I. Government Ethics - JCOPE Reform

The League is advocating to reform the state’s Joint Commission on Public Ethics (JCOPE). JCOPE was established as part of the Public Integrity Reform Act of 2011, which reformed the oversight and regulation of ethics and lobbying in New York State. JCOPE was created to restore public trust in government by ensuring compliance with the State’s ethics and lobbying laws and regulations. Unfortunately, over the last 10 years JCOPE has proved to be a toothless enforcement entity that lacks independence from the Executive and Legislature.

Recently the League sent a letter to the legislative leaders urging both houses to hold public hearings to lay the groundwork for major changes to the agency. Below is the letter submit by our joint organizations to the Legislature.

While we wait for these hearings to be held, the League is supporting A.6611 (Hyndman)/S.5254-A (Biaggi) which would remove the requirement that legislators, state employees, and state-wide officials cannot be found guilty of ethical violations by JCOPE without the votes of at least two members of his/her own political party. This legislation removes the political party veto and brings JCOPE’s voting rules into line with other agencies that act by a simple majority vote, including the Commission on Judicial Conduct, the state Public Campaign Finance Board, the New York City Conflicts of Interest Board, and the New York City Campaign Finance Board.
Re: Hold hearings into state oversight of ethics laws

Dear Majority Leader Stewart-Cousins, Speaker Heastie, Senate Minority Leader Ortt, Assembly Minority Leader Barclay, Senate Ethics Chair Biaggi, and Assembly Governmental Operations Chair Zebrowski:

We call on you to hold legislative oversight hearings on New York State’s systems of ethics oversight and enforcement. Our groups have long been deeply concerned about the lack of neutrality built into the structures of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC). We believe that JCOPE has consistently failed to act independently and is little more than an extension of the state’s elected leaders.

Under state law, JCOPE is responsible for ethics enforcement. JCOPE’s clear lack of independence and lack of public credibility makes it impossible for the public to have confidence in JCOPE’s actions. JCOPE’s jurisdiction includes investigations into violations of Public Officers Law, yet to have any credibility, the public officers who are subject to such laws should of course not have complete control over the operation of the entity. However, that is exactly who effectively controls JCOPE. JCOPE commissioners, all of whom are appointed by those whose conduct they may investigate and judge, simply lack the independence to act against their interests when that is what the facts and law requires.

Thus, we believe a legislative oversight hearing is necessary to assess how New York State can restore public confidence in ethics enforcement, including creating a new ethics enforcement body.
Almost since its creation in 2011, JCOPE has been a punching bag and punchline among state government observers. Instead of being designed as an independent watchdog, it was set up as a political creature to protect the interests of the leaders who appoint the commissioners.

JCOPE was not intended to be, and is not, an independent agency.

Certainly, we believe that by and large JCOPE’s staff and commissioners have worked honorably to do the best they could. However, as an institution, JCOPE is a complete failure. The Legislative Ethics Commission’s (LEC) membership includes legislators – an even more obvious conflict for that entity.

A legislative investigation is called for to separate the ethical wheat from the unethical chaff. From our organizations’ perspectives, there is only one conclusion – JCOPE and the LEC must go.

However, in order to best understand JCOPE’s (and LEC’s) weaknesses, it is important that there be a comprehensive examination of its performance, and of how ethics are enforced in New York. That examination should be conducted in public through a participatory hearing, which should be followed by a discussion of how best to provide New Yorkers with the effective independent ethics oversight they want and deserve.

In the American form of democracy -- one with checks and balances among the branches of government -- the Legislature is entrusted with the responsibility to monitor the performance of the executive branch and to review policy proposals, in addition to approving legislation. In that capacity, you are charged with examining agency and policy failures. In our view, concerns over the agency’s ten-year performance are ripe for legislative review.

Therefore, we call on you to immediately convene a joint hearing, which should include sworn testimony from present and former JCOPE Commissioners, and current and former top staffers.

In addition, such hearings should examine the broader concerns about JCOPE (and other agencies charged with protecting the public interest) and ensure that members of the public are encouraged to testify.

New Yorkers deserve an independent ethics watchdog, one with the resources and legal support to take on even a governor without fear or favor. (A recent report by the New York City Bar Association came to this conclusion and can be found here.)

We look forward to discussing this issue with you as well as working with the Legislature to ensure that New York’s ethics oversight system is a model for the nation.

Sincerely,

Grant Davis Reeher
Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs,
Syracuse University
Rachel Bloom
Citizens Union

Evan Davis
Committee to Reform the State Constitution

Susan Lerner
Common Cause/New York

Laura Bierman
League of Women Voters of NYS

Blair Horner
New York Public Interest Research Group

John Kaehny
Reinvent Albany

Erica Vladimer
Sexual Harassment Working Group
MEMORANDUM OF SUPPORT FOR:
A.6611 (Hyndman)/ S.5254-A (Biaggi)

To: New York State Assembly & Senate

Date: April 2021

Subject: An act to amend the executive law, in relation to the joint commission on public ethics.

The League of Women Voters of New York State supports the above referenced legislation which would remove the requirement that legislators, state employees, and state-wide officials cannot be found guilty of ethical violations by JCOPE without the votes of at least two members of his/her own political party.

JCOPE was created in 2011, with the intention of overseeing and regulating ethics and lobbying in New York State. Since its creation, the agency has had serious issues with its structure and independence. One of the major flaws of JCOPE’s structure is a special voting rule that allows an enforcement action supported by a super-majority of commission members to be blocked by a minority of commission members of the same political party as the potential subject of the enforcement action.

This rule has obstructed the effectiveness of JCOPE’s enforcement by allowing members of political parties to protect their own self-interested. Ethical violations are non-partisan in nature. A violation of ethical obligations should be equally punishable, regardless of which political party the violator is a member of.

For the above reasons, the League of Women Voters of New York State urges your support of A.6611 (Hyndman)/ S.5254-A (Biaggi).