

# EXECUTIVE SUMMARY

Georgia is one of the 42 states with an ethics commission, known in-state as the Georgia Government Transparency and Campaign Finance Commission. As the sole agency tasked with administering and enforcing the Georgia Government Transparency and Campaign Finance Act, Georgia's Commission plays a critically important role in protecting the public interest and serves an essential purpose: to provide an independent watchdog on public officials.

In recent years, the Commission has been dogged by scandals, budget cuts and personnel reductions. As such, questions repeatedly have been raised regarding the Commission's independence and ability to effectively undertake essential responsibilities; public trust and confidence in the agency have appeared to wane considerably. Politicians and elected officials on both sides of the partisan aisle have expressed concerns about the Commission's structure and activities, and a state audit in 2014 noted that "the General Assembly could consider changes to the Commission's composition and funding to improve the structural independence of the body."<sup>1</sup>

With an eye toward potential reforms for Georgia's Commission, Common Cause Georgia examines in this report how ethics commissions in other states are appointed, funded, and statutorily empowered, and then compares those commissions with the Georgia Government Transparency and Campaign Finance Commission in these critical areas. Common Cause Georgia then makes recommendations for reform based upon best practices and innovations related to ethics commissions in other states.

To gain a comparative view of ethics commission practices across the country, Common Cause Georgia examined 52 ethics commissions in 42 states. Eight states – Arizona, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont and Wyoming – do not have ethics commissions, and were not included in this analysis.

Common Cause Georgia examined four key factors in considering potential reforms for Georgia's ethics commission: appointments, partisan balance, jurisdiction, and funding. The key findings and recommendations in each of these areas are summarized below.

## APPOINTMENTS AND PARTISAN BALANCE

All states assign the appointment of commissioners to at least one of the three branches of government. The vast majority of states, including Georgia, have a mix of executive and legislative appointments, with the governor typically having several appointments and each of the two chambers of the state legislature making one appointment each. Nine states have commission appointments that are controlled solely by the executive branch; five have commission appointments that are controlled solely by the legislative branch. No states rely solely on the judicial branch for ethics commission appointments.

Common Cause Georgia identified only four states – Colorado, Kansas, Mississippi and Oklahoma – that involve all three branches of state government in the commission appointment process.

In addition, Common Cause Georgia found that ethics commissions in more than half of the 42 states examined, including Georgia, are required to maintain some degree of partisan balance among commission members. A few of these states require that the commission be bipartisan, with the number of commissioners evenly split between parties. Sixteen states do not mandate a partisan split of any kind among commission members. While the vast majority of states rely upon an appointment process that resembles Georgia's, most also have strict statutory partisan balance requirements to provide minority representation on the commission. Georgia has some of the least stringent requirements for partisan balance, requiring that only one appointee be a member of the minority party.

[Key recommendation for reform: Create a more independent commission by spreading the appointment process across all branches of state government, while also passing stricter statutory requirements for the commission's partisan balance.](#)

Common Cause Georgia recommends a 12-member ethics commission, with members selected by the Governor, the Chief Justice of the Supreme Court of Georgia, the President Pro Tempore of the Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader. The Governor would receive four appointments, with no more than two from the same political party. The Chief Justice would receive four appointments, with no more than two from the same political party. Each of the remaining selectors would receive one appointment. This proposal would give each branch of state government four appointees while ensuring an even split between the two major parties and mitigating any appearance of partisan partiality among commissioners.

## JURISDICTION

State ethics commissions are responsible for enforcing ethics laws, although their jurisdictions vary widely and can include legislators, executive branch officials, candidates, local officials and lobbyists. The Center for State Ethics at the National Conference of State Legislatures recently compiled comprehensive data<sup>ii</sup> on the jurisdictions of ethics commissions in 42 states. The vast majority of these – 44 commissions in 41 states – have full or partial jurisdiction over the executive branch; a slightly smaller number – 38 commissions in 36 states – have full or partial jurisdiction over the legislative branch. Thirty-four commissions in 33 states have jurisdiction over lobbyists, while 29 commissions in 28 states have jurisdiction over candidates for office. In general, local officials are the least regulated – only 25 commissions in 25 states have jurisdiction over municipal and county elected officials.

Georgia's ethics commission is among those with relatively broad jurisdiction – it is one of only 11 commissions with oversight authority in all five measures of jurisdictional power. However, the Commission lacks jurisdiction in one key area: campaign finance oversight for local candidates and public officials.

Common Cause Georgia found that 16 ethics commissions in 16 states, including Georgia, also serve as the campaign finance reporting agency for the state.<sup>iii</sup> In most other states, campaign finance reporting and election administration are assigned to the Secretary of State or a Board of Elections. Among these states, the majority have jurisdiction over local filings; however, Georgia's HB 143 mandated in 2013 that the Georgia Government Transparency & Campaign Finance Commission relinquish responsibility for serving as the filing office for disclosure reports for all local candidates and public officials.

[Key recommendation for reform: Common Cause Georgia recommends that all campaign finance disclosure reports from county or municipal candidates and elected officials be filed directly with the Georgia Government Transparency & Campaign Finance Commission.](#)

In addition, all state and local candidates and elected officials should be required to file campaign finance reports electronically, and in a uniform manner. This key change would promote government efficiency and transparency, while also eliminating serious inefficiencies in campaign finance filing requirements.

## FUNDING

The vast majority of states fund their ethics commissions in the annual state budget<sup>iv</sup> – which often means that politics figures in the agencies’ budgetary allocation. A recent study from the Center for Public Integrity concluded that ethics commissions in more than half the states with such entities are woefully underfunded and that inadequate resources leave commissions without the tools needed for even the most basic functions.<sup>v</sup>

Common Cause Georgia found only three states – Alabama, California and Oregon – where the mechanism for commission funding could be considered independent and free from political machinations. Other states, including Georgia, have funding models that could be considered somewhat independent; their commissions rely on an annual appropriation from the general fund, but also are empowered to use a portion or percentage of fees, such as lobbyist registration fees, to offset operational costs. In most cases, these offsets comprise only a small percentage of the commission’s overall budget. The remaining states have a funding formula that is wholly dependent on an annual legislative appropriation.

For many years, Georgia’s commission has suffered mightily from state budget cuts, leaving it without the finances necessary to perform its most essential functions – namely, investigatory functions – and operate efficiently. Without fundamental, statutory changes regarding the way the Commission is funded, there is no guarantee that the General Assembly will continue to support the agency at appropriate levels, nor will commission members and staff be insulated from political retaliation by legislators who feel slighted by the Commission’s decisions or rulings.

[Key recommendation for reform: Constitutionally guarantee that a fixed percentage of the state’s general fund budget be appropriated to the Commission each year.](#)

Common Cause Georgia recommends that .02 percent of the state budget be dedicated to fund the Georgia Government Transparency and Campaign Finance Commission, which would be equal to roughly \$4.3 million based on the \$21.8 billion FY16 state budget. With a funding formula that does not require annual legislative approval, Georgia’s commission will be empowered to act without fear of retribution, securing its independence from the public officials it is tasked with overseeing. An annual constitutional guarantee of funding also ensures that the commission can carry out its essential functions and duties, unencumbered by yearly budget maneuvers.

[Key recommendation for reform: All fees imposed by the Commission should be dedicated to the agency’s budget and used exclusively to defray operational expenses.](#)

In addition to its annual state appropriation, Georgia’s commission is empowered to retain a small portion of the fees it collects to defray operating costs; currently, the total comes to less than 10 percent of the agency’s total operating budget. Increasing the percentage of fees that the Commission is allowed to retain will create larger budgetary offsets for the agency and provide the Commission with a greater measure of political independence.

[Key recommendation for reform: Common Cause Georgia recommends that the totality of the fees paid by local candidates and elected officials be returned to the agency’s budget and used as an additional source of funding to offset the Commission’s operational costs.](#)

Currently, revenue from fees paid by local candidates and elected officials is being diverted to the local jurisdiction rather than to the Commission. The Georgia Government Transparency and Campaign Finance Commission has requested an advisory opinion from the Attorney General’s office to clarify the statutory authority behind the current practice; as such, Common Cause Georgia urges the Attorney General’s office to issue that opinion promptly.

## CONCLUSION

The findings of a comparative study of the 42 states with established ethics commissions are particularly relevant in Georgia. While the 52 commissions examined in this report differ greatly in structure, jurisdiction, and funding mechanisms, all play a crucial role in representing the public interest in state and local government.

Common Cause Georgia believes that a strong ethics commission must possess:

- broad jurisdiction over key political players and institutions;
- a reasonable degree of autonomy from the elected officials and activities it regulates;
- a funding formula that ensures the agency's independence; and
- the resources necessary for its functions and tasks.

On these key measures of structural strength, Georgia's ethics commission is lagging. While the Georgia Government Transparency & Campaign Finance Commission has a relatively robust mandate to oversee and regulate the legislative branch, the executive branch, candidates for elected office, local officials, and lobbyists. The agency must also have "the authority, funding, and capacity to accomplish those mandates; and be able to do so without ex ante or ex post pressure from elected officials."<sup>vi</sup>

Ethical conflicts are inevitable in a representative democracy, but with proper oversight, transparency and enforcement, officials can be held to the highest ethical standards and public confidence in the democratic process can be restored and maintained. It is clear that structural alterations to the Georgia Government Transparency & Campaign Finance Commission's composition, powers and funding mechanisms are necessary to fully empower the agency and to improve the real and perceived independence of this critically important state entity.

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<sup>i</sup>Georgia Dep't of Audits & Accounts Performance Audit Div., Gov't Transparency & Campaign Finance Comm'n Audit Report, [http://www.gmanet.com/GMASite/media/PDF/ethics\\_commissioner\\_audit\\_2014.pdf](http://www.gmanet.com/GMASite/media/PDF/ethics_commissioner_audit_2014.pdf) (2014).

<sup>ii</sup>State Ethics Commissions: Jurisdiction, Nat'l Conference of State Legislatures (Nov. 10, 2015), <http://www.ncsl.org/research/ethics/50-state-chart-state-ethics-commissions-jurisdic.aspx>.

<sup>iii</sup>State Links, Campaign Finance Institute, <http://www.cfinst.org/law/stateLinks.aspx> (last visited June 7, 2016).

<sup>iv</sup>Erik Lincoln, Yue Qiu, Chris Zubak-Skeese, How Does Your State Rank for Integrity? Center for Public Integrity, (2015, November 9), <https://www.publicintegrity.org/accountability/state-integrity-investigation/state-integrity-2015>

<sup>v</sup>Nicholas Kusnetz, Only Three States Score Higher Than D+ In State Integrity Investigation; 11 Flunk, Center for Public Integrity (2015, November 23), <https://www.publicintegrity.org/2015/11/09/18693/only-three-states-score-higher-d-state-integrity-investigation-11-flunk>

<sup>vi</sup>W.J. Rauh, (2014). The Effects of Political Control and Institutional Structure on State Ethics Commissions. (Doctoral dissertation). <http://scholarcommons.sc.edu/etd/3177>