

April 10, 2015

Governor Cuomo
Executive Chamber
Capitol
Albany, NY 12224

Senate Majority Leader Skelos
New York State Senate
Legislative Office Building
Albany, NY 12247

Assembly Speaker Heastie
New York State Assembly
Legislative Office Building
Albany, NY 12248

Senate Co-Leader Klein
New York State Senate
Legislative Office Building
Albany, NY 12224

Senate Minority Leader Stewart-Cousins
New York State Senate
Legislative Office Building
Albany, NY 12247

Assembly Minority Leader Kolb
New York State Assembly
Legislative Office Building
Albany, NY 12248

Re: Recommendations for review of the Joint Commission on Public Ethics and Legislative Ethics Commission

Dear Messrs. Cuomo, Skelos, Klein, Heastie, Kolb and Ms. Stewart-Cousins:

As part of this year's budget agreement, you extended the deadline for the appointment of, and the report from, a review commission on the workings of the Joint Commission on Public Ethics ("JCOPE") and the Legislative Ethics Commission ("LEC").¹ The new deadlines require that the review commission be established by May 1, 2015 and that its report be issued by November 1, 2015.²

As set forth below, we urge that you create a panel whose members' independence is beyond reproach; that conducts its business with the utmost attention to transparency; and that you ensure that the process is inclusive, encouraging public participation and contribution to the greatest extent possible. We believe these are essential ingredients to help restore public trust.

As you know, our organizations were displeased that the 2011 law was ignored, in that the review commission was not formed, as required, by June 1, 2014, with a report on March 1, 2015. Had that panel been established as required under law, it might have provided useful information in your deliberations on this year's ethics reforms which were ultimately contained in the budget.

Notably, this year's extender of those requirements makes clear that the "legislative leaders" who were to be involved in the appointment of the review panel's membership are now limited to the Majority Leader of the Senate and the Speaker of the Assembly.³ We have written this letter to all of the current

¹ Formally referred to as the "review commission to review and evaluate the activities and performance of the joint commission on public ethics and the legislative ethics commission in implementing the provisions of Chapter 399 of the laws of 2011."

² Senate bill 2006B/Assembly bill 3006B, Part DD.

³ The Public Integrity Reform Act of 2011 referred to the "legislative leaders" as those of the majority and minority party; see Section 94 (2) of the Executive Law regarding the appointment of JCOPE: "...the legislative leaders of the same political party in the same house shall appoint a member to fill such vacancy irrespective of whether that legislative leader's political party is in the majority or minority."

legislative leaders to have played a role in commissioner appointments to JCOPE and the LEC, as originally dictated in the 2011 law.

There can be no doubt that the state's ethics watchdogs need a thorough review. Both agencies have been frequently criticized as lacking structural independence and operating in secrecy.⁴ The criticism was at least implicitly validated in JCOPE's recent policy reform recommendations from February 2015:

“Increasing Transparency and Disclosure. Amend the Executive Law to provide JCOPE with more flexibility to make information public by a vote of the commissioners, including the ability to make investigative findings public if no legal violation is found or if JCOPE determines not to investigate. In addition, consider whether JCOPE's current exemptions from the ‘Freedom of Information Law’ and ‘Open Meetings Law’ should be modified to increase the transparency of JCOPE's operations while still protecting the integrity of JCOPE's sensitive compliance and investigative functions.”⁵

Even when compared to the rest of the nation, New York's ethics enforcement ranks poorly: In a 2012 comparison of state ethics laws, New York's ethics enforcement received a grade of “F.”⁶

Of course, the problems at JCOPE have been exacerbated by the impact of budget cuts, which have totaled a reported 4 percent over the past 2 years.⁷ As a result, the work at JCOPE has suffered; in a review of the timeliness of JCOPE's posting of lobbyist information on its website, only 1,774 had been posted as of April 5 at 1 pm. To put this in some perspective, last year a total of 5,625 lobbyists were posted on the JCOPE website. At this pace, it is likely that the public will be denied access to information on lobbying spending for the duration of the 2015 legislative session.

These limitations will be offset – at least to some extent – by an increase in JCOPE funding. However, at the same time, the workload for JCOPE and the Legislative Ethics Commission will increase. Under the ethics agreement contained in this year's budget, public officials will be required to increase the amount of information that they publicly disclose on the sources of their outside income and the lobbying law will be expanded to monitor advocacy by interest groups for significantly more local governments.⁸

Those changes may be coupled with other workload increases if JCOPE's recommendations are adopted. JCOPE has recommended that its authority be further extended to “require lobbyists to disclose political consulting and fundraising activity in their lobbying filings” and to “expressly prohibit lobbying entities and coalitions from creating or participating in shell or pass-through entities in order to shield the identities of the sources from which they solicit or receive funding.”⁹ Both of these recommendations will require additional work for the agency.

⁴ King, H., “Three Years In, New York Ethics Commission Still Looking to Find Footing,” *Gotham Gazette*, 12/18/14, available at: <http://www.gothamgazette.com/index.php/government/5479-three-years-in-new-york-ethics-commission-still-looking-to-find-footing>.

⁵ New York State Joint Commission on Public Ethics, “Report From The New York State Joint Commission On Public Ethics February 2015.”

⁶ The Center for Public Integrity, State Integrity Investigation project, New York State ranking available at: http://www.stateintegrity.org/new_york.

⁷ McKinley, J., “Cuomo Focuses on Ethics Reform, Not on Funding It,” *The New York Times*, 3/20/15.

⁸ Under current law, lobbying of municipalities with populations of more than 50,000 must be reported to JCOPE. Under the budget agreement, lobbying of local governments representing 5,000 must be reported, see Senate bill 2006B/Assembly bill 3006B, Part CC, section 6.

⁹ New York State Joint Commission on Public Ethics, “Report From The New York State Joint Commission On Public Ethics February 2015.”

With the recent changes to ethics in the state budget that will add to JCOPE's and the LEC's workload, the review panel must be appointed quickly in order to help guide policymakers on further changes needed to the state's ethics laws as well as to help agency staff with the new responsibilities headed their way.

Regarding the appointees of the review commission, we believe that they must operate independently of their appointing authorities. Specifically, we recommend that at a minimum appointees cannot:

- have had political party or government ties in past five years;
- have a relationship to lobbying or lobby firms in five years;
- have been involved in political consulting in the last five years; and
- held elected office in past five years.

In making these recommendations, we urge you to go beyond the "usual suspects" that are often appointed on public commissions, and ask that the appointees publicly pledge to put the interests of the public ahead of their appointing authorities. Moreover, the review panel's work must be conducted as openly as possible in order to help build public support for whatever measures the panel recommends.

Regarding the operations of the commission, our organizations jointly urge that it:

- strictly follow ethics restrictions, freedom of information and open meeting laws requirements;
- maintain a public website regarding its operations, including webcasting or archiving video and materials from meetings, including testimony and minutes;
- hold public hearings across the state;
- examine "best practices" nationwide with regard to the JCOPE and LEC board membership as well as the independence and qualification of each's executive directors; and
- evaluate resource needs for the agencies to fulfill their missions.

We appreciate your consideration of these ideas and we look forward to working with you to strengthen regulation, oversight and the enforcement of the state's ethics laws.

Sincerely,

Lawrence Norden, Deputy Director,
Democracy Program
Brennan Center for Justice

Dick Dadey, Executive Director
Citizens Union

Susan Lerner, Executive Director
Common Cause New York

Sally Robinson, President
League of Women Voters of New York State

Blair Horner, Legislative Director
NYPIRG

John Kaehny, Executive Director
Reinvent Albany