NYPIRG NEW YORK PUBLIC INTEREST RESEARCH GROUP

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 2021-2022 EXECUTIVE BUDGET'S REFORM PROPOSALS
February 10, 2021
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 his public protection/general government proposal.

Recently, 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.

Our testimony covers several areas: The Governor's pandemic emergency powers, voting and elections, ethics, campaign financing, and redistricting.

1. The Executive's Emergency Powers

Summary: If you agree to extend the Governor's emergency budget and non-budget powers, only do so with strict limitations and comprehensive public accountability and openness measures.

While we agree that the executive needs to move quickly and decisively to react to the ongoing pandemic, the circumstances have changed since last spring. If the Legislature determines that the Governor needs authority to change budget appropriations or to enact laws through his executive orders, there must be a review and changes in the delegation of authority are necessary. The American form of representative democracy primarily hinges on the balance of power between co-equal branches of government. It goes without saying that this structure was embedded in our democracy at its formation and reflected in the state's Constitution. The Legislature is the primary policymaking branch and in our republican form of democracy, the part of state government "closest to the voters."

The legislation that granted the Governor extraordinary powers commensurately reduced the power of the legislative branch.

BUDGET POWERS

The Governor proposes an extension of his budget powers. If the Legislature approves such authority – whatever the duration – his power must only begin once the Legislature has ended its session. As you know, New York has often made changes to its approved budget through a supplemental agreement at the

end of session. Given that the Legislature is scheduled to continue to meet through the middle of June, the Executive's authority should only be put in place once that session ends.

Moreover, there needs to be much more public accountability to the Executive's budget actions through the dissemination timely and detailed information about the State's withholding of funds. Only now has the Executive released a plan to implement any spending reductions. Prior to the Governor's budget plan, payments had been withheld and little information more than broad withhold categories had been publicly released. The lack of details makes it difficult to assess how State actions are impacting agencies, local entities, and nonprofits.

In order to provide greater information to the public, if the Governor's emergency budget powers are extended, there must be a requirement that the Executive publish on its website timely and complete information about funds that have been withheld or advanced as part of the state budget adjustment process, ideally monthly and broken out by agency and major program. In terms of the current fiscal year's withholds – which have been announced to be five percent instead of 20 – that the Executive make publicly available on its website a detailed breakdown of its changes to current year's appropriations, the amount that was withheld – both the 20 percent as well as the final 5 percent – and then compared to the Governor's proposed budget appropriation.

EXECUTIVE ORDERS

Under the current emergency law, the Governor has the authority to suspend a "statute, local law, ordinance, order, rule or regulation or part thereof" so long as such action is to protect the "health or welfare of the public" and it is "necessary to aid the disaster effort." The duration of these decisions are limited to no more than thirty days, unless "that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each to be suspended."[1]

The Legislature retained a role to play, as emergency decisions can be overturned by legislative action and these powers expire in April of 2021. We believe it is time to review and revise the delegation of power.

Accordingly, we urge that the powers of the Governor be limited to a specific period and that his orders can only be extended as the result of approval by the Legislature. It must not be "automatic." Therefore, we urge that *if* this power is extended, those powers should only kick in when the Legislature breaks in June. Moreover, the Governor's executive orders must only be extended if the Legislature approves of it. Otherwise, those actions should sunset.

2. Voting and Elections

Summary: The Governor has proposed several initiatives that are consistent with Senate actions. Much needs to be done to further strengthen voting in New York. One glaring problem is the need for comprehensive changes to the administration of elections. The Legislature must take steps in the budget to fix the Board of Elections.

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.[2] VEP is the most reasonable measure of participation and includes citizens

[1] New York State Executive Law Section 29-a.
[2]United States Elections Project, *2020 November General Election Turnout Rates*: http://www.electproject.org/2020g.

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.[3] 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.

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.

SAME DAY REGISTRATION

The state's antiquated system of voter registration is a relic of a bygone era. It serves little purpose other than to help self-perpetuate the re-election of incumbents and limit voter participation. New York should join the states[4] offering Same Day Registration through the passage of an amendment to the State Constitution.

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.

A system of "Same Day Registration" would dramatically increase voter participation in a state where participation, particularly in state and local elections, is persistently low. 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 the system works (participation rates in "same-day" states are traditionally among the highest in the country).[5] **Finish the job by second passage of this amendment in 2021 in order for it to be in place in time for the 2022 elections (subject to voter approval).**

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[3]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.

[4] For a list of states with same day registration, see National Conference of State Legislatures, http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx.

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

ENABLE EASIER ACCESS TO ABSENTEE BALLOTS

The State Constitution and Election Law currently place unnecessary restrictions and burdens on New Yorkers applying for an absentee ballot. Increased access to absentee ballots would likely mean increased voter participation from voters with work, school, or childcare commitments who would not currently qualify.

In an age where some states such as Oregon successfully moved to conducting entire elections via mail, it is time to rethink the state's policies with an eye towards expanding absentee voter opportunities as a method of increasing voter participation. **Finish the job by second passage of this amendment in 2021 in order for it to be in place in time for the 2022 elections (subject to voter approval).**

EARLY VOTING REFORMS

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.[6]

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. In the county of Rensselaer, the city of Troy (population is about 50,000) had no early voting locations in its boundaries.[7]

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. Moreover, the state should require that all college campuses have polling places on campus to allow those students – young adults typically have the lowest voter participation rates of all voters – to vote more easily.

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. 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.

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[6] 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.

[7] 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/.

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 promise 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.
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.

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.

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.

3. Ethics

Summary: What is missing in the Governor's budget is a plan to establish independent ethics oversight. We urge you to reject the Executive Budget funding of JCOPE with a clear reform plan.

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.

INDEPENDENT OVERSIGHT OF ETHICS LAWS

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 (LEC) that would have sole responsibility for issuing punishment for unethical actions by legislators and legislative employees. The LEC's membership totals 9— all appointees of the legislative leaders with 4 of the 9 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, and courts now can strip corrupt public officials of their pensions, if those lawmakers were seated after 2011.

Both new ethics oversight entities were fatally flawed: Ethics watchdogs must be independent, not political creatures. Yet, 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, discourages 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's work force, the majority 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 have 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.*[8]

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.

JCOPE 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).

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

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.[9] The criticism was at least implicitly validated in JCOPE's 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."[10]

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.[11]

REFORM ETHICS OVERSIGHT

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.

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.

One model is New York State's Commission on Judicial Conduct. The Commission is established in the state's constitution, which helps limit political pressures on decision making. Under this plan, 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. 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.

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.[12] 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

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[9] 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.

[10] New York State Joint Commission on Public Ethics, "Report From The New York State Joint Commission On Public Ethics February 2015."

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

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

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.[13]

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.[14]

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 committee or to certain party committees," specifically to committees that are responsible for awarding the specific contracts.[15]

4. Campaign Finance

Summary: The campaign financing changes made by the public financing commission are inadequate and the changes to the SBOE's Internet-access to campaign finance data is fatally flawed and must be overhauled. We urge that you use the budget process to drive changes.

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."[16]

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

[13] 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.
[14] New Jersey Election Law Enforcement Commission, http://www.elec.state.nj.us/pay2play/laws.html.
[15] 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/.
[16] New York State Commission on Government Integrity, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988.

succeed is unclear, 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 is $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.[17]

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.[18]

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."[19] 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.[20] 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.[21] **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.

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[17] 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.

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

[19] New York State Election Law §14-124(3).

[20] 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.

[21] 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.[22]

THE NEW CAMPAIGN FINANCE DATABASE

We urge you to revamp the recently launched Public Reporting System for campaign finance as soon as possible. The new system has unacceptable glitches, errors, and bugs as to be practically unusable by the public.

5. Redistricting

Summary: There can be no doubt that the bipartisan redistricting commission has been hamstrung by the Governor's decision to freeze its current year appropriation. However, this commission is a far cry from the independent one that we urge. Nevertheless, it has been created under law and should be funded. We also urge that you eliminate the appropriation for the Legislative Task Force For Demographic Research and Reapportionment. The new commission – and any future independent one – should serve as the independent agency dealing with the census and other changes that may be needed.

After decades of calls for reform, change came about after the battles over the state's last redistricting in 2012. After approving lines drawn by the majority leadership Republican Senate and Democrat Assembly (a federal court drew the congressional lines), the Governor and Legislature agreed to advance an "independent" redistricting commission and public process for 2022 and beyond through an amendment to the state constitution.

As you know, NYPIRG had concerns. One concern was based on the failure to clear out antiquated and illegal provisions from the constitution dating back to the 19th century; another was whether the commission could ever be "independent;" and third to require stringent fidelity to the "one person, one vote" principle that underpins protections to democratic representation.

[22] National Conference of State Legislatures, "Limits on Campaign Contributions During The Legislative Session," http://www.ncsl.org/research/elections-and-campaigns/prohibited-donors.aspx.

Indeed, while the language of the constitution describes the current commission as "independent," a judge blocked that description from the ballot question since he concluded, rightfully, that the commission as constructed was nothing more than advisory and that leaving that language in the ballot question would mislead the voting public. In our view, the commission membership is in reality a legislative body and we have seen nothing in the appointment process so far that changes our thinking.

Voters approved those changes in 2014. Six years later in 2020 we find ourselves amid a pandemic that has disrupted nearly every facet of American life. Among the disruptions is that the decennial U.S. Census, which generates the population data essential to the task of redistricting, may be delayed. To further add to the difficulties of the looming redistricting process, the 2014 amendment was approved when primaries were set in September, and now they are in June. As a result of the pandemic and the changes to the primary date, the timetable for the state constitution's redistricting process have been upended.

The proposal that has been advanced by the Legislature is intended to address the current dilemma as well as some of the vexing problems with New York's 2014 redistricting "reforms." If approved by voters, the constitutional amendment laudably would cap the number of senate districts at 63; provide constitutional protection for counting prison populations at people who are incarcerated' last residences; do away with the partisan co-directors of the redistricting commission; eliminate the partisan commission voting rules; remove the 1894 "block-on-border" rule that favors towns over cities in senate line drawing; and remove "dead wood" provisions long ruled unconstitutional by the U.S. Supreme Court and federal courts. The proposal also addresses timetable issues mapmakers face in 2020 and some of the shortcomings of the 2014 amendments. Lastly, it reduces the voting thresholds for approval by the Legislature, eliminating convoluted rules that changed depending on the partisan makeup of the legislature.

However, while improving on the current redistricting requirements, the proposal falls short of the full reforms we believe would provide truly independent commission and, most importantly, establish stringent limits on permissible district population deviations (*e.g*., congressional districts are virtually identical in population). Moreover, it keeps in language that requires mapmakers to construct political boundaries using the core of existing districts – a major failing of the existing constitution.

Thus, while the resolution overall *improves* the redistricting process established in 2014, it *could be significantly strengthened* with reforms needed to ensure fair and independent redistricting.

Thank you for the opportunity to testify.