillips/new-york-has-been-most-corrupt-state-decades/>.