



**TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
JOINT HEARING OF THE SENATE FINANCE AND ASSEMBLY WAYS & MEANS
COMMITTEES REGARDING THE
FISCAL YEAR 2022-2023 EXECUTIVE BUDGET'S REFORM PROPOSALS CONTAINED IN
THE PUBLIC PROTECTION/GENERAL GOVERNMENT LEGISLATION
January 25, 2022
Albany, N.Y.**

Good afternoon, my name is Blair Horner and I am executive director of the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, not-for-profit, research and advocacy organization. Consumer protection, environmental preservation, health care, higher education, mass transit, and governmental reforms are our principal areas of concern. We appreciate the opportunity to testify on the Governor's Executive Budget on ethics, transparency, campaign finance, and election law reforms contained in her public protection/general government proposal.

Our testimony covers several areas: ethics, voting and elections, and campaign financing.

Overall summary: Ethics: There is no doubt that replacing the Joint Commission on Public Ethics (JCOPE) must occur – the agency was designed to fail, and it did so. And while the Governor deserves credit for advancing a reform plan, hers is inadequate to ensuring that the new entity will be both actually and perceived as independent. Moreover, she does not propose reforms of the Legislative Ethics Commission and the offices of the Inspectors General, which need independence from those that they monitor. Voting: Support the governor's plan to shorten the voter registration deadline and urge expanding on her plan to place polling sites on college campuses to include the early voting period. And fix the state's failing administration of elections. Campaign finance: Lastly, given the far too frequent scandals and corruption that have resulted from Albany's pay-to-play campaign financing system, there must be a system designed to limit contributions from those with business before the government.

Ethics

Summary: Fix the governor's "selection committee" that would rely on law schools' deans, broaden prohibitions on who can serve on the new ethics commission as well as the executive director. Add a new public servant code of conduct. Overhaul the Legislative Ethics Commission and strengthen the public accountability of the state's Inspectors General.

Nowhere is the public's trust more susceptible to harm than when lawmakers act in ways that skirt not only the letter, but also the spirit, of ethics laws. New York has seen its share of ethical lapses, yet little has been done. Prison sentences, convictions, plea deals, scandals and other allegations of ethical misconduct have been on the front pages of the state's newspapers far too often. As a result, the ways in which the state regulates political ethics has been a front-burner issue. Unfortunately, little is clear when it comes to New York State's ethics laws. The laws are loophole-riddled and poorly—if at all—enforced. Changes are needed to comprehensively reform the state's ethics laws.

REPLACE THE JOINT COMMISSION ON PUBLIC ETHICS AND THE LEGISLATIVE ETHICS COMMISSION

In summary, NYPIRG strongly believes that the Joint Commission on Public Ethics and the Legislative Ethics Commission should be *replaced* with an independent ethics enforcement agency that would monitor and enforce ethics for the executive and legislative branches. Both entities were established with fatally flawed structures because of political concerns, not the public's best interests. Ethics watchdogs must be independent, not political creatures. Yet, the structure of both agencies indicates their design was driven by fear of real independence.

Those flaws were mirrored in predecessor agencies – namely they relied on commissions whose members were directly appointed by the political leadership of the state. That obvious and inherent conflict-of-interest undermined those forerunner agencies and fueled public cynicism.

And they didn't work.

The Joint Commission on Public Ethics

A glaring example of the structural failure of the JCOPE is the former governor's book deal. The former governor received \$5.1 million for the lessons-from-the-pandemic book. The book was the governor's opportunity to "cash in" on his celebrity as a fact-based-counterpoint to the incompetence by the then-Trump Administration's response to the COVID-19 pandemic.

New York State's governor is the highest paid in the nation and is considered a full-time employee. In order to get outside income, he had to receive approval from JCOPE.

In this case, the outside income was staggering – millions of dollars for a book that was based on then-Governor Cuomo's actions as a public servant, written during the pandemic while he was still a public employee. The former governor requested approval for a massively lucrative book deal that was based on his work as governor.

That alone should have given JCOPE pause. But it didn't.

The use of public resources is another area in which JCOPE should have acted but didn't. In requesting approval of his book deal, the former governor used public resources to do the legal work for that request. His full-time public employee subordinates researched and wrote up the legal request for the book approval. JCOPE should have stopped the request right then and there.

Arguably JCOPE was boxed in by a previous decision that allowed the former governor to do the same thing. In a previous book deal, JCOPE had allowed the former governor to use his government staff attorney to request approval for that book. The agency more or less rolled over back then and had done little to check the actions of the former governor and his staff over the years. Those failures may have emboldened Governor Cuomo to believe he could do what he wanted.

As a result, JCOPE staff decided not to alert the agency's Commissioners and to green light the governor's book deal at the staff level, but with one caveat: He could not use public resources in the writing of the book.

However, it has now become clear that the former governor broke that promise. As a result of that obvious broken pledge, JCOPE Commissioners recently convened and took the extraordinary action to rescind the agency's approval of the book deal.

The JCOPE decision was followed almost immediately with the release of the long-awaited report by the Assembly Judiciary Committee, which confirmed the findings of harassment in the AG's report and provided additional details. The Assembly report offered additional support for the JCOPE decision to rescind its approval of the book deal and showed it was warranted. The Assembly Committee's investigation found that Governor Cuomo "utilized the time of multiple state employees, as well as his own, to further his personal gain during a global pandemic – a time during which the former Governor touted the 'around-the-clock' state response to the crisis."

The former governor disputes these charges and says that he is innocent.

Yet, the allegations of harassment, unprofessionalism, unethical actions, and personal enrichment continue to pile up, putting the former governor in deeper legal troubles. These reports also highlighted inappropriate actions by the former governor's top aides. It is our view that such behaviors are far less likely to occur if public officials were subject to clear ethical standards that were enforced by an independent enforcement agency.

And as you know, there have been problems in the past—problems which led to scandals that led to prison terms for top Administration officials. This includes reports in which high-ranking officials were communicating via personal email accounts to circumvent the state's public accountability mechanisms. It was, in fact, the internal JCOPE discussion over how to handle one of these cases (the disclosure of internal JCOPE discussions over whether to sanction Joseph Percoco, a former top aide to Governor Cuomo who was convicted in federal court of corruption and sent to prison) that led to the now-widely-criticized IG report.

Replace JCOPE

The *Public Integrity and Reform Act of 2011 (PIRA)* established JCOPE to oversee executive branch ethics, lobbyist and client reporting and conduct, and empowered it to investigate, but not punish, legislators. The legislation also created a new Legislative Ethics Commission (LEC) that would have sole responsibility for issuing punishment for unethical actions by legislators and legislative employees. The LEC's membership totals nine—all appointees of the legislative leaders with *four* of the nine being currently *sitting* legislators.

The JCOPE commission members are appointed by the Governor (six of the 14 members with three being enrolled Republicans); the Senate Majority Leader and Speaker each appoint three members; and the Senate and Assembly Minority Leaders each get one appointment. The JCOPE chair is chosen by the Governor; the executive director is chosen by the commissioners and does not have a fixed term but may only be terminated as specified in statute. Financial penalties were toughened in *PIRA*, and courts authorized to strip corrupt public officials of their pensions. Financial disclosure requirements were beefed up in *PIRA* and made public.

A fundamental problem is that JCOPE's basic commission structure is flawed. First, the appointment (and removal) process by which three members are appointed (and removable) by the Speaker of the Assembly, three by the Temporary President of the Senate, one by the minority leader of the Assembly, one by the minority leader of the Senate, and six by the Governor, severely undermines the independence and accountability of JCOPE.

Moreover, these factors are combined with the mandate that at least two of the members of JCOPE voting in favor of a full investigation of a legislative member or staff member must be appointees of a legislative leader or leaders of *the same major political party* as the subject of the investigation. This makes it virtually impossible to pursue an investigation of a member in the good graces of the leaders of either house.

This appointment process virtually guarantees the factionalizing and politicizing of JCOPE—anathema to an effective ethics system. This gives political leaders an effective veto over investigating or sanctioning any member—or any lobbyist or client—who they want to protect for any reason.

And the public has seen that factionalization play out. In a public letter to the editor in the *Times Union*, four JCOPE commissioners bemoaned being out of the loop in the search for a new executive director:

*Designed to be independent, the incessant interference continues. If the next executive director is not hired from outside state government after an exhaustive search, the public trust will be inexorably destroyed.*¹

Another problem: JCOPE allows elected officials among its members. Typically, ethics boards have explicit prohibitions on the participation of elected officials.²

Moreover, allowing elected officials to serve on the board of JCOPE, which has regulatory authority over the lobbying industry, creates an inherent conflict of interest (in fact, the first chairperson was not only an elected official, but one who also served as the head of a lobbying group).

THE GOVERNOR'S PLAN FALLS SHORT

NYPIRG applauds the governor for tackling this issue and advancing a plan that eliminates and replaces JCOPE. And she has attempted to solve the most difficult component of reform – the independence of the board itself. Short of a constitutional amendment (which can also solve the inherent fundamental flaw in the Legislative Ethics Commission), figuring out how to make independent selections is extremely difficult.

The governor attempts to solve that problem by creating a selection committee of the state's law school deans who would make the decisions on who would serve on the new ethics commission. Relying on “trusted outside” decisionmakers is one way to solve the independence problem.

Yet law school deans are not – as a group – free of political pressure. All report to institutions, either larger universities or boards, which can be pressured. Moreover, these institutions and boards are not – first and foremost – accountable to the public.

Furthermore, all law schools are involved in lobbying of state and local governments and the new ethics agency will be regulating state and local lobbying. Thus, reliance on a “trusted source” model must have its own protections from political influences if it is to be viewed – and actually be – politically independent.

Here the governor's plan falls short. Simply by dint of being a law school dean, these individuals are selecting the new ethics commission membership. There are no conflict-of-interest provisions, no swearing of an oath to ensure that their decisions are for the public's best interests, no restriction on their conversations with political players. Even law school deans need ethical guardrails.

In addition, under the governor's plan the commission membership cannot include state elected officials but can include local electeds. As mentioned earlier, this agency regulates lobbying and as you know lobbyists and the clients are a major source of campaign contributions to candidates for political office. Allowing elected officials to serve on the agency that oversees lobbying is a fatal flaw. In addition, there is no prohibition on state employees becoming the executive director of the agency. Given the previous

¹ Albany *Times Union*, <http://www.timesunion.com/tuplus-opinion/article/Letter-Ethics-panel-hire-a-questionable-move-6408151.php>.

² For example, JCOPE's first Chair was then the elected Westchester District Attorney Janet DiFiore.

administration's ability to wheel and deal to repeatedly place his own former staffers as the head of the ethics agency this is clearly a problem.

Lastly, given the appalling behavior of the previous administration's top staff, the governor fails to advance code of conduct standards designed to require civil behavior by the state's public servants. We urge that a final reform agreement include such an addition.

However, our criticisms are no excuse for inaction. And they provide no rationale for a failure to replace JCOPE. That agency must be replaced and its public accountability standards enhancement. Inaction or tinkering around the edges are simply unacceptable.

REPLACE THE LEGISLATIVE ETHICS COMMISSION

Any efforts to overhaul New York's ethics and oversight mechanisms must also include overhauling the Legislative watchdog, as well. Including legislators on the LEC destroys its independence and discourages legislators and staff from seeking opinions or filing complaints for fear of breaches of confidentiality and retaliation. Legislative staffers have been vocal critics of the failures of this system, including not having their complaints of sexual harassment handled properly.

Having the "regulated" sit on the commission that "regulates" legislative ethics is an obvious flaw. Clearly, the LEC must be abolished, and its powers (except imposition of penalties) transferred to a new state ethics watchdog, which would have full power over the Legislature (except for penalties)—to provide advice and ethics training, to administer and enforce annual disclosure, and to enforce the ethics laws.

Reforms

Longer Term: Constitutional Change Is Needed

How to best reform New York's ethics oversight system? One model is New York State's Commission on Judicial Conduct. The Commission is established in the state Constitution, which helps limit political pressures on decision making. Under this model, most of the appointments to this new Ethics Commission would be made by the courts, thus granting it sufficient independence. All its members and staff must be prohibited from *ex parte* communications with their appointing authorities and its budget would be constitutionally protected. It is essential that the law protect the budget of the new ethics watchdog, perhaps as a percentage of the net total expense budget of the state or as a fixed amount with an inflation adjustment.

- JCOPE and the LEC should be eliminated and replaced by a new ethics commission to be established by a constitutional amendment.
- The commission should be smaller in size than JCOPE, even as small as five commission members, to bring about more accountability for those making the decisions. The commission should have an odd number of commissioners to avoid the gridlock that grips even-numbered boards.
- The method of appointment is important for facilitating independent action. As mentioned above, the Commission on Judicial Conduct—whose membership is appointed by the executive and legislative branches – could serve as a model.

Short term: Overhaul Existing Entities to Achieve Immediate, Interim Improvements

A constitutional amendment takes time. We recommend that you consider legislation that, while relying on bipartisanship, uses randomness in its appointment process. Our recommendation proposes that you replace the appointments processes for both JCOPE and LEC. We urge that you use the selection process from the California redistricting commission as inspiration.³

³ California Redistricting Commission, see https://www.wedrawthelinesca.org/about_us.

Step #1: The executive and Legislature agree on a bipartisan selection panel (“Selection Panel”) to choose the commissioners for the new JCOPE. The qualifications for these individuals should maximize independence from their selectors. We recommend six (6) members, three from each branch. The executive branch (governor, attorney general and comptroller) jointly would agree on three selectors – one Democrat, one Republican, and one independent. The legislative branch does the same with the Democratic leaders choosing one, the Republicans choosing one, and the four agreeing jointly on the third candidate. A failsafe will be needed in case decisions on these selectors (or their appointments) are not made.

Step #2: An application process is opened to anyone in the public. Standards should be included that requests independence, expertise, and availability. The State Police⁴ would receive those applications and conduct background checks and review of adequacy as candidates using a publicly-disclosed methodology reviewed and approved by the Attorney General. The State Police would also do the background checks on the “selectors” mentioned above.

Step #3: No more than 30 candidates meeting the standards are then forwarded to the Selection Panel. Five commissioners are randomly selected in public meetings—with an eye toward ensuring gender, ethnic, and racial diversity to the extent practicable. Four commission members are chosen. Those four choose five from the approved pool, one of which is chosen to chair.

This system would be repeated for the new Legislative Ethics Commission.

Additional Measures To Be Taken

While the independence of ethics oversight is the most critical element of reform, there are many other actions that can be taken. Some of the most obvious (the are in addition to comments that we submitted in August):

- Clear prohibition on outside income for members of the executive branch, including the governor.
- Establish a “Code of Conduct” that makes clear that government officials are the *servants* of the public. We recommend that you consider standards set by New York’s court system⁵ as well as those found in the Council of Europe’s ethical code.⁶

STRENGTHEN THE INDEPENDENCE OF THE STATE’S INSPECTORS GENERAL

A report by Albany’s *Times Union* illustrated just how the former Administration viewed oversight by the state’s Inspector General.⁷ According to the deposition of Linda Lacewell, formerly a top lawyer to the former governor and the Superintendent of the Department of Financial Services at the time of his resignation, the state’s Inspector General cannot investigate complaints against the governor or the top aides of the governor.

⁴ The disturbing revelations of the use of the State Police as essentially a “palace guard” but the former governor (and other previous governors) deserves your attention as well.

⁵ New York State Unified Court System, Part 1200, Rules Of Professional Conduct, <https://www.nycourts.gov/legacypdfs/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>.

⁶ Council of Europe, “Recommendation No. R (2000) 10 of the Committee of Ministers to members states on the code of conduct for public officials,” See Article 5(3), requiring that public officials be “*The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues, and subordinate staff.*”

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cc1ec>.

⁷ Bragg, C., “Lacewell: Inspector general can't investigate governor, secretary,” Albany Times Union, December 2, 2021, https://www.timesunion.com/state/article/Cuomo-aide-Investigators-appointed-by-Cuomo-16666523.php?utm_source=newsletter&utm_medium=email&utm_content=headlines&utm_campaign=tu_capitolco nfidential&sid=5931827c3f92a45314a7c87d.

Under New York State law, the Inspector General is empowered to receive and investigate “complaints concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any entity under the Inspector General's jurisdiction.” In short, the IG is supposed to investigate things like harassment of staff or misuse of public resources for public gain—just the types of allegations being made against the former governor.

Inspectors General are common across the nation. At the federal level, they have similar responsibilities. As you may recall, they did their jobs so well that former President Trump fired some for being too honest.

States and municipalities have IGs too. New York has more than one—there is one for the Metropolitan Transportation Authority and the state’s Medicaid program, for example. Yet, New York’s law creates a wrinkle: New York State’s Inspector General is chosen by the governor and reports directly to the governor’s top aide – the Secretary to the Governor.

Since the IG is chosen by and effectively reports to the governor, according to Lacewell, that person has a conflict of interest and therefore cannot investigate the governor. That legal logic may have contributed to the failure of the IG’s office to compel the former governor to testify about how he learned of a secret conversation by the members of JCOPE. Leaking confidential JCOPE information is a misdemeanor.

Lacewell’s opinion mattered a lot to the governor. In the criminal trial of another former top Cuomo aide who was subsequently convicted of corruption and sent to prison, Lacewell was described as the “Minister of Defense”—charged with protecting the former governor from scrutiny.

Of course, Lacewell’s opinion is just that, opinion. In contrast, the IG under former Governor Paterson was incredibly active, leading scores of investigations including those against Paterson and his aides.⁸ That inconvenient fact was not part of the apparent worldview of the Cuomo team.

But the revelations highlight a problem in state law: the Inspector General is simply not independent enough of the governor and his or her aides.

A review of “best practices” nationwide shows that New York’s law falls far short of what the public should expect. The nation’s *Association of Inspectors General* offers model legislation to establish IG offices.⁹

That model legislation calls for IGs to be structurally independent of the entity that they are responsible for monitoring, that there be strict standards for who can be selected (no former top aides to the governor for example), and guaranteed funding in order to ensure that the agency is financially secure enough to do its job with fear of budgetary repercussions.

Of course, that rule should apply to *all* state-funded watchdog agencies.

Government officials are *public servants*. They are not royalty or dictators. They are charged with serving the needs of the public. In order for the public to have confidence that their tax dollars are being used

⁸ Most notably, see Office of the Inspector General report, “Investigation Regarding the Selection of Aqueduct Entertainment Group to Operate a Video Lottery Terminal Facility at Aqueduct Racetrack,” October 2010. NOTE: The problems identified in this report have been largely ignored and contribute to an “anything goes unless you’re caught” culture in Albany. In addition, the *current* IG has stated that she can investigate the governor, see: <https://www.timesunion.com/opinion/article/Editorial-Big-ethical-loopholes-16680720.php>.

⁹ Association of Inspectors General, “Model Legislation For the establishment of Offices of Inspector General,” see: <https://inspectorsgeneral.org/>.

appropriately and that their public servants are behaving ethically and professionally, there must be independent oversight of all public servants—even the governor, and for that matter, even the President.

Accountability is key to maintaining public trust in democracy. State ethics agencies and Inspectors General are central to maintaining that accountability. The public expects that government officials are accountable for efficient, cost-effective government operations and to deter, prevent, detect, identify, expose and eliminate fraud, waste, corruption, illegal acts and abuse.

This public expectation is best served by Inspectors General when they follow the basic principles of integrity, objectivity, independence, confidentiality, professionalism, competence, courage, trust, honesty, fairness, forthrightness, public accountability and respect for others and themselves.

Inspectors general are granted substantial powers to perform their duties. In exercising these powers, inspectors general regard their offices as a public trust, and their prime duty as serving the public interest.

While this testimony has focused on structural oversight issues—JCOPE, the LEC and Inspectors General—we'd urge you to look carefully at the Code of Ethics in Public Officers Law section 74. This section is more a set of modest aspirations than bright-line standards that provide public servants clear guidelines for conduct and enforcement agencies useful tools to protect the public integrity.

PROHIBIT CAMPAIGN DONATIONS FROM VENDORS SEEKING OR ENGAGED IN STATE PROCUREMENT

The notion that those receiving government contracts can be restricted is not a new concept. The Securities and Exchange Commission (SEC), for example, has enacted a pay-to-play rule.¹⁰ The rule, under the Investment Advisers Act of 1940, prohibits an investment adviser from providing services, directly or indirectly, to a government entity in exchange for a compensation, for two years after the adviser or an employee or an executive makes contributions to political campaigns of a candidate or an elected official, above a certain threshold.

Moreover, the rule prohibits an investment adviser or an employee or an executive from providing or agreeing to provide payments to a third party, on behalf of the adviser, in order to seek business from a government entity. The only exception to this is if the third party is a registered broker dealer or a registered investment adviser, in which case the party will be subjected to the pay-to-play restrictions.¹¹

Under New Jersey's pay-to-play law, for-profit business entities that "have or are seeking" government contracts are prohibited from making campaign contributions prior to receiving contracts. Moreover, businesses are forbidden from making "certain contributions during the term of a contract." These pay-to-play restrictions apply at state, county, and municipal levels of government.¹²

NJ law requires contributions over \$300 to be reported, and the contributor's name, address, and occupation to be identified. A government entity is prohibited from awarding a contract worth in excess of \$17,500 to a business entity that made a campaign contribution of more than \$300 "to the official's candidate

¹⁰ Advisers Act Rule 206 (4)-5, addressing pay to play law.

¹¹ United States Security and Trade Commission, "Advisers Act Rule 206(4)-5 (Political Contributions by Certain Investment Advisers)," <https://www.sec.gov/rules/final/2010/ia-3043-secg.htm>.

¹² New Jersey Election Law Enforcement Commission, <http://www.elec.state.nj.us/pay2play/laws.html>.

committee or to certain party committees,” specifically to committees that are responsible for awarding the specific contracts.¹³

Voting and Elections

Summary: The governor’s plans have measures worth supporting and improving. Unfortunately, she has not tackled the issue that undermines New York’s democracy – its system of running elections. The Legislature must take steps in the budget to fix the Board of Elections. We urge support for the governor’s plan to shorten the period of time between the voter registration deadline and the state’s elections. We urge your support and expansion of her plan to require polling places on college campuses – but include early voting in that requirement. Lastly, ensure that local boards of elections are adequately funded to meet their crucial responsibilities.

New York State has approved a significant number of measures to reform its elections system. These changes have had a positive impact. For example, in 2020, the state had a Voting Eligible Population (VEP) of nearly 13.7 million.¹⁴ VEP is the most reasonable measure of participation and includes citizens over 18 who are not incarcerated for a felony. According to the New York State Board of Elections, nearly 13.6 million New Yorkers were listed as either active or inactive voters for the same period. That means that the state has significantly reduced the gap between the number of eligible voters and those who are registered. However, just four years ago, the estimate was that one million eligible New Yorkers were *not* registered.¹⁵ This means that the over one million *eligible* citizens were not registered to vote. While the comparison of these two datasets is imperfect, it underscores that New York has closed the gap between those who are eligible to vote and those who are registered.

However, New York’s voter participation still lags. While improving, voting rates are still lower than the national average. In the 2020 general election, a lower percentage of registered New Yorkers—63.4 percent—voted, compared to the national average of 66.7 percent. In the 2021 general election, 25.7 percent of registered New Yorkers voted despite well-publicized and competitive local elections in many parts of the state as well as a referendum vote on major revisions to the State Constitution.

Moreover, for heavy turnout elections in Presidential years, still far too many of New York’s beleaguered voters stand in line for hours and face problems at the polls in order to cast their ballots. Broken machines, improperly trained or supervised poll workers, inadequate numbers of early voting poll sites, inaccessible poll sites, poor ballot design, insufficient numbers of ballots, and illegal requests for ID are ongoing problems for too many voters. These chronic problems at poll sites require strong and immediate action from city, state, and local governments, as well as from Boards of Elections.

While many dedicated board staff and poll workers worked tirelessly before and on Election Day, the problems many voters faced are systemic. Policymakers need to focus on voter registration, voter education, Election Day operations and the administration of elections reforms or these same problems will persist—to the continuing diminution of New York’s democracy.

¹³ New Jersey Business & Industry Associates, “Fast Facts: Complying with New Jersey’s ‘Pay-To-Play’ Law,” <https://www.njbia.org/complying-new-jerseys-pay-play-laws/>.

¹⁴ United States Elections Project, *2020 November General Election Turnout Rates*: <http://www.electproject.org/2020g>.

¹⁵ New York State Board of Elections, *Voter Enrollment by County*: <https://www.elections.ny.gov/EnrollmentCounty.html>. The State Board lists 12.4 million New York voters as “active registered” and an additional one million as “inactive voters.” Added together, New York State has total of nearly 13.6 million registered voters.

SHORTEN THE VOTER REGISTRATION “BLACKOUT” PERIOD

Each year, just as interest in elections and candidates begins to peak, potential voters find that the deadline for registering to vote has already passed. Here in New York, campaigns for statewide and local offices barely attract public attention before October. By the time voters begin to focus on the election, the deadline has already passed.

Electoral participation experts have long concluded that registration “black-out” periods lower voter turnout. One needs to look no further than the states that have same-day or no registration to show how well those systems work (participation rates in “same-day” states are traditionally among the highest in the country).¹⁶

The governor proposes to shorten New York’s voter registration deadline to match the constitutionally required 10 day “blackout” period. NYPIRG urges your support.

REQUIRE POLLING PLACES ON COLLEGE CAMPUSES.

Despite the constitutional promise, students too often face obstacles to voter registration and participation across the state. Students live in their college communities anywhere from nine to twelve months of the year, for at least four years. Students are no more transient than the average American family, which typically moves once every five years. Moreover, the U.S. Census Bureau considers students to be residents of their college community in its survey. Thus, the federal government distributes funds to municipalities based on figures that include the student population. Students contribute to their communities in many valuable ways. They work as volunteers in a host of civic organizations, create jobs in the community, are locally employed, bolster the local economy, and pay sales and gasoline taxes.

Young people were historically known as the voting bloc with the lowest voter turnout rates. 2020 changed that. Despite the hurdles mentioned above and a global pandemic, up to 55% of young voters participated in the 2020 general election nationwide. While youth turnout is lower than that of older adults (nearly 67% in 2020), imagine how many more will participate if barriers were removed that prevent them from making their voices heard.

Young adults are a voting bloc whose residence is more easily identified. Across New York, colleges are filled with students who are less likely to vote yet have a common community. The unfortunate history of student voting has been one in which officials too often seek to suppress participation.

Year after year, students have faced obstacles to registration and/or voting in various counties around the state. Some counties target students by further splitting campus populations into multiple election districts and/or removing the campus poll site.¹⁷

However, students live in their college towns anywhere from nine to twelve months of the year, for at least four years. This means that students are no more transient than the average American family, which typically moves once every five years.¹⁸ Moreover, the U.S. Census Bureau considers students to be residents of their college community for the purposes of the decennial census. Thus, federal funds are distributed to municipalities based on figures that include the student population. Students contribute to the

¹⁶ Street, A., Murray, T. et al, “Estimating Voter Registration Deadline Effects with Web Search Data *Political Analysis* (Spring 2015) 23 (2): 225-241.

¹⁷ Examples of college students being unfairly targeted in elections; <http://www.nyclu.org/news/nyclu-dutchess-county-protect-college-students%E2%80%99-voting-rights> and <http://www.nbcnews.com/news/asian-america/ny-attorney-general-raises-concerns-over-challenges-chinese-american-voters-n453801>.

¹⁸ Green, J., “How Often Do Americans Move And Why?” My Moving Reviews, <https://www.mymovingreviews.com/move/how-often-and-why-americans-move/>.

college community in many valuable ways. They work as volunteers in a host of civic organizations, help to create jobs in the community, bolster the local economy, and pay sales and gasoline taxes.

The courts have weighed in and defended the rights of college students to register and vote from the college addresses. Like all other adults, college students can designate their residence for the purposes of voting. *College students are allowed to choose to vote either from their college address or their family's address.*

Expansion of early voting polling locations is vital to improve voter turnout rates. Florida hosted early voting polling sites on college campuses for their 2018 general election. These polling sites saw much higher rates of voters ages 18-22 and of Black and Hispanic voters. In nine participating counties, twelve college campuses had early polling locations and 60,000 voters casted their votes there. The majority of those casting their votes were between the ages of 18 and 29, 22,000 being between 18-22.

This also encouraged voters who previously sat out the 2016 general election. About 47,700 of the voters who took advantage of the early on campus voting were registered before the 2016 general election. Of these voters, 15% (nearly 7,300) did not vote in 2016. This program also allowed over 100 voters who attempted to vote by mail in 2016 and had their ballot rejected to successfully cast their ballot in 2018.¹⁹

The governor proposes that polling places be placed on all college campuses for the general election. Unfortunately, the governor does not include early voting in that mandate. We urge your support for the governor's plan and that it be extended to the early voting period.²⁰

STRENGTHEN EARLY VOTING

It has become quite clear that voters like the option of voting early. What is unacceptable, however, is having to wait in long lines to do so. To some extent, those long lines are due to a lack of resources, but to a large extent those lines are the result of the lack of a political will. For example, Erie County which has a voting population of 660,431, had 37 early voting sites (roughly 1 polling site for every 1,800 registered voters), while Suffolk County with a voting population of 1.12 million had 12 (roughly one polling sites 93,600 voters!). Suffolk was not the only county with a paucity of early voting locations: Neighboring Nassau County's ratio was 1 early voting poll site per 72,600 voters and Brooklyn had 1 early voting poll site per 64,300 voters.²¹

Despite having an additional year to evaluate the need for expanded early voting access, counties did not open nearly enough early voting locations. For example, Suffolk County once again had 12 early voting locations for 1.08 million registered voters (roughly one polling site for every 90,400 voters.)²²

The law obliged local boards of elections to *consider*, but did not *require*, certain factors when deciding where to locate early polling locations. The law stated that factors like "population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns" could be considered. Yet, "consideration" is not a mandate.

¹⁹ The Andrew Goodman Foundation, "On-Campus Early In-Person Voting in Florida in the 2018 General Election," August 9, 2019, <https://andrewgoodman.org/on-campus-early-voting-fl/>.

²⁰ Senate bill 4658/Assembly bill 454-A accomplish just that.

²¹ New York State Board of Elections, Voting Statistics as of 11/1/2020, <https://www.elections.ny.gov/EnrollmentCounty.html>, survey of county boards of elections for early polling locations.

²² New York State Board of Elections, Voting Statistics as of 11/1/2021, <https://www.elections.ny.gov/EnrollmentCounty.html>, survey of county boards of elections for early polling locations.

New York should require that no county can have ratios of voters to early voting polls of more than 50,000 to one. And that every local community in which the people rely heavily on mass transportation, or ones that have dense population centers, or rural areas in which distances are far, must have reasonable access.

REFORM NEW YORK STATE'S BOARDS OF ELECTIONS

New York State's elections are run by the two major political parties through the New York State Board of Elections. At every level, Democrats and Republicans run two essentially separate agencies to conduct and monitor elections. This organizational structure was created so that both political parties would have equal ability to monitor the other and thus ensure fairly run elections.

Over the years, that system has allowed for political patronage, collusion between the parties at the expense of the public, scandals, and incompetence. The past decade of elections have shown that, if nothing else, the election of 2020 shows that the public is fed up with the long lines, disenfranchisement, lost ballots, and partisan arrogance. They want reform. Instead of relying on the political parties to watch out for the voters' best interests, an independent, non-partisan, professional agency should replace this aging, failing system.

However, there is one significant limit to reform of the Board of Elections—the New York State Constitution.

The Constitution states:

[Bi-partisan registration and election boards]

§8. All laws creating, regulating, or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording, or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, *as the legislature may direct*. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town, or village elections.

This provision locks in the requirement that the two major political parties “shall secure equal representation” in the administration of elections. Moreover, that all election “boards and officers shall be appointed or elected in such manner” — “as the legislature may direct.”

However, it does not say that the state must have county boards of elections, that every employee must have an opposing political party counterpart, and that the political parties decide who among their ranks are to be placed in elections administration positions or designated as “officers”.

Reform must therefore come as two proposals.

First, a plan that strips away political party control over the “gears” of the elections, while meeting the constitutional mandate that the two major parties are equally represented on the “boards and officers.” And while the constitution states that such “boards and officers” must be chosen “upon the nomination of such representatives of said parties respectively” it specifies only “as the legislature may direct.” This clause allows the legislature to restrict the types of individuals that the political parties may advance.

Second, reform that changes the state Constitution and replaces the state Board of Elections with a nonpartisan, independent, professional agency with a constitutionally mandated minimum level of funding to run elections.

Baseline Principles

Elimination of the local boards of elections. The State Board of Elections would administer all elections and rank-and-file staffers would come from the civil service system, to the greatest extent possible.

The State Board of Elections would establish uniform, statewide administration of elections. Staff that work for the Board would meet the constitutional requirements, but be required to meet civil service standards, including passing relevant exams.

There would be strict limitations on the types of individuals who could represent the political parties acting in areas covered by the constitution. As mentioned earlier, limits can be placed “as the legislature may direct”:

- Fixed terms of appointment and employment.
- Conflict of Interest clause disallows any commissioner to be appointed if they or an immediate family member have held or campaigned for elected office, held, or campaigned for a party position, been a registered lobbyist or registered client or a consultant to a political campaign, or participated in paid partisan campaign work during at least the past five years.
- Sworn oath to maintain a fiduciary relationship to the board and the public, not political interests.
- Mandatory requirement that the board members be representative of the broad diversity of the state.
- Voter Registration, election administration, and ballot access are all administered in a transparent manner at the statewide level. We recommend that campaign finance administration be transferred to another entity.
- Contracts fall under NYS guidelines for transparent and competitive bidding (no sole source or single source contracting) and enhanced state Comptroller review.

Establish an Election Advisory Board

Mandate creation of a NYSEA Advisory Board with broad and diverse representation from communities of color, voters with disabilities, civic community, youth, geographic area, and diverse political party representation.

- Board has the authority to review and offer opinions on all matters voted on by the Commissioners.
- Board is granted contemporaneous access to all agency documents and data.
- Explicitly covered by the Freedom of Information, Open Meetings, and Ethics laws.

Supplemental reforms should also be implemented in State Election Law to maintain public confidence in the integrity of election results. With the elimination of the veneer of bi-partisan oversight taking on this role we recommend several companion reforms.

Public Accountability

Statistically Meaningful Audits: New York’s present audit system is mediocre. There are statistical models for randomly selecting certain races and districts that lead to a very high level of assurance that there were no mistakes made in software/machines/reporting/etc. Set a gold standard of 'random' audits.

Candidate Designated Audits: Allow every candidate who receives more than 5% of the vote to choose .05% (or 1%, etc.) of the districts in their area/state that must conduct a hand recount if the margin of victory is within 5% (or 2% or 1% etc.) This is a way to boost public confidence. It would also allow candidates who know best the support that they have in relevant Election Districts, to choose districts where the results seem inconsistent and to pinpoint potential problems with machines/scanners/etc.

Transparent Vote Counting Assurances: Bolster and ensure an open ballot counting process.

Bipartisan Counting: For example, assuming that BOE staff are civil service, but the two main parties get to assign the workers who count the ballots.

Election Day Poll Workers: To the greatest extent possible, eliminate partisan grip on poll workers. Institute compensation time for all non-essential state workers who work the polls. Ensure that party and candidate monitoring of the vote counting process continues to provide confidence in returns, especially if vote counting falls to civil service employees.

Liberal Interpretation Language. Current law allows for minor mistakes not to disqualify affidavits. The League of Women Voters' lawsuit allows a curing period for absentee ballots. But it seems that technical mistakes are still being used to challenge ballots.

Boost funding for voting in the final budget.

The state's board of elections have historically been underfunded and understaffed, yet charged with maintaining the integrity of our most fundamental democratic process – voting. New Yorkers cannot expect these bodies to continue to operate on a shoestring budget with constant funding cuts while the state simultaneously increase their responsibilities and operational demands. The State Board of Elections and county boards of elections need a serious funding commitment.

NYPIRG urges that you provide the funding necessary to ensure that the cornerstone of a functioning democracy – voting – is adequate to meet the needs of New Yorkers.

Campaign Finance

Summary: New York's still too high campaign contributions must be lowered as well as limits on donations to housekeeping accounts. Better disclosures are necessary. We support funding of the state's embryonic system of public financing, but urge that you reform it to track the New York City system, not one more or less modeled on Montgomery County, Maryland. We also urge that you place unique restrictions on the campaign fundraising of lobbyists.

New York has long been on notice about the failure of its state's campaign finance law. Nearly thirty years ago, the final report of the Commission on Government Integrity was issued. The Commission's report condemned New York's lax ethical standards calling them "disgraceful" and "embarrassingly weak." The Commission then scolded state leaders for failing to act, "Instead partisan, personal and vested interests have been allowed to come before larger public interests."²³

NYPIRG applauded your action to eliminate the disparity in the state's campaign finance system that allowed for Limited Liability Companies to contribute huge sums – and often in secret – to candidates for office. Treating LLCs as corporations does, however, highlight the weaknesses in corporate limits.

Unfortunately, the Commission on Public Financing and Elections work fell far short of what is needed.

The Governor and the Legislature took significant steps in approving legislation that treat Limited Liability Companies (LLCs) as a business for the purposes of campaign contribution limits, lowering campaign contribution limits, and establishing a voluntary system of public financing of elections. This last move goes into effect soon and did *not* embrace the model for public financing found in the three-decades-old program in New York City. Instead, it established an untested system. Whether this will succeed is unclear,

²³ New York State Commission on Government Integrity, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988.

but the failure to embrace what is known to work and instead create something with no track record raises serious questions and only time will tell if it succeeds.

LOWER CAMPAIGN CONTRIBUTION LIMITS

New York State relies on private donations to fund its political campaigns. As mentioned above, Governor Cuomo and state lawmakers dramatically lowered contributions that can be made to candidates for political office. The maximum contribution for statewide office will soon be \$18,000. And while that is down significantly from the past (\$47,100 in the general), it is still well above the national average of \$6,126.²⁴

Since New York State has very high campaign contribution limits, candidates focus their fundraising on those who can give the most— and those individuals and entities frequently have business before the government. For example, between 3/5 and 2/3 of all the money entering the political system comes from lobbying firms or their clients.²⁵

In addition, New York’s sky-high contribution levels have fueled a shift away from smaller donors toward reliance on bigger ones. This reliance undermines the public’s involvement in a system that can only be described as a money chase. Whether the as-yet-untested system of public financing offsets this money chase will be seen sometime in the future.

PLACE MEANINGFUL LIMITS ON DONATIONS TO “HOUSEKEEPING ACCOUNTS”

New York exempts from contribution limits donations to so-called “housekeeping” accounts for “party building activities.”²⁶ There have been widespread abuses of this exemption. For example, in 2012, the Independence Party admitted to using soft money to pay for ads attacking specific candidates mere days before an election. \$311,000 of the funds used to buy these advertisements came from the Senate Republicans’ housekeeping account.²⁷ Candidates for office must use campaign contributions for all of their administrative costs and the same should be true for the political parties. The housekeeping loophole has allowed donors to circumvent New York’s already-weak campaign limits. New York must place meaningful limits on “housekeeping accounts.”

REQUIRE THE DISCLOSURE OF CAMPAIGN FINANCE “BUNDLERS”

While lobbyists give large amounts of money directly from their bank accounts, they can deliver even more through “bundling” money on behalf of their clients. Participants in this practice multiply their political contributions and influence by aggregating checks written by members, clients, or associates. Other governments, notably New York City’s, require committees to disclose which of their donations were bundled and by whom.²⁸ **Bundling is a key way in which lobby firms magnify their influence and ingratiate themselves to decision makers.** It is difficult, however, to establish exact numbers reflecting the extent of this process. New Yorkers deserve to know which interests have bought access to their elected officials; complete disclosure of bundling is the only way for them to do so.

²⁴ National Conference of State Legislatures, *State Limits on Contributions to Candidates*, Overview, <https://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>.

²⁵ NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

²⁶ New York State Election Law §14-124(3).

²⁷ Kenneth Lovett, “Independence Party Goes Along With GOP Scheme. . .,” *New York Daily News*, March 4, 2013, <http://www.nydailynews.com/news/politics/lovett-independence-party-gop-annex-article-1.1278583>.

²⁸ New York City Administrative Code Section 3-701 (12) defines bundlers as follows: “The term ‘intermediary’ shall mean an individual, corporation, partnership, political committee, employee organization or other entity which, (i) other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity to a candidate or authorized committee; or (ii) solicits contributions to a candidate or other authorized committee where such solicitation is known to such candidate or his or her authorized committee.”

A brazen example of New York’s disgraceful campaign financing system is that it allows elected officials to solicit lobbyists for donations while the legislature is considering new laws and while the executive is considering new regulations.

There is nothing more unsettling for those of us who believe in democracy and representative government than lobbyists forking over campaign dollars to elected officials at night while they ask for favors during the day.

As a Court stated when it upheld the unique campaign contribution restrictions found in the state of Tennessee’s law:

“Any payment made by a lobbyist to a public official, whether a campaign contribution or simply a gift, calls into question the propriety of the relationship.” [The U.S. Court of Appeals for the 4th Circuit, *Preston v. Leake*, 660 F.3d 726, 737 (4th Cir. 2011).]

RESTRICT CONTRIBUTIONS FROM LOBBYISTS

However, limits should not be placed solely on those seeking government contracts with the executive branch. A number of states place restrictions on campaign contributions from lobbyists, particularly during the legislative session. According to the National Conference of State Legislatures, 18 states have restrictions on campaign contributions by lobbyists, with 12 of those states prohibiting lobbyists from making campaign contribution during the legislative session.²⁹

Currently, lobbyists play a central role in funding the campaigns of candidates for state office and then circling back once they are elected to plead for favors. This situation places elected officials in an untenable situation and creates an obvious conflict of interest. While the documentation of this has been overwhelming and goes back decades, recent media reports underscore lobbyists’ fundraising for the governor.

Recent media reports have disclosed that Albany’s lobbying elite have rushed to fund the governor’s re-election effort, one describing how “Albany lobbying firms like Bolton St. Johns and Mercury Public Affairs jockeyed to hold private fund-raisers for the governor within weeks of her taking office.”³⁰

Of course, lobbyists and their clients do not view their contributions as charitable – they want something in return. And they must believe they get it or they wouldn’t continue to do so. Due to U.S. Supreme Court decisions, there is little that can be done to turn off the spigot of special interest money, but narrow restrictions can be accomplished. Restrict lobbyists so that their role in lawmaking is one in which they are measured by the depth of their legislative knowledge, not the width of their wallets.

THE NEW PUBLIC CAMPAIGN FINANCE MATCHING SYSTEM

Starting in 2024, New York State will hold its first elections using a system of matching small donations for candidates in statewide and state legislative elections. As mentioned earlier, we have concerns about the reliance of this new system on a small, recently-created publicly financed system instead of New York City’s. Yet, without adequate funds, there would be no chance of success. The governor’s proposed budget allocates \$10.53 million in FY23 for the Public Campaign Finance Board. If this number were to remain

²⁹ National Conference of State Legislatures, “Limits on Campaign Contributions During The Legislative Session,” <http://www.ncsl.org/research/elections-and-campaigns/prohibited-donors.aspx>.

³⁰ Fandos, N., “Hochul Outpaces Foes by Raising Record-High \$21.6 Million for Campaign,” *The New York Times*, January 18, 2022, <https://www.nytimes.com/2022/01/18/nyregion/kathy-hochul-fundraising.html>.

constant for the next 3 years, this could leave the PCFB with a shortfall depending on participation in the 2024 elections.³¹ NYPIRG urges that you closely examine whether the governor’s projections hold up.

State agency accountability

NYPIRG urges that in the final budget you establish a New York State version of the New York City Mayor’s Management Report.³² The state Comptroller recently released a “dashboard” for New Yorkers to keep track of state spending of federal stimulus revenues released to the states to offset financial hardships due to the COVID-19 pandemic.³³ His efforts should be applauded and expanded. Why not a dashboard for *all* government spending? Why not mirror the MMR in order to show New Yorkers how their money gets spent and whether that spending is resulting in tangible benefits? **NYPIRG urges an agency accountability system based on the one issued in New York City.**

ESTABLISH EASY SEARCH OPTION TO ALREADY-STATE-COLLECTED CONSUMER INFORMATION

Using the “Google search” option as a guide, NYPIRG recommends that the state require agencies to allow for easy access to *existing* public information. By mimicking the current Google search option, the state could allow consumers to easily access information currently collected, but essentially hidden from public view. In identifying these “buried treasurers,” it is also likely that new ideas will emerge on how to collect even more helpful information.

For example, the New York State Health Department has a trove of useful – but largely hidden – public data. The DOH hosts a physician profiles website to make it easier for patients to find out more about their doctors.³⁴ It also has a website where consumers can comparison shop for prescription drugs (there can be an enormous range in prices even within the same county for the exact same prescription).³⁵ Two notable shortcomings of the drug price website is that few pharmacies post the required website information and the pricing comparison is limited to only 150 medicines – but the state collects data on thousands. Expansion of that program could help many uninsured and underinsured New Yorkers. In addition, the DOH has information to compare hospitals, cardiac bypass, and other procedures, yet few know about them.

DOH is not the only place to get good information, but it offers an example of things that taxpayers pony up the money for yet derive little if any benefits. **NYPIRG urges the creation of a state agencies search engine that gives New Yorkers an easy-to-use system to access useful already-collected consumer information.**

Thank you for the opportunity to testify.

³¹ New York State Election Law § 14-204(2) limits qualifying New York Assembly candidates to receiving \$175,000 for general election purposes. Multiplying the general election limit over the New York State Assembly’s 150 districts would result in a maximum of \$52,500,000 in possible matching funds for Assembly general election campaigns in 2024.

³² See <https://www1.nyc.gov/site/operations/performance/mmr.page>.

³³ See <https://www.osc.state.ny.us/reports/covid-relief-program-tracker>.

³⁴ See <https://www.nydoctorprofile.com/NYPublic/>.

³⁵ See <https://apps.health.ny.gov/pdpw/SearchDrugs/Home.action>.