



**WRITTEN TESTIMONY OF THE
GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE**

**2022 JOINT LEGISLATIVE HEARING
PUBLIC PROTECTION
JANUARY 25, 2022**

Proposed Replacement to the Joint Commission on Public Ethics (JCOPE)

The New York City Bar Association’s Government Ethics and State Affairs Committee submits these comments on Governor Hochul’s proposal to replace the Joint Commission on Public Ethics (“JCOPE”) with an independent commission on ethics and lobbying in government.¹ Since JCOPE was created in 2011, the Committee has issued a series of reports on JCOPE’s structure and the manner in which it hinders effective administration of the state’s ethics laws.² The Committee believes that this proposal goes a long way toward addressing the structural flaws that have plagued JCOPE. Most importantly, the proposal:

1. Eliminates special voting rules that allow a minority of commission members to block enforcement actions and instead allows the commission to act in all matters by simple majority vote;
2. Places the power to remove commission members in the commission, itself, thereby promoting more independence between the appointing authorities and the commission;
3. Subjects the commission to the state’s Open Meetings Law and Freedom of Information Law, which provides exceptions to disclosure for much of the commission’s activities, but flips the script for the commission in favor of transparency; and
4. Reduces the unwieldy size of the commission from 14 members to five members.

¹ A.9005 / S.8005 (Budget Article VII), Part Z, <https://www.nysenate.gov/legislation/bills/2021/s8005>.

² “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>.

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.

While the proposal includes these and other meaningful changes, the Committee believes that it falls short with respect to the appointment method, which is key to establishing a truly independent commission. The proposal's basic concept of removing the direct appointment power from the persons who are subject to the ethics commission's oversight is sound. Also, while the selection committee could benefit from a broader range of voices, we think there is nothing inherently flawed with empowering law school deans to make the appointments. But the overall design of this appointment method raises accountability and transparency concerns. Specifically, based on our reading, the proposal empowers persons who are neither elected, nor accountable to the general public, to hold proceedings behind closed doors to appoint commissioners pursuant to procedures that they adopt without any public input. This method is ripe for meddling. At a minimum, the public should be able to comment on the procedures for selecting the commissioners and the selection committee should hold at least one public meeting to consider and vote on appointments. We hope that unelected individuals charged with making appointments to the ethics commission would welcome the greater scrutiny that should rightfully follow from the exercise of such a power.

As a general matter, in any system that maintains the current method in which elected officials make direct appointments to the commission, the Committee believes that such a method should incorporate additional elements to establish greater independence between the appointing authorities and commission members and limit the size of the commission, such as a method of joint appointments. For example, with the proposed five-member commission, two appointments can be apportioned to the four legislative leaders, two appointments can be apportioned to three statewide elected officials, and one appointment can be apportioned to the four commission members appointed directly by the aforementioned elected officials. Such a method, which can include incentives to make timely appointments or lose the power to fill any particular vacancy, should encourage cooperation and moderation among the appointing authorities, eliminate the perception that a commission member is beholden to any one appointing authority, and also make clear to the public who is responsible for the composition and direction of the commission.

While the constitutional amendment proposed by Senator Krueger and Assemblymember Carroll to establish a Government Integrity Commission (S.855 / A.1929),³ currently serves as the best means to achieve more enduring ethics reform in the New York State, the Committee welcomes many of the statutory changes advanced in Governor Hochul's proposal.

Government Ethics & State Affairs Committee
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³ "Support for the Creation of a NYS Government Integrity Commission," New York City Bar Association, 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>.