



**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 2019-2020 EXECUTIVE REFORM BUDGET PROPOSALS
February 10, 2020
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, 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.

There can be no doubt that New York State, considered "progressive" in many areas, with constitutional protections for labor, the poor, the environment, and the law. But when it comes to its democracy, New York is anything but progressive. From anemic voter participation rates to essentially unfettered campaign contributions, from widespread corruption to ineffective government watchdogs, New Yorkers suffer greatly from the state's flawed democracy. And while laws alone cannot fix all that ails New York's democracy, reforms are needed.

Last year, the governor and the Legislature acted on a number of issues to fix New York's democracy. From changes to the voting system to the significant limitation on campaign contributions from Limited Liability Companies, you took significant steps. But given the myriad of reform needs, there is still much to be done.

One area in which change was promised, but not delivered was the establishment in last year's budget of a commission to establish public financing of elections. As seen later, we believe that it did not deliver and that you should take steps to fix their fatally flawed work. Regarding this year's budget plan, the governor offers little in the way of improving New York's system of elections and ethics. For example, there is one important area in desperate need of consideration, but which has been ignored in the executive budget plan: the need for *independent* oversight of both the ethics and contracting practices of the state.

Our testimony will review the recommendations of the governor and offer suggestions on how to tackle the issue of independent oversight.

1. Ethics

• What's Missing, Yet Crucial: Independent ethics oversight.

The *Public Integrity and Reform Act of 2011* established a new Joint Commission on Public Ethics ("JCOPE") to oversee executive branch ethics, lobbyist and client reporting and conduct, and empowered to investigate, but not punish, legislators. The legislation also created a new Legislative Ethics Commission. Legislators and staff would remain subject to punishment only by the Legislative Ethics

Commission. The LEC's membership totals 9 – all appointees of the legislative leaders with 4 of the 9 sitting legislators.

The JCOPE 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, and courts can strip corrupt public officials of their pensions.

Yet there's a fundamental problem in this law: both new ethics oversight entities were fatally flawed.

Ethics watchdogs must be independent – not political creatures. The structure of both agencies was driven by fear of real independence.

From the public point of view, ethics watchdogs must be independent of all public officials subject to its jurisdiction, or else its actions will always be suspect, undermining the very purpose of the ethics law to promote the reality and perception of integrity in government. The touchstones of independence may be found in Commission members of high integrity, who hold no other government positions, are parties to no government contracts, engage in no lobbying of the government, and do not appear before the government in a representative capacity.

Including legislators on the LEC destroys the independence of the LEC, discouraging legislators and staff from seeking opinions or filing complaints, for fear of breaches of confidentiality and retaliation.

Similarly, 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.

Thus, although JCOPE has little actual authority over the Legislature and although the legislative branch constitutes less than two percent of the state work force, most of its membership comes from legislative appointees.

And with 14 members, JCOPE is too big, and even numbered panels are prone to gridlock. Large boards are unwieldy, inhibit substantive discussion and make decision-making more difficult.

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 we've 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

After a national search, however, the new JCOPE Executive Director is a former counsel to the governor. Interestingly, JCOPE has had three Executive Directors in its existence – all of whom have been former staff of the governor’s.

New York’s Commission is unique in another way – it allows elected officials among its members. Typically, ethics boards have explicit prohibitions on the participation of elected officials.

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).

When it comes to LEC, given Albany’s history, the members of the body overseeing legislative ethics must not even be appointed by the Legislature. Anything less invites (historically well-founded) cries of cronyism. And a system of split appointments, even when it does not engender paralysis, only exacerbates this problem.

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.² 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.”³

Even when compared to the rest of the nation, New York’s ethics enforcement ranks poorly: In a 2015 comparison of state ethics laws, New York’s ethics enforcement received a grade of “F.” Not surprisingly, that same group listed New York’s oversight of procurement as an “F” as well.⁴

Reforms

First, 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.

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

² King, H., “Three Years In, New York Ethics Commission Still Looking to Find Footing,” *Gotham Gazette*, <http://www.gothamgazette.com/index.php/government/5479-three-years-in-new-york-ethics-commission-still-looking-to-find-footing>.

³ New York State Joint Commission on Public Ethics, “Report From The New York State Joint Commission On Public Ethics February 2015.”

⁴ The Center for Public Integrity, State Integrity Investigation project, New York State ranking available at: <https://www.publicintegrity.org/2015/11/09/18477/new-york-gets-d-grade-2015-state-integrity-investigation>.

Thirty-nine states provide external ethics oversight through an independent ethics commission that has statutory authority and staffing that are independent of the rest of state government. Ethics commissions in only six states, including New York, do not have jurisdiction over state legislators.

Second, the new ethics watchdog must be reduced in size from fourteen members, and all its members must be appointed by the governor with the advice and consent of the Legislature, without regard to political party affiliation.

One model is the state of Hawaii, whose Commission has five members chosen from a pool created by Hawaii's Judicial Council, which nominates two individuals for each vacancy on the Commission. The nominees' names are sent to the governor, who selects one of the nominees for appointment. Senate confirmation of appointees is not required.

Moreover, in seeking commissioners for JCOPE, New York should look beyond the "usual suspects" of attorneys and others with personal, political or business ties to political leaders. The Commission should look more like local community boards and less like a political insiders' club.

Finally, the law must 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.

Recommendation: Establish an Independent Ethics Commission.

Unfortunately, a plan has not been offered by the executive in his budget plan. Therefore, NYPIRG urges both houses of the legislature to advance a plan to eliminate the existing ineffective oversight entities and replace them with an independent and effective ethics watchdog. **We urge that you advance a constitutional amendment to establish a new ethics agency, an independent one. The model for its creation can be the Commission on Judicial Conduct.** 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.

2. Campaign Finance

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."⁵

Yet, until last year, in the past three decades no steps have been taken to overhaul the state's campaign finance system. Indefensibly high contribution "limits," coupled with utterly inadequate disclosure requirements and nonexistent enforcement, have created a system that cries out for change, starting with the need for establishing a voluntary system of public financing.

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.

⁵ New York State Commission on Government Integrity, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988.

Recommendation: Establish a *real* system of public financing.

NYPIRG urges you to fix the deeply flawed recommendations of the Commission. After 30 years of calls for a system of publicly financing state elections, this was *the* historic opportunity for you to act to realize the reforms that have long been called for and supported by the Assembly. Unless you believe that the report is without fault, you must act.

Before getting into the details, let's recap how the Commission addressed its work. The Commission was originally established as part of last year's state budget deal that came together in late March. The law required the Commission to finish its work by December 1st, just eight months later. At that time, Governor Cuomo promised that the Commission's work would result in a program that was a model for the nation.

The governor and the legislative leaders finally appointed commissioners in early July, allowing three months to be lost. When the appointments were made, the governor installed the head of the state Democratic Party on the Commission, an unusual move that put the head of one political party involved in developing the campaign rules for all other parties – an obvious conflict of interest.

With only three months to go, the Commission held its first meeting. At that meeting, some commissioners pushed hard for a change in the rules for how minor political parties operated instead of conducting a focused public debate on creating a system of public financing of campaigns for state elective office.

At a series of public forums, experts, academics and advocates testified that the Commission should focus its efforts on adapting the well-regarded New York City public financing system for all state races. The City's program has existed for over three decades and is widely viewed as a model for the nation.

But the Commission *ignored* that advice and instead advanced an untested, complicated program that is dramatically different from the road-tested City system.

The Commission established a system of public financing, but different from what nonpartisan advocates recommended. The New York City system allows contributions up to \$250 to be matched by public funding at a ratio of \$8 to \$1.

Instead, the Commission approved a plan that has a complicated sliding scale matching system. For contributions up to \$50, there will be a \$12 to \$1 match; for the next \$100 a \$9 to \$1 match; and for the next \$100, an \$8 to \$1 match. Matches are only allowed for contributions up to \$250 from donors living in the district. While this could be a good idea, it is untested and extremely complex to administer and enforce.

The Commission recommendation lowered campaign contribution limits, but they are still high. For example, under previous law, a donor could contribute to governor of up to \$69,700, a shockingly high number. The Commission plan drops that limit to \$18,000. But the national average for gubernatorial candidates is up to \$7,000 and no one can contribute more than \$6,000 for candidates for President. New York City limits contributions for Mayor to no more than \$2,000 for candidates running in the public financing program. \$18,000 campaign contributions for statewide office are still way too high.

Under the Commission's plan the New York State Board of Elections will administer the program, although with some tweaks. The State Board of Elections is by design a political creature – run by the two major political parties – and has been viewed as ineffective. In light of its partisan structure and its poor track record of enforcing the anemic current laws, it should not be administering a system that dispenses public funds for elections.

And, the Commission added one more unnecessary measure by advancing new obstacles for minor political parties to effectively participate in New York elections. It raised signature limits to petition to run for office, as well as raising the minimum number of votes necessary for minor political parties to automatically be placed on the ballot. These changes were made without any meaningful public input and there has been no legislative record on either of the issues. These decisions were made in a seemingly cavalier fashion.

Instead of building on a successful New York City program, the Commission instead offered an untested and incredibly complicated public financing scheme, allowed high campaign contribution limits, continued to rely on a politically-driven entity for administration and enforcement, and established new obstacles to minor party participation. It's clear that the Commission failed to do its job.

NYPIRG urges that the following measures be taken:

- Have the system of public financing more closely track the program in New York City.
- Require that those with business before the government are prohibited from making campaign contributions, in the same manner as New York City.
- Lower campaign contribution limits to no more than those found for candidates for federal office.
- Lower campaign contributions to party committees to no more than those for federal parties and have transfers from those committees subject to limits for candidates.
- Establish an independent agency to oversee all campaign financing, including the public financing system. Limit those who serve on its commission to those without political relationships, and mandate that all staff be covered by civil service protections in order to be insulated from political pressures and concerns. And require that this new agency develop rules and regulations that closely track the structure found in New York City.
- Eliminate the new limits on minor political parties and access to the ballot. Establish a meaningful legislative record in order to justify whatever are justified through separate legislation.

We urge you to act and look forward to working with you to create a campaign financing system that is a “model for the nation.”

Recommendation: Place meaningful limits on campaign contributions to political party committees and donations to “housekeeping accounts.”

The Commission did nothing to rein-in the flow of money to political parties – both “hard” and “soft” donations. These highest-in-the-nation “limits” allow legal campaign contributions of over \$100,000 to the political parties, which in turn are allowed to transfer all those contributions to the candidates off their choice. This indefensibly high system allows essentially unlimited contributions. Moreover, New York exempts from contribution limits donations to so-called “housekeeping” accounts for “party building activities.”⁶ 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.⁷ Candidates for office must use campaign contributions for all their administrative costs, why shouldn’t the parties? The housekeeping loophole has allowed donors to circumvent New York’s already-weak campaign limits.

⁶ New York State Election Law §14-124(3).

⁷ 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>.

Recommendation: Require the disclosure of campaign finance “bundlers.”

While lobbyists give large amounts of money directly from their personal 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.⁸ **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.

Recommendation: Prohibit campaign donations from vendors seeking or engaged in state procurement.

In his executive budget, the governor proposes new campaign finance restrictions on those seeking and receiving government contracts. The investigation by the U.S. Attorney’s office into allegations that state contracts were rigged to benefit campaign contributors to the governor underscores the need for action in this area.⁹

How “pay to play” laws work and the legal justification:

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, unless 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

⁸ 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.”

⁹ Whalen, R., “Buffalo Billion Executives Fighting Charges After Being Named in Federal Corruption Complaint,” *Time Warner Cable News*, September 22, 2016, <http://www.twcnews.com/nys/buffalo/crime/2016/09/22/buffalo-billion-executives-named-in-federal-corruption-complaint.html>.

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>.

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

However, we do not believe that limits should 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 campaign contribution during legislative session.¹⁴

3. Voting and Elections

New York State had a Voting Eligible Population (VEP) of nearly 13.8 million¹⁵ in 2018. VEP is the most reasonable measure of participation and includes citizens over 18 who are not incarcerated for a felony. However, 12.7 million New Yorkers were listed by the New York State Board of Elections as either active or inactive voters for the same time period. That means over one million *eligible* citizens were not registered to vote.¹⁶ While the comparison of these two datasets is imperfect, it underscores that many New Yorkers who are eligible, are simply not registered to vote.

In the 2018 general election, a stunningly low percentage of registered New Yorkers – an estimated 45.2 percent – voted. A review of the U.S. Elections Project analysis, showed New York to be among the worst in the nation in terms of eligible voter turnout.¹⁷

Too many of New York’s beleaguered voters stand in line for hours and face problems at the polls in order to exercise their right to vote. To be fair, it’s important to recognize that the majority of voters across the city and state do not have significant problems when casting their vote. However, even when things go smoothly on Election Day, New York still has many unnecessary barriers that impede voter participation.

Early Voting – An Election “Best Practice” Across The Nation

Thirty-seven states and the District of Columbia had acted to allow in-person early voting in one form or another prior to New York’s action. The laws are different and New York attempted to follow best practices based on the rest of the nation’s experiences. In terms of accessibility, many states allowed longer early voting periods than New York does. As seen below, the time period for early voting varies from state to state¹⁸:

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

¹⁵ United States Elections Project, 2018 November General Election Turnout Rates: <http://www.electproject.org/2018g>. The Project lists that New York State’s “Voting Age Population” is 15.7 million.

¹⁶ New York State Board of Elections, Voter Enrollment by County: https://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov18.pdf. The State Board lists 11.6 million New York voters as “active registered” and an additional one million as “inactive voters.” Added together, New York State has total of 12.7 million registered voters.

¹⁷ United States Elections Project, *2018 November General Election Turnout Rates*: <http://www.electproject.org/2018g>. Percentage of “Voter Eligible Population, Estimated or Actual 2018 Total Ballots Counted.” Arkansas, Hawaii, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, West Virginia, all had lower turnouts. The national average was 50.3 percent.

¹⁸ National Conference of State Legislatures, “State Laws Governing Early Voting,” <http://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>. NOTE: Beyond the 39

- The date on which early voting begins may be as early as 45 days before the election, or as late as the Friday before the election. The average starting time for early voting is 22 days before the election.
- Early voting typically ends just a few days before Election Day.
- Early voting periods range in length from four days to 45 days; the average length is 19 days.
- Of the states that allow early in-person voting, 24 and the District of Columbia allow some weekend early voting.
 - Saturday: 20 states, plus the District of Columbia provide for voting on Saturday. Four additional states (California, Kansas, Vermont and Massachusetts) leave it up to county clerks who may choose to allow Saturday voting. Delaware and Virginia will also include Saturday voting when the laws go into effect.
 - Sunday: Five states (Alaska, Illinois, Maryland, New York and Ohio) allow for Sunday voting. Five states (California, Georgia, Michigan, Nevada and Massachusetts) leave it up to county clerks who may choose to be open on Sundays. Florida mandates early voting must begin, including Sunday, the 10th day and end the third day prior to the election for state and federal elections. Local election officials also have the discretion to allow early voting the Sunday prior to the election. Delaware will also include Sunday voting when the law goes into effect in 2022.

Like New York, these states typically offer local officials flexibility in terms of how to run early voting in their municipality.

Early Voting Comes To New York State.

In January of this year, a new law was enacted that added New York State to the vast majority of states that allow early voting. The new law was focused on making voting easier and implemented the new system for the 2019 elections – an election in which voter turnout is relatively light and elections officials could implement the program with the least number of obstacles.

Under the law, local boards of elections were given some discretion in the number of early voting sites that would be allowed and where they would be located. The new law stated that there should be at least one early voting polling place for 50,000 registered voters in each county. Counties with voting populations less than 50,000 should have at least one early polling place. However, the number of early voting polling places in a county shall not be required to be greater than *seven*. Thus, the largest counties had a lot of room in deciding the number of early voting locations.

A Look At The Experience In 2019

About 256,000 people chose to cast their vote ahead of Election Day this year. According to the state Board of Elections that means nearly 2% percent of registered voters turned out statewide.

As seen later, Erie County offered the largest number of early voting polling locations (37). In that county, 4.5 % of the county’s registered voters, significantly higher than the state average. New York City, on the other hand, despite having *five times* the number of registered voters, offered only 61 sites. Not surprisingly, less than 2 of the City’s eligible voters utilized early voting (less than the statewide average).¹⁹

states and the District of Columbia, two additional states, Delaware and Virginia, have enacted early voting but it will not be in place until 2020 and 2022, respectively.

¹⁹ Calder, R., Garger, K., “Turnout abysmal in New York’s first early voting period, “ New York Post, November 4, 2019, <https://nypost.com/2019/11/04/turnout-abysmal-in-new-yorks-first-early-voting-period/>.

Not unexpectedly, there were some glitches as the system came online, but overall the voting went smoothly. There were some concerns over security in schools were used to house several sites.²⁰

Wide Variation In Polling Sites

As mentioned above, counties were given wide discretion on how to implement the new law. Recently, NYPIRG released an in-depth analysis featuring data on early-voting sites across New York State. The data displays the number of active voters, early voting poll sites, and average number of voters per site within each county. As a result of county discretion, there was a wide disparity in both the overall number and number of voters per site in counties across the state. Some counties were limited to only one early voting site, while others averaged over or almost over 100,000 active voters per site. The analysis below illustrates issues in the roll out of early voting that should be addressed before the 2020 elections.

As seen below, sixteen counties had a ratio *greater* than one early voting location per 50,000 voters. And while it was not illegal to do so, a wide variation does not make sense. For example, the borough of Manhattan had a ratio in excess of one early voting site for each 100,000 voters – double what was the goal in the law. Not illegal, but unfair to Manhattan voters. In contrast, Erie County had 37 early voting sites with a ratio of about 16,000 voters per location.

NUMBER OF NEW YORK VOTERS PER EARLY VOTING SITE

County	Number of Sites	Active Voting Population	Average Number of Voters per Early Voting Site
Albany	6	183,529	30,588
Allegany	1	25,136	25,136
Bronx	11	721,734	65,612
Brooklyn	18	1,460,396	81,133
Broome	3	115,918	38,639
Cattaraugus	2	44,741	22,370
Cayuga	3	45,559	15,186
Chautauqua	3	76,459	25,486
Chemung	1	50,215	50,215
Chenango	1	28,262	28,262
Clinton	1	46,558	46,558
Columbia	3	44,496	14,832
Cortland	1	27,490	27,490
Delaware	1	27,053	27,053
Dutchess	5	182,782	36,556
Erie	37	597,592	16,151
Essex	1	24,035	24,035
Franklin	1	25,343	25,343
Fulton	1	31,046	31,046
Genesee	1	36,950	36,950
Greene	1	30,063	30,063
Hamilton	1	4,179	4,179
Herkimer	1	37,737	37,737
Jefferson	1	56,351	56,351
Lewis	1	16,742	16,742

²⁰ Slattery, D., “Lawmakers will look at impact and rollout of New York’s first ever early voting period ahead of 2020 races,” New York Daily News, November 15, 2019, <https://www.nydailynews.com/news/politics/ny-early-voting-election-day-new-york-lawmakers-democrats-albany-20191115-dqrrv7qgvzhkzirqgamvmb4lt4-story.html>.

Livingston	1	39,000	39,000
Madison	1	41,110	41,110
Manhattan	9	1,016,771	112,974
Monroe	7	460,283	65,754
Montgomery	1	27,359	27,359
Nassau	15	949,987	63,332
Niagara	2	131,758	65,879
Oneida	3	128,649	42,883
Onondaga	6	289,064	48,177
Ontario	3	72,162	24,054
Orange	6	220,262	36,710
Orleans	1	23,085	23,085
Oswego	1	69,635	69,635
Otsego	1	33,978	33,978
Putnam	1	63,507	63,507
Queens	14	1,180,052	84,289
Rensselaer	2	97,154	48,577
Rockland	4	194,263	48,566
Saratoga	3	154,480	51,493
Schenectady	4	93,776	23,444
Schoharie	1	18,489	18,489
Schuyler	1	11,812	11,812
Seneca	1	19,357	19,357
St. Lawrence	1	59,370	59,370
Staten Island	9	293,348	32,594
Steuben	1	57,553	57,553
Suffolk	10	977,134	97,713
Sullivan	1	46,700	46,700
Tioga	1	30,759	30,759
Tompkins	2	54,631	27,315
Ulster	7	118,268	16,895
Warren	1	42,163	42,163
Washington	1	35,054	35,054
Wayne	1	54,412	54,412
Westchester	17	593,559	34,915
Wyoming	1	23,510	23,510
Yates	1	13,466	13,466

A Deeper Look At The Numbers In Onondaga County

The local media outlet, syracuse.com, analyzed early voting data from the Onondaga County Board of Elections. According to its review, “the numbers showed early voting was most popular among older voters, the most reliable group. But the new option attracted an intriguing number of lapsed voters.

- Early voting did not capture the age group most likely to skip voting because they are working two jobs and hauling kids to soccer practice.
- A lot of the early voters were retirement age. Forty-seven percent were 65 and older. Only 11 percent of early voters were between 18 and 40, records show.
- About 21 percent of early voters were registered to vote but did not show up for the 2017 or 2018 elections. A handful of those people hadn’t voted in so long they were at risk of being purged from the rolls.
- The percent of registered voters who came to vote early was only slightly higher in the suburbs vs. the city of Syracuse. About 3 percent of town voters cast ballots early; compared to 2.5 percent of city voters.
- Not surprisingly, turnout was strongest in suburbs that hosted polling places.

Last year's ballot had statewide races, including governor. Turnout was high last year in Onondaga County – 62 percent. The 2017 election, with an open seat for Syracuse mayor, had 37 percent turnout. In 2015 – the last local election year like this one – had only 27 percent turnout.”²¹

Syracuse.com concluded that its analysis “would suggest that early voting was more driven by convenience than a necessity for a big chunk of the voters. That could change as more people become aware of this option.”²²

Obviously, the conclusions drawn in upstate New York do not necessarily mean that the rest of the state's voters had similar turnouts. Upstate New York tends to be older in terms of its inhabitants. But the data does follow what one would have expected in advance of the early voting “experiment.”

Conclusion: Early Voting Makes It More Convenient For Voters

Of course, it's not surprising that those who are most familiar with voting and for whom potential physical inconveniences or barriers are important considerations (older voters) would be most likely to cast their ballot early. And while it is far too early to tell, convenience was the most likely benefit of early voting.

Despite New York's limited early voting experience, some conclusions can be drawn.

Recommendation: Require A More Standardized Number of Early Voting Sites In Each County

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.” Yet, “consideration” is not a mandate. In the county of Rensselaer, the city of Troy (population is about 50,000) had no early voting locations in its boundaries.²³

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.

Recommendation: Take Steps To Help New, or Currently Underrepresented, Voters To Participate in Early Voting – Young Adults

This common-sense legislation will increase voter participation and strengthen our democracy.” Lt. Governor Hochul²⁴

As mentioned earlier, it appears that the major benefit of early voting is convenience. Given that voting is a constitutionally protected right, convenience is more than enough justification for implementation of the system.

²¹ Breidenbach, M., “From 18 to 100 years old (2 of them!): Inside Syracuse's history-making early voters,” Syracuse.com, November 5, 2019, <https://www.syracuse.com/news/2019/11/from-18-to-100-years-old-2-of-them-inside-syracuses-history-making-early-voters.html>.

²² Ibid.

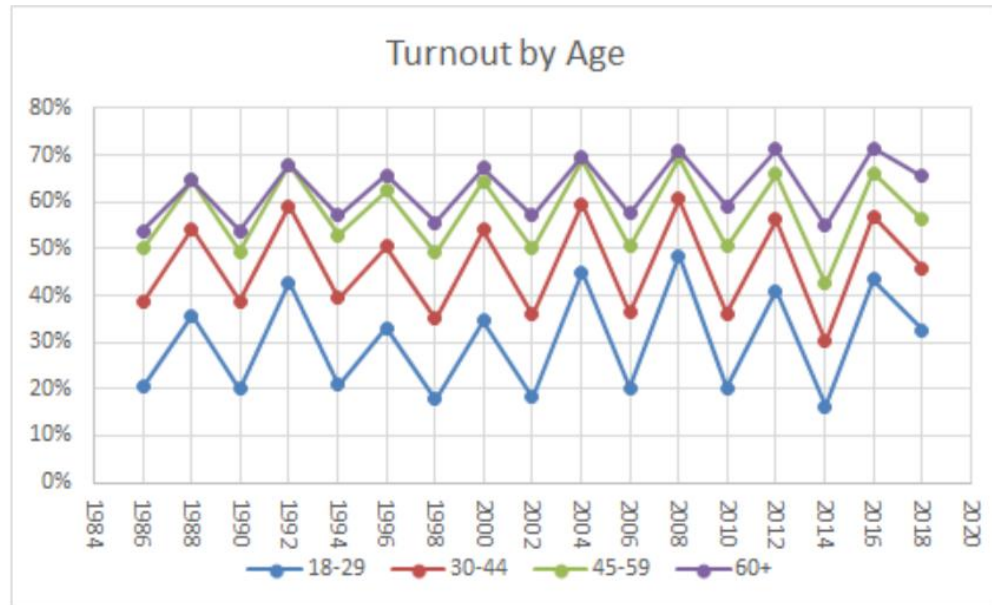
²³ Eliopoulos, P., “No early voting location coming to Troy after legislators vote down proposal for third time,” News 10, <https://www.news10.com/news/local-news/no-early-voting-location-coming-to-troy-after-legislators-vote-down-proposal-for-third-time/>.

²⁴ FingerLakes1.com, “Cuomo signs ‘transformative’ bill bringing early-voting to NYS for 2019,” January 24, 2019, <https://fingerlakes1.com/2019/01/24/cuomo-signs-transformative-bill-bringing-early-voting-to-nys-for-2019/>.

However, it has been an expectation of reformers that early voting would increase voter participation as well. As mentioned in the above recommendation, additional steps need to be taken if that promise is to be realized.

NYPIRG recommends that an important factor in the location of early voting polling sites is that they be in areas where voters are least likely to vote. Once such obvious group are young adults. Nationally, the younger the adult, the less likely one is to vote.²⁵

Turnout Rates: Age



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 college student voter participation has been one in which officials seek to suppress participation instead of enhancing it.

Year after year, students have faced discriminatory 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.²⁶

However, students live in their college towns anywhere from nine to 12 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 four years. 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

²⁵ United States Elections Project, “Voter Turnout Demographics,” <http://www.electproject.org/home/voter-turnout/demographics>.

²⁶ 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>.

the 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 can choose to vote from their college address or their family's address.

Despite that right and their concentrated numbers, we found few examples in which a college was used as an early voting location this election.

A recent report by the Andrew Goodman Foundation studied the impact of Early Voting Sites for college students. Not surprisingly, it found that locating polls on campus led to considerably higher rates of participation by students, people of color and infrequent voters.²⁷ Because many students have less access to private transportation options and convenient access to Early Voting sites located off-campus, on-campus sites improved turnout. Campus sites might also serve as alternative in areas where public school access is a problem. and in some cases in other towns or areas of the county pose more of a barrier than for other voters.

Recommendation: Mandate Automatic Voter Registration

The idea is simple: Anytime a citizen interacts with a government agency, whether that's getting a license at the DMV, registering for classes in a public college or university, signing up for health insurance coverage, or updating an address at the post office, voter registration information should be made available and uploaded electronically and automatically.

This fundamental shift could add large numbers of eligible voters to the rolls, bringing more voices into state elections and ensuring everyone can be heard. Doing so would also make New York's elections more secure and save taxpayers money.

The legislation approved by the Senate wisely adds safeguards for non-eligible individuals who may have mistakenly completed a form, and a clear opportunity for declining to register. While a fully automatic system that registers all those eligible who interact with state agencies would be more effective in registering voters, we understand that these features will help address concerns that ineligible voters will be added to the rolls.

There are a number of other states that have established such a system.

According to the National Conference of State Legislatures, as of April 2019, 17 states and the District of Columbia are categorized as having automatic voter registration.²⁸

Automatic Voter Registration (AVR) removes barriers to registration for eligible voters, the first step on the way to increasing voter participation. By registering through routine and necessary interactions with state agencies, voters won't have to worry about registration deadlines or application submissions.

²⁷ Andrew Goodman Foundation, "On-Campus Early In-Person Voting in Florida in the 2018 General Election," <https://andrewgoodman.org/on-campus-early-voting-fl/>.

²⁸ National Conference of State Legislatures, "Automatic Voter Registration," April 22, 2019, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>. Those states with AVR: Alaska, California, Colorado, Connecticut, District of Columbia, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont, Washington, and West Virginia.

Automatic registration also leads to cleaner voter registration rolls because the process updates existing registrations with current addresses. This will result in more efficient elections, as well as reducing the use of provisional ballots since fewer discrepancies and mistakes will occur.

Lastly, AVR should enhance New York compliance with the National Voter Registration Act. Since the NVRA requires that eligible voters be offered an opportunity to register to vote at designated agencies, automatically registering individuals follows the law and reduces the possibility of human error in the process.²⁹

Recommendation: Boost funding for voting in the final budget.

New York's first early voting period was a success due in no small part to the Board of Elections' commitment to supporting county boards in securing new voting equipment, selecting site locations, and ensuring comprehensive security procedures were in place. New York is expected to have 8 million voters in 2020. Counties will need to conduct three periods of early voting, totaling 30 days of voting statewide.

Costs will inevitably increase from 2019. The Board of Elections is still collecting 2019 cost summaries from county boards, but early reports have shown that spending is beyond what was predicted. Based on these estimates, counties will need a much higher funding commitment for the 2020 election cycle to cover equipment, broadband access and maintenance, staff, site locations and incidentals, security, and electrical power.

New voting machines are a long-term investment for election operations and are essential for modernizing New York State's voting systems. Ten counties did not purchase new equipment for the early voting period and an additional 17 counties only purchased enough equipment for the early voting period and not Election Day. These counties will need to purchase additional machines to prepare for the increase in voters in 2020. Each of these machines requires broadband setup and security maintenance to ensure secure connectivity during the early voting period and on Election Day.

New potential costs may also be incurred in 2020 for early voting. Although most counties sought out tax exempt site locations to save on cost, many sites have told counties they do not want to serve as early voting poll sites in 2020. While tax exempt sites should serve as polling sites, there are counties that may need to pay for site rental space as well as increased staff and security measures, and incidentals for the three periods of early voting periods in 2020.

The Board of Elections has no funding to continue creating the mandated website and the project has been halted due to the lack of funding. Automatic voter registration, expected to be passed this year, will carry with it a fiscal impact to state and county boards of elections. Even small procedural changes to election law, such as allowing voters to have their voter registration automatically change when they move, cost money to implement.

The State Board of Elections has historically been an underfunded and understaffed agency that is charged with maintaining the integrity of our most fundamental democratic process – voting. We cannot expect this body to continue to operate on a shoestring budget with constant funding cuts while we simultaneously increase their responsibilities and operational demands. The State Board of Elections and county boards of elections need a serious funding commitment.

²⁹ For more on the benefits of AVR, see the Brennan Center for Justice, "AVR Impact on State Voter Registration," and The Pew Center on the States, Elections Initiative, Issue Brief, "Inaccurate, Costly, and Inefficient Evidence That America's Voter Registration System Needs an Upgrade," 2012.

Last year, counties spent above and beyond the \$25 million of funding allocated to them by the state for a single period of early voting. These counties are estimating that the total cost for early voting in 2020 could be well over \$200 million.

The executive has proposed \$10 million in Aid to Localities to help cover the costs of early voting in 2020. It has also proposed \$15 million in Capital Projects for the purchase of new elections equipment, and \$16 million for the creation of an online voter registration portal.

In addition to tripling the number of days of voting, county boards of elections discovered several unforeseen costs related to early voting in the prior year. These costs included issues with location, electrical power, the need for additional equipment and staff, and the expected increase in voter turnout in 2020. Counties are estimating that these costs could run as high as \$200 million.

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.

Thank you for the opportunity to testify.