

**Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs,  
Syracuse University  
Carey Institute for Government Reform, Wagner College  
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  
Sexual Harassment Working Group**

## **NEWS RELEASE**

**For immediate release:**

February 26, 2020

**CIVIC ORGANIZATIONS UNVEIL NEW WEBSITE [WWW.JCOPEMUSTGO.ORG](http://WWW.JCOPEMUSTGO.ORG)  
NEW PUSH TO GET ALBANY TO SUPPORT  
NEW, INDEPENDENT ETHICS WATCHDOG  
A MAJORITY OF THE SENATE NOW ARE CO-SPONSORS**

(Albany, N.Y.) Calling for a comprehensive overhaul of ethics oversight in New York, a coalition of twelve civic groups kicked off their latest effort by unveiling a new website “[www.jcopemustgo.org](http://www.jcopemustgo.org).” The groups’ effort is in support of legislation that, if approved, would replace the state’s current ethics watchdog, the Joint Commission on Public Ethics (JCOPE) through a constitutional amendment. The proposal also replaces the Legislative Ethics Commission (LEC) and moves oversight of New York’s campaign financing system to the new ethics watchdog.

The website features recent articles on political corruption in New York, various news reports on weaknesses within JCOPE, a 2015 national ranking that graded ethics enforcement in New York with an “F,” and details of the constitutional amendment (Senate bill 594/Assembly bill 1282) supported by the civic groups.

### **BACKGROUND ON THE CONSTITUTIONAL RESOLUTION TO REPLACE JCOPE AND LEC**

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.

### **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 braches 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.
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# WHY NEW YORK NEEDS THE ANTI-CORRUPTION CONSTITUTIONAL AMENDMENT

## Statement of the Coalition in Support

Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs, Syracuse University; Carey Institute for Government Reform, Wagner College; Center for the Advancement of Public Integrity, Columbia Law School; New York City Bar Association (separate statement); 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

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It is self-evident that our state government should take all reasonable steps to secure public confidence that government is free of corruption. At this time the public has no reason for such confidence.

New York voters need the opportunity to vote on a constitutional amendment (A1282A, S594A) that will secure effective deterrence of corruption. Action by both Houses on the Anti-Corruption Amendment is required to give them that chance.

### Limitations of Current Anti-Corruption Measures

Robust and independent ethics enforcement can be a strong deterrent to corruption, but the current ethics enforcement bodies lack needed independence and protection from political control.

The Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC) were established in 2011 with the stated goal of cleaning up New York state government, but these bodies have not stemmed New York's corruption problem. Top state legislative leaders have been convicted of corruption as have top state employees entrusted by the Governor with great responsibilities. JCOPE and LEC have failed to deter corruption because they were designed to fail.

All of their members are appointed by the officials they regulate. JCOPE has 14 members evenly divided between Republicans and Democrats. As few as two of the Governor's appointees and three of the legislative leaders' appointees can veto an investigation or adverse finding. Appointing authorities are free to tell their appointees how to vote. Executive Directors can be and often are former top aides to the Governor. The Chair serves at the pleasure of the Governor.

The State Inspector General (SIG) is not a reliable deterrent. The SIG reports to the Secretary to the Governor, which undermines public confidence that the Office of the State Inspector General (OSIG) will take action contrary to the interests of the Governor. Just recently OSIG showed its lack of independence by failing adequately to investigate a claim of improper disclosure to the Governor that a JCOPE Commissioner had voted in a matter affecting the Governor in a way that caused him to complain about her vote.

The Governor recognized this inadequacy when, in the wake of numerous corruption scandals involving state officials, he appointed a Commission to Investigate Public Corruption in 2013. He said it would restore public confidence that New York government meets the highest legal and ethical standards. Unfortunately, it had the opposite effect when he disbanded it before it had finished its work.

## **The Proposed Anti-Corruption Constitutional Amendment**

The Anti-Corruption Amendment is structured to provide effective deterrence to governmental corruption and improve public confidence in government. The Anti-Corruption Amendment would establish a thirteen-member commission that would replace both JCOPE and LEC and oversee both the legislative and executive branches.

Most important, the Commission will be independent:

- As is the case with the effective Commission on Judicial Conduct, where a minority of the members are appointed by the judiciary, a minority of the members of the new enforcement body will be appointed by the Governor and the legislative leaders. The majority will be appointed by persons the Commission does not regulate, the judiciary.
- There will be at least one Commissioner who is not a member of any political party.
- Voting will be by the majority without political veto by a minority.
- Appointing authorities will be barred from communicating directly or indirectly with their appointees.
- No person employed by the state within the past five years can serve as Executive Director.
- The Commissioners, not the Governor, will choose one of their number to be Chair.

The Commission will also have teeth:

- In addition to fines It will have the power to impose disciplinary sanctions up to removal from office for non-elected state employees.
- It may fine and censure elected officials and recommend their removal through constitutional mechanisms.
- State employees will have a duty to report misconduct and will be protected as confidential whistleblowers.
- Once probable cause is found, adjudicatory hearings will be public.

Adopting the Anti-Corruption Amendment will make New York a leader in its commitment to deter corruption. No state will have a stronger law. It is time to go beyond tinkering and smoke and mirrors and enshrine in the Constitution an enforcement body with independence and real enforcement.

**BRING MEANINGFUL AND COMPREHENSIVE  
ETHICS REFORM TO ALBANY**  
**Pass the Anti-Corruption Constitutional Amendment!**  
A.1282-A (AM Carroll) / S.594-A (Sen. Krueger)

After considerable study of the efficacy of the current ethics enforcement structure in New York, which consists of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC), the New York City Bar Association urges the Legislature to pass the **Anti-Corruption Constitutional Amendment** (the “Amendment”). This bill would create a **Government Integrity Commission** (the “Commission”) to replace the LEC and JCOPE and address their significant structural shortcomings. New York must undertake wholesale reform in the area of ethics enforcement to give the public a reasonable measure of confidence that ethics enforcement is taken seriously in Albany.

***At the heart of any ethics oversight body’s effectiveness is its ability to (i) discharge its statutory mission of improving public trust in government, and (ii) enforce with vigor the laws that it administers. We believe the Government Integrity Commission is structured to accomplish that goal.***

| CURRENT SYSTEM  | WHY IT DOESN’T WORK   | THE AMENDMENT’S SOLUTION  |
|---|---|---|
| <p><b><i>Bifurcated structure</i></b><br/>JCOPE investigates all ethics complaints and can impose a civil penalty on executive branch officers and employees. LEC has exclusive authority to impose civil fines on legislative branch officers and employees.</p> | <p>Inconsistent and ineffective results. Each have unique operating structures (and their own structural deficiencies). The LEC can disagree with JCOPE's interpretations of the State's ethical commands, negating JCOPE’s ability to conduct oversight.</p> | <p><b><i>Single commission</i></b><br/>Eliminate JCOPE and LEC; create a single Commission, ensuring consistent enforcement in both the legislative and executive branches. Most states have a single ethics enforcement agency with jurisdiction over both the legislative and executive branches.</p> |
| <p><b><i>Appointment by the officials being regulated</i></b><br/>JCOPE has 14 members evenly divided between Republicans and Democrats and all appointed by the officials being regulated; LEC has 9 members, 4 of which are members of the Legislature.</p>     | <p>Creates the appearance – if not the reality – of political control over appointees. Having power split evenly between political parties increases the likelihood of partisan deadlock.</p>   | <p><b><i>Appointment by all three branches of government</i></b><br/>13 Commissioners, a majority of whom would be appointed by the judiciary, whose conduct is not being regulated by the Commission. At least one Commissioner won’t be affiliated with a political party.</p>                        |
| <p><b><i>Lack of independence</i></b><br/>JCOPE does not limit the appointment of individuals to the commission or its staff who have previously served in government or as a lobbyist. The Governor selects the Chair.</p>                                       | <p>Not imposing reasonable limitations regarding appointments and staffing based on previously held positions creates the appearance of political patronage and reduces JCOPE’s perceived independence.</p>   | <p><b><i>Independence</i></b><br/>No Commissioner could have held office, been employed in state government or any political party, or been engaged as a lobbyist in the 3 years prior to their appointment or during their term. Commissioners will choose one of their number to be Chair.</p>        |

**Read the City Bar’s report in support of A.1282-A/S.594-A here: <http://bit.ly/2IU3wuf>**

| CURRENT SYSTEM   | WHY IT DOESN'T WORK   | THE AMENDMENT'S SOLUTION   |
|--|---|--|
| <p><b>Veto power</b><br/>An investigation or adverse finding can be blocked by 2 of JCOPE's 14 members.</p>  | <p>Allowing a super minority of members to block actions makes the ability to carry out any action extremely difficult.</p>                   | <p><b>Majority rules</b><br/>Commission would act by majority vote.</p>  |
| <p><b>Removal by the officials being regulated</b><br/>The person appointing a member to JCOPE can remove that member for what the appointing authority deems to be substantial neglect of duty.</p>   | <p>Threatens the independence of commissioners to execute their duties in a nonpartisan, unbiased manner.</p>                                 | <p><b>Removal for cause</b><br/>Commissioners 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.</p>  |
| <p><b>Potential for influence</b><br/>Except for communications barred due to confidentiality requirements, ex parte communications between appointing authorities and appointees are not restricted.</p>  | <p>Undermines the independence of the commissioners. At a minimum, creates the appearance of influence and lack of independence.</p>          | <p><b>No ex-parte communication</b><br/>Direct communications between Commissioners and their appointing authorities and related staff would be barred.</p>  |
| <p><b>Lack of enforcement power</b><br/>JCOPE has no power to censure, suspend, demote or terminate any state official or employee and has no power to impose any form of sanction on a member of the legislature or a legislative employee. LEC lacks sanction power beyond the imposition of a civil fine.</p> | <p>In the rare instances where the bodies do find wrongdoing, they are unable to adequately punish those involved in any significant way.</p> | <p><b>Ability to impose sanctions</b><br/>The Commission would have the power to sanction serious misconduct through censure, suspension, demotion or removal of a non-elected public official and through the power to censure an elected. Removal of elected officials would remain governed by the existing constitutional process.</p> |
| <p><b>Whistleblowers unprotected</b><br/>There is no enforcement of the State Code of Ethics or protections for individuals who come forward to report misconduct.</p>   | <p>Individuals are not encouraged to come forward and fear retribution if they do so.</p>   | <p><b>State Code of Ethics enforced</b><br/>All state officers and employees would have an ethical duty to report known misconduct to the Commission and would be protected against retaliation by being treated as confidential whistleblowers.</p>   |
| <p><b>Opaque decision-making process</b><br/>JCOPE business often conducted in private executive sessions; LEC meetings are not open to the public unless the commission decides otherwise.</p>  | <p>Lack of transparency adds to the appearance that the bodies are not independent.</p>   | <p><b>Transparency</b><br/>Once probable cause is found, adjudicatory hearings will be public.</p>   |

**WE URGE THE LEGISLATURE TO ENACT THE  
ANTI-CORRUPTION CONSTITUTIONAL AMENDMENT (A.1282-A/S.594-A)**