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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**

*August 25, 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, but many offenders have managed to get away unscathed by either 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.

The League would prefer a simplified joint appointment structure that ensures impartiality by adding additional restrictions and limitations on the individuals who can be appointed. All state commissions benefit from appointing members that are as diverse as the people they serve with regard to race, ethnicity, and gender; especially in a commission meant to address issues of workplace harassment and discrimination. We would urge the bill sponsors to consider including language in the amendment to guarantee commissioners fulfill a minimum diversity requirement.

#### **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 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. Rather than removing the BOE as the main enforcement agency, the bill sponsors should consider eliminating the Chief Enforcement Counsel and allowing the BOE to recommend certain campaign finance cases to the State Integrity Commission.

#### **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.