



**BRING MEANINGFUL AND COMPREHENSIVE
ETHICS REFORM TO ALBANY**
Pass the Anti-Corruption Constitutional Amendment!
A.1929 (AM Carroll) / S.855 (Sen. Krueger)

After considerable study of the efficacy of the current ethics enforcement structure in New York, which consists of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC), the New York City Bar Association urges the Legislature to pass the **Anti-Corruption Constitutional Amendment** (the “Amendment”). This bill would create a **Government Integrity Commission** (the “Commission”) to replace the LEC and JCOPE and address their significant structural shortcomings. New York must undertake wholesale reform in the area of ethics enforcement to give the public a reasonable measure of confidence that ethics enforcement is taken seriously in Albany.

At the heart of any ethics oversight body’s effectiveness is its ability to (i) discharge its statutory mission of improving public trust in government, and (ii) enforce with vigor the laws that it administers. We believe the Government Integrity Commission is structured to accomplish that goal.

CURRENT SYSTEM	WHY IT DOESN’T WORK	THE AMENDMENT’S SOLUTION
<i>Bifurcated structure</i> JCOPE investigates all ethics complaints and can impose a civil penalty on executive branch officers and employees. LEC has exclusive authority to impose civil fines on legislative branch officers and employees.	Inconsistent and ineffective results. Each have unique operating structures (and their own structural deficiencies). The LEC can disagree with JCOPE’s interpretations of the State’s ethical commands, negating JCOPE’s ability to conduct oversight.	<i>Single commission</i> Eliminate JCOPE and LEC; create 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 the legislative and executive branches.
<i>Appointment by the officials being regulated</i> JCOPE has 14 members evenly divided between Republicans and Democrats and all appointed by the officials being regulated; LEC has 9 members, 4 of which are members of the Legislature.	Creates the appearance – if not the reality – of political control over appointees. Having power split evenly between political parties increases the likelihood of partisan deadlock.	<i>Appointment by all three branches of government</i> 13 Commissioners, a majority of whom would be appointed by the judiciary, whose conduct is not being regulated by the Commission. At least one Commissioner won’t be affiliated with a political party.
<i>Lack of independence</i> JCOPE does not limit the appointment of individuals to the commission or its staff who have previously served in government or as a lobbyist. The Governor selects the Chair.	Not imposing reasonable limitations regarding appointments and staffing based on previously held positions creates the appearance of political patronage and reduces JCOPE’s perceived independence.	<i>Independence</i> No Commissioner could have held office, been employed in state government or any political party, or been engaged as a lobbyist in the 3 years prior to their appointment or during their term. Commissioners will choose one of their number to be Chair.

Read the City Bar’s report in support of A.1929/S.855 here: <http://bit.ly/2IU3wuf>.

CURRENT SYSTEM	WHY IT DOESN'T WORK	THE AMENDMENT'S SOLUTION
<p><i>Veto power</i> An investigation or adverse finding can be blocked by 2 of JCOPE's 14 members.</p>	<p>Allowing a super minority of members to block actions makes the ability to carry out any action extremely difficult.</p>	<p><i>Majority rules</i> Commission would act by majority vote.</p>
<p><i>Removal by the officials being regulated</i> The person appointing a member to JCOPE can remove that member for what the appointing authority deems to be substantial neglect of duty.</p>	<p>Threatens the independence of commissioners to execute their duties in a nonpartisan, unbiased manner.</p>	<p><i>Removal for cause</i> Commissioners 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.</p>
<p><i>Potential for influence</i> Except for communications barred due to confidentiality requirements, ex parte communications between appointing authorities and appointees are not restricted.</p>	<p>Undermines the independence of the commissioners. At a minimum, creates the appearance of influence and lack of independence.</p>	<p><i>No ex-parte communication</i> Direct communications between Commissioners and their appointing authorities and related staff would be barred.</p>
<p><i>Lack of enforcement power</i> JCOPE has no power to censure, suspend, demote or terminate any state official or employee and has no power to impose any form of sanction on a member of the legislature or a legislative employee. LEC lacks sanction power beyond the imposition of a civil fine.</p>	<p>In the rare instances where the bodies do find wrongdoing, they are unable to adequately punish those involved in any significant way.</p>	<p><i>Ability to impose sanctions</i> 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.</p>
<p><i>Whistleblowers unprotected</i> There is no enforcement of the State Code of Ethics or protections for individuals who come forward to report misconduct.</p>	<p>Individuals are not encouraged to come forward and fear retribution if they do so.</p>	<p><i>State Code of Ethics enforced</i> All state officers and employees would have an ethical duty to report known misconduct to the Commission and would be protected against retaliation by being treated as confidential whistleblowers.</p>
<p><i>Opaque decision-making process</i> JCOPE business often conducted in private executive sessions; LEC meetings are not open to the public unless the commission decides otherwise.</p>	<p>Lack of transparency adds to the appearance that the bodies are not independent.</p>	<p><i>Transparency</i> Once probable cause is found, adjudicatory hearings will be public.</p>

**WE URGE THE LEGISLATURE TO ENACT THE
ANTI-CORRUPTION CONSTITUTIONAL AMENDMENT (A.1929/S.855)**