

**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  
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**

March 3, 2021

Honorable Andrea Stewart-Cousins  
Temporary President and Majority Leader  
State Senate  
LOB, Room 907  
Albany, NY 12247

Honorable Carl Heastie  
Speaker  
State Assembly  
LOB, Room 932  
Albany, NY 12248

Honorable Robert Ortt  
Minority Leader  
State Senate  
LOB, Room 909  
Albany, NY 12247

Honorable William Barclay  
Minority Leader  
State Assembly  
LOB, Room 933  
Albany, NY 12248

**Re: New York's Ethics Enforcement Needs A Dramatic Overhaul**

Dear Messrs. Heastie, Ortt, Barclay and Ms. Stewart-Cousins:

February has not been a kind month to New Yorkers. Earlier, the state Attorney General issued a report that documented a significant undercount of COVID deaths in nursing homes. That revelation was confirmed by the Cuomo administration.

Also, an Assemblyman has alleged that the Administration had crossed a line in pushing back on criticism regarding its handling of nursing home data. The month ended with two claims of sexual harassment against the Governor made by women who formerly worked for the Cuomo administration, as well as a claim of unwanted physical advances toward and a request to kiss a private individual at a private event. These claims are serious and damaging to New Yorkers' confidence in state government. The alleged behavior is not acceptable and must be properly investigated so that the Administration and Governor can be held to account for any misconduct. This past Sunday, after attempting to handpick the investigator the Governor's office finally provided the Attorney General with a referral so that the office can hire an outside investigator fully and independently to investigate the claims and make a public report.

Everyone – from lawmakers to the media – has called for an independent investigation. But those calls raised a serious question – why not rely on the state's ethics watchdog – the Joint Commission on Public Ethics (JCOPE) – to launch the probe?

## Replace JCOPE, Page 2

The reason is that no one believes that JCOPE is structured to be an independent referee. Established a decade ago, the Commission's membership consists of individuals who are direct political appointees and oversee the people that JCOPE supposedly monitors. Two of its 14 members can veto an investigation or adverse finding. Over the last decade, there have been allegations that Commissioners do, in fact, relay internal discussions back to their appointing authorities – despite a legal prohibition to do so.

Not only does the lack of independent oversight erode the public's confidence in government, its absence also means that those who are indeed innocent cannot be easily exonerated since an independent investigation currently requires obtaining an outside investigator.

An independent agency is needed to appropriately monitor ethics and discipline wrongdoers.

Luckily, the model for such an agency exists and is reflected in the legislation introduced by Senator Krueger and Assemblymember Carroll (S.855/A.1929). That legislation, modeled on the Commission for Judicial Conduct, proposes an amendment to the state Constitution that 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 and other kinds of discriminatory harassment would be barred as ethical misconduct and a unit established for such claims.
- The Integrity Commission would have full authority to sanction officers or employees of public authorities up to termination or recommendation of removal for elected officials.

The Association of the Bar of the City of New York's Government Ethics and State Affairs Committee recently issued a report that called for the creation of a new independent agency that follows the outline provided in the Krueger/Carroll legislation. Their report concluded that they "believe that the promise of an independent monitor with the necessary safeguards to protect against political interference can only be realized by abolishing JCOPE and replacing it with an entity to be established by constitutional amendment."

Leaving that power centralized not only can blind the public but leave public officials without an easy path to exoneration if they are indeed innocent. The state needs an independent ethics watchdog that is free from partisan or political pressure, has adequate resources to do its jobs, and has a professional workforce based on excellence, not political connections.

### **Replace JCOPE, Page 3**

Unless and until that occurs, New Yorkers will have to deal with a state government too often distracted by controversies, a distraction that keeps them from focusing on their jobs – to better the lives of the public. We urge your support for moving this important legislation.

Sincerely,

Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs, Syracuse University:

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