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Governor and Legislature Have Failed to Create an Independent Ethics Oversight Body

Politically Appointed Commission Lacks
Independence From the Electeds it is Supposed to Regulate

After careful review, we believe the Commission on Ethics and Lobbying in Government created in the state budget is fatally flawed, will not have the public's confidence and will not be able to oversee the state's most powerful elected officials without fear or favor.

The fundamental reason for weak and politicized ethics enforcement in New York remains: the new commission – like the old – is not independent from the elected officials who it is supposed to oversee. The new law also does not eliminate the risk of *ex parte* communications with commissioners, which further undermined JCOPE's credibility.

The vetting process involving law school deans or designees does not add any independence to the selection process, nor does it even create the appearance of independence. Let's be clear, the new law says the deans will not nominate or select candidates, they will simply screen their eligibility. Just like in the former, broken system, elected officials will directly select and appoint their own ethics commissioners. It gives the deans the perilous option of rejecting a particular appointee made by a member of the state's top political leadership.

We are also disappointed that the process of creating this new ethics commission was opaque during the budget process, which is not how major changes to our state's public accountability and ethics laws should be made.

Under this flawed structure no member of the public can put forward a person whom they think should be considered as part of a pool of candidates, which other states do for independent commissions. The regulated have monopolized the identification of the persons who should regulate them. Further, not only does the final budget create a

commission that is directly appointed by state leaders, it also creates a partisan commission that the Governor and legislative majority leaders will control.

The law also fails to make secure the Commission's authority to sanction sexual and other forms of discriminatory harrassment. The Commission's authority needs to extend beyond abuse of power to situations actionable under the Human Rights Law. The lack of reform to the state's code of ethics to make clear that it is an ethics violation to discriminate against employees sends a dangerous message to staffers that their right to a harassment- and discrimination-free workplace is not a priority.

While the law includes measures that allow the new agency to perform more efficiently and in most instances it must operate under the Freedom of Information Law (FOIL), what matters most is the agency's leadership. The ethics commissioners will make the ultimate decisions about whether or not to enforce the state's ethics laws.

We urge our elected officials to not allow the creation of this commission to be an obstacle to real reform of our ethics laws, both regarding the structure of the ethics commission, and the laws governing the conduct of public officials. Our elected leaders must go back and create the independent, transparent ethics commission that the Governor promised, and New Yorkers deserve.

See the March 2022 [proposal from watchdog groups](#) to create an independent commission, with safeguards to ensure independence and transparency.

See also a [list of editorials](#) that have opposed the commission and called for independent ethics oversight.

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