



**REPORT ON LEGISLATION BY THE  
COMMITTEE ON GOVERNMENT ETHICS AND STATE AFFAIRS**

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**M. of A. Carroll  
Sen. Krueger**

A CONCURRENT RESOLUTION OF THE SENATE AND THE ASSEMBLY proposing that the Constitution be amended by adding a new Article V-A in relation to state government integrity.

**STATE GOVERNMENT INTEGRITY**

**THESE CONCURRENT RESOLUTIONS  
TO AMEND THE STATE CONSTITUTION ARE APPROVED**

The New York City Bar Association, through its Committee on Government Ethics and State Affairs, supports these concurrent resolutions to amend the State Constitution to add a new Article V-A establishing a State Government Integrity Commission.<sup>1</sup> The Committee has spent considerable time over the past several years studying the efficacy of the current ethics oversight structure, which consists of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC).<sup>2</sup> While JCOPE has been reasonably effective in regulating lobbyists, experience continues to show that its overall mission is hampered by structural flaws, including an appointment and removal method that discourages independent action by the commission members, voting rules that can stymie investigations supported by a super-majority of commission members, and confidentiality provisions that can mask political interference.<sup>3</sup>

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<sup>1</sup> The Committee played a significant role in drafting these concurrent resolutions. The members of the relevant JCOPE Subcommittee are: Evan Davis, Michael Fresco, Michael Guerra, Dan Karson, Celeste Koeleveld and Katherine Loving. The Committee reviewed and approved the proposed legislation and this report at its April and May 2018 meetings, respectively.

<sup>2</sup> Report of the New York City Bar Association and Common Cause/New York, "Hope for JCOPE," March 14, 2014, <https://www2.nycbar.org/pdf/report/uploads/Hope-for-JCOPE-Report.pdf>.

<sup>3</sup> Report of the New York City Bar Association, "Ten Years In, Is There Still Hope for JCOPE," Feb. 16, 2021, <https://s3.amazonaws.com/documents.nycbar.org/files/2020852-JCOPE10YearReport.pdf>.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

The Committee pushed for the implementation of the commission to review the work of JCOPE and the LEC that was placed in the 2011 legislation creating these bodies.<sup>4</sup> When the Review Commission was finally appointed after considerable delay, the Committee testified before that body in support of structural reform.<sup>5</sup> The Review Commission concluded that such reform was outside of its mandate and for the Legislature to decide.

The principal features of the proposed new Article V-A include:<sup>6</sup>

- The current bifurcated JCOPE/LEC structure would be eliminated and replaced with 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 those branches.
- Like the Commission on Judicial Conduct, a constitutional body to sanction judicial misconduct that has worked well, Commissioners would be appointed by all three branches of government. A majority of the members would be appointed by the judiciary whose conduct is not being regulated by the Commission.
- 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.
- Unlike JCOPE, where two of its 14 members can block an investigation or adverse finding, the Commission would act by majority vote.
- Because of its mandate to avoid the reality or appearance of corruption and conflicts of interest, the Commission would be responsible for the administration and enforcement of the campaign finance laws. Its duties in this area would include recommending contribution limits to the legislature that are low enough to prevent a public official from becoming beholden to a large contributor to such an extent that a reasonable person would find real impairment of policy judgment.
- 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.

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<sup>4</sup> Letter to Legislative Leaders, “JCOPE/LEC Review Panel – June 1, 2014 Deadline to Appoint,” July 9, 2014, <https://www2.nycbar.org/pdf/report/uploads/JCOPELECReviewPanelLettertoGovernorSIGNED7.9.14.pdf>.

<sup>5</sup> Testimony before the New York Ethics Review Commission regarding the Joint Commission on Public Ethics (JCOPE), Oct. 14, 2015, [https://www2.nycbar.org/pdf/report/uploads/20072967-JCOPE\\_Review\\_Commission\\_Testimony\\_Govt\\_Ethics\\_10.14.15.pdf](https://www2.nycbar.org/pdf/report/uploads/20072967-JCOPE_Review_Commission_Testimony_Govt_Ethics_10.14.15.pdf).

<sup>6</sup> See also <http://documents.nycbar.org/files/2017378-CommissionPublicIntegrityOverview.pdf>.

- Ex parte communications between Commission members and their appointing authorities and related staff would be barred, and no member could have held office, been employed 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 Committee is of the view that in order to seriously attack the climate of corruption that taints our state government, establishment of an independent enforcement body in the Constitution is a necessary step. Without that independence even the best rules barring misconduct will be “paper rules” only without the needed practical force and effect. The Constitution must be amended to achieve that goal so that the ability of the judicial branch to participate in making appointments and the creation of a single entity with jurisdiction over the legislative and executive branches is beyond constitutional question. Accordingly the Committee strongly supports the instant Concurrent Resolutions.

Government Ethics & State Affairs Committee  
Edward L. Murray, Chair

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\* This report was first issued in May 2018 during the term of Jennifer Rodgers as Chair of the Committee.