



NEW YORK
CITY BAR

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

**A.6611
S.5254-A**

**M. of A. Hyndman
Sen. Biaggi**

AN ACT to amend the executive law, in relation to the joint commission on public ethics

THIS BILL IS APPROVED

The Government Ethics and State Affairs Committee of the New York City Bar Association supports the enactment of A.6611/S.5254-A, which would remove the requirement that legislators, state employees, and state-wide officials cannot be found guilty of ethical violations by the Joint Commission on Public Ethics (JCOPE) without the votes of at least two members of his/her own political party.

Since JCOPE was created in 2011, the City Bar has issued a series of reports regarding the commission's structure and the manner in which it hinders effective administration of the state's ethics laws.¹ As detailed in these reports, a central flaw to JCOPE's structure is the 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. Indeed, it is well acknowledged that political party protection measures impede effective enforcement. In 2013, for example, the Moreland Commission to Investigate Public Corruption singled out the political party protection mechanism found in the membership structure of the New York State Board of Elections as a cause of the poor enforcement record of that body.²

¹ "Hope for JCOPE," Report of the New York City Bar Association and Common Cause/New, March 14, 2014, <https://www2.nycbar.org/pdf/report/uploads/Hope-for-JCOPE-Report.pdf>; "Ten Years In, Is There Still Hope for JCOPE?," Report of the Government Ethics and State Affairs Committee of the New York City Bar Association, Feb. 16, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ten-years-in-is-there-still-hope-for-jcope>.

² Hope for JCOPE, at 26.

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.

A.6611/S.5254-A 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,³ the state Public Campaign Finance Board,⁴ the New York City Conflicts of Interest Board,⁵ and the New York City Campaign Finance Board.

For all of these reasons, and for the reasons illustrated in our aforementioned reports, the City Bar supports the enactment of A.6611/S.5254-A.

This City Bar notes, however, that an additional special voting provision has resulted in gridlock at JCOPE. This provision requires that its executive director be approved by at least one Republican and Democratic appointee of both the Governor and the Legislature.⁶ As the executive director position has been vacant since June 2019, the Committee encourages the Legislature to consider amending this provision as well.

While the City Bar believes 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,⁷ changes to JCOPE’s voting rules provide a needed short-term solution until a constitutional amendment can be adopted.

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

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³ Judiciary Law § 41(6).

⁴ Election Law § 14-207(1).

⁵ N.Y.C. Charter § 2602(h).

⁶ Exec. Law § 94(9)(a).

⁷ Report on A.1929/S.855 by the New York City Bar Association Committee on Government Ethics and State Affairs, Reissued March 8, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-creation-of-a-nys-government-integrity-commission>.