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**Testimony**  
**Joint Budget Hearings on Environmental Conservation**  
**Senate Finance Committee and Assembly Ways and Means Committee**  
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**I. Introduction**

Chairpersons Liz Krueger and Helene Weinstein and other members of the Senate Finance and Assembly Ways and Means committees: my name is Bob Cohen. I am the Policy Director of Citizen Action of New York (“Citizen Action”), a grassroots organization with thousands of members in eight chapters and affiliates throughout the state, located in Buffalo, Rochester, Binghamton, Utica, Albany, Kingston, New York City, and Long Island. A significant percentage of our membership, leadership and staff are people of color, and we organize in some of the most distressed neighborhoods in our state.

Citizen Action is a Steering Committee member of NY Renew, a statewide climate coalition of over 340 organizations that led the fight for the 2019 passage of the Climate Leadership and Community Protection Act (“CLCPA”). Citizen has also joined with partners to successfully organize opposition to several proposed fossil fuel projects in upstate New York, including the NED (Northeast Energy Direct) and “Albany Loop” pipelines. And as discussed further below, Citizen Action and its partners successfully mobilized residents to convince the State in 2019 to not make additions to state facilities on Sheridan Avenue near the State Capitol that would have increased fossil fuel emissions and harmed nearby environmental justice communities.

Now that the multi-agency Climate Action Council (“CAC”) has released the Final Scoping Plan mandated by the CLCPA (the “Scoping Plan” or the “Plan”), the Legislature’s role has become even more critical. The Scoping Plan is filled with calls for the Legislature to pass further legislation and to fund climate initiatives. **The Legislature must heed this call, and act aggressively -- to make**

sure the most critical goals of the CLCPA are achieved. Citizen Action’s priority budget recommendations are outlined below: both as to funding and Article VII language.

II. **Legislation is Needed to Ensure that the Greenhouse Gas (GHG) Emissions Reduction Targets in the CLCPA Are Enforceable, and that the State Establishes a Schedule of Interim GHG Reductions in Emissions by Sector and by Emissions Source**

The CLCPA requires significant reductions in emissions of greenhouse gases (“GHG”) for all sectors of the state economy, including transportation, buildings and power plants, with specific renewable targets concerning the electricity provided to end users, including residents and businesses. Specifically, GHG emissions must be reduced economy-wide 40% by 2030 (the “40 by 2030 target”) and 85% by 2050, and that net zero emissions must be achieved by the 2050 date (the “85 by 2050 target”).<sup>1</sup>

It is critical to note that while the 40 by 2030 and 85 by 2050 targets are *not self-enforcing under the current language in the CLCPA or other state statutes*: they set broad targets for the *economy as a whole* rather than establishing legally enforceable emissions caps for businesses and other sources of GHG emissions. And neither the Plan nor the Executive Budget Article VII language sets out a legally binding schedule for year-by-year or biennial reductions in GHG emissions that achieves the 2030 and 2050 targets. **If an individual business or a sector of the economy (e.g., buildings) fails to reduce its emissions sufficiently to make the Department of Environmental Conservation (DEC) and other state enforcement agencies confident that the 40 by 2030 and 85 by 2050 targets will be achieved, these agencies will have little or no recourse under present law to force further emissions reductions.** This critical problem should be addressed through the budget.<sup>2</sup>

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<sup>1</sup> Environmental Conservation Law (“ECL”) §75-0107; Public Service Law § 66-p.

<sup>2</sup> Under the CLCPA, DEC is mandated to issue regulations by January 1, 2024 to achieve the CLCPA targets, and other agencies may also issue regulations to achieve these targets. However, as we discuss further below, *meaningful penalties to ensure businesses comply with these regulations cannot be imposed without further legislation.*

III. **The Governor’s Cap-and-Invest Plan Can With the Right Safeguards Advance the Critical Purpose of Ensuring Annual Declining Emissions. But the Legislature Should Also Consider Regulatory Actions, Perhaps in Tandem With Cap-and-Invest**

In the State of the State address and the Executive Budget, the Governor proposed a cap-and-invest system as the primary means of ensuring enforceability and a declining cap on emissions.<sup>3</sup> Under the cap-and-invest scheme laid out in the Plan, the State of the State, and the Executive Budget, an annual cap on greenhouse gas emissions in the state would be set, which would be reduced every year to meet the 40 by 2030 and 85 by 2050 targets. Large scale emitters of greenhouse gases and distributors of heating and transportation fuels will be required to purchase allowances via auctions conducted by the State reflecting the “emissions associated with their activities.”<sup>4</sup>

**In the Scoping Plan, the CAC clearly recognized that the GHG climate mandates were not legally unenforceable without additional regulations and/or statutory changes.** For example, in comparing the merits of a carbon tax and a cap-and-invest system, the CAC claimed that cap-and-invest is superior due to its enforcement aspect: “only a cap-and-invest program would implement a declining, enforceable cap on emissions overall and a mechanism for State enforcement of such limits against individual sources, thus ensuring that aggregate emissions do not exceed the statewide emissions limits.”<sup>5</sup>

**While cap-and-invest has promise as a means of ensuring we achieve the GHG climate mandates, it is not by any means the only method that should be considered by the Legislature to cap emissions and enforce the GHG mandates.** Specifically, the Legislature should consider as an alternative a system of regulatory enforcement of caps on emissions with strong penalties for businesses that do not comply, or a combination of a regulatory system and cap-and-invest.

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<sup>3</sup> “Achieving the New York Dream” (2023 State of the State Book)(January 10, 2023), at 123-131 (“SOTS Book”), <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>; FY 2024 New York State Executive Budget, Transportation, Economic Development and Environmental Conservation Article VII Legislation, Part AAA (“TED Article VII Bill”).

<sup>4</sup> See SOTUS Book, at 123.

<sup>5</sup> New York State Climate Action Council, “New York State Climate Action Council Scoping Plan” (December 2022), at 340 [emphasis added], <https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

Our concern about the Legislature putting all its eggs in the cap-and-invest basket is in part because there are significant variations as to how a cap-and-invest program can be designed, and many of the details of the administration’s proposal are not yet publicly known or fully fleshed out, in the Plan, the State of the State or the Executive Budget.<sup>6</sup>

We also have significant concerns based on the information that *is* available. First, the administration has signaled that many emitters will not be covered under the final regulations: only “large-scale emitters” and distributors of heating and transportation fuels in the state will be required to purchase allowances for the emissions associated with their activities.<sup>7</sup> Second, past cap-and-invest proposals have rightly been criticized on equity grounds, for example, for permitting offsets, thus exacerbating the concentration of pollution in low income communities and communities of color, and for not addressing the harms to such communities due to co-pollutants.<sup>8</sup> Third, the Executive Budget proposes a vague universal “rebate” that would apparently go to all consumers in New York State irrespective of income.<sup>9</sup> Billionaires and low-income New Yorkers would apparently get the same amount, a fairly nominal rebate of roughly \$50 for each person in the state; if passed as is, this would be a squandering of a significant portion of the roughly \$1 billion that has been estimated would be spent under the program. Citizen Action strongly agrees with NY Renews that any rebate fund should instead be targeted to low- and moderate- income New Yorkers. Further, the rebate program should be structured in a manner so that low income households do not lose much or all of the benefit of the rebate program by being placed in higher income brackets due to the rebate, jeopardizing their receipt of public assistance.<sup>10</sup> The rebate program set forth in the Climate and Community Investment Act (2022 bill numbers: A6967, Cahill/S4264, Parker), avoids this pitfall and should be examined by the Legislature as a model for the design of any cap-and-invest rebate program.

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<sup>6</sup> Limited details are in the Executive Budget, but other information on the program may not be revealed until the regulatory phase. DEC is not required to issue regulations to comply with the CLCPA emissions limits until January 1, 2024. ECL §75-0109(1).

<sup>7</sup> SOTS Book, at 126.

<sup>8</sup> As a NY Renews publication discusses, during the first three years of California’s cap-and-trade system, co-pollutant emissions rose most in disadvantaged communities. NY Renews, “Addressing New York’s Approach to Pollution Caps”, (November 2022).

<sup>9</sup> See, TED Article VII Bill, Part AAA, Section 8.

<sup>10</sup> Testimony of Stephan Edel, NY Renews, Before the Joint Budget Hearing on Environmental Conservation (February 14, 2023).

The Legislature must in our view play a significant role in ensuring that when and if DEC establishes a cap-and-invest system by regulation, that appropriate safeguards will be included. We recommend that any cap-and-invest program include certain elements laid out by the NY Renews coalition, including: 1) rules to prevent or limit permit trading, and the banking of unused permits over a period of years; 2) mechanisms to ensure prioritization of GHG or co-pollutant reduction in disadvantaged communities; 3) equitable allocation of the funding generated to assist workers impacted by our state’s transition off fossil fuels; and 4) as already stated, targeting relief to disadvantaged communities and low and moderate income consumers to alleviate potential increased energy burdens.<sup>11</sup> Some of these elements are discussed in the Scoping Plan, but we recommend that the Legislature include the most important elements in statute. The Climate and Community Protection Fund proposal by NY Renews, discussed in Point V of this testimony, provides a roadmap as to how to spend the funds generated by cap-and-invest and other revenue programs.

Cap-and-invest must also be accompanied by strong enforcement mechanisms, such as those contained in the state of Washington’s Climate Commitment Act, signed into law by Governor Jay Inslee in 2021. Without an assurance of strong protections against the abuses of cap-and-invest such as I’ve just discussed, the Legislature should be extremely cautious about adopting such a system, and instead consider a regulatory approach. Caps on emissions by business sectors and individual businesses could be set directly in statute, or alternatively, legislation could mandate that a state agency establish binding schedules by regulation. A model for the latter is the NY Home Energy Affordable Transition Act (“NY HEAT”)(S2016; formerly the Gas Transition and Affordable Energy Act), sponsored by Senator Krueger and Assemblymember Fahy, which would require the setting of biennial gas sales reduction targets for each gas company in order to achieve the CLCPA reduction targets for the gas sector.

A final possibility is to have a hybrid of a regulatory system and cap-and-invest, for example, that establishes statutory penalties to businesses that emit more than a set level for certain businesses not covered by cap-and-trade. The CLCPA, as already stated, requires DEC to issue regulations to “ensure compliance with [the CLCPA’s]... statewide emissions reduction limits” by January 1, 2024; this language permits either a regulatory system or cap-and-trade or a combination of both to be established by regulation.<sup>12</sup>

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<sup>11</sup> NY Renews, “Addressing New York’s Approach to Pollution Caps” (November 2022).

<sup>12</sup> ECL §75-0109(1). ECL §75-0109(2)(b) also mandates that the GHG emissions limits in the CLCPA be “legally enforceable.”

However, the CLCPA does *not* impose penalties on businesses that do not comply with any regulations mandated by the CLCPA: a major gap in the existing statute. **We therefore recommend that the Legislature at a minimum pass in 2023 “placeholder” enforcement provisions providing for penalties for businesses that violate emissions limits established by DEC or other state executive agencies,<sup>13</sup> whether instituted as part of a regulatory system, cap-in-invest or a hybrid of the two.** Further, the Attorney General, who already has general authority to enforce the state’s laws through civil actions<sup>14</sup> and a long history of aggressive environmental enforcement, should be given the explicit statutory authority to enforce the state’s GHG emissions limits in addition to DEC. The penalties provided could mirror those provided under the Air Pollution Control Act, New York’s Clean Air Act. This should be coupled with ramping up the enforcement staff at DEC and other relevant state agencies; DEC is almost certainly likely to need new funding for enforcement in light of its significant new responsibilities in climate, and in other areas, like water contamination.<sup>15</sup>

#### **IV. The Legislature Must Generate Significant New Revenue this Budget Year to Support Climate Transformation**

It is undeniable that fully addressing the climate crisis and environmental injustice in New York will cost tens of billions of dollars in private *and* public investments. Government was central to so many other past major transformations of the U.S. economy, positive and negative -- including the Internet, broadband, and the interstate highway system -- both through funding and regulatory changes. Seriously addressing the climate crisis will be no different. And some necessary components of the transition to a renewable energy economy, like expansions in public transportation and establishing a strong electric vehicle charging infrastructure, simply cannot happen without significant governmental investments. The federal Inflation Reduction Act made an important start, but the state must increase its contributions as well: a CAC analysis found that it would take \$10 billion in investments each year to meet the state’s climate goals.<sup>16</sup>

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<sup>13</sup> Section 8 of the CLCPA explicitly authorizes and directs all state agencies (listing by name many of the critical agencies with responsibilities over industries that emit greenhouse gases, like the Public Service Commission and the Department of Transportation) to “promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established” in the CLCPA.

<sup>14</sup> See Executive Law §63(12).

<sup>15</sup> See Comptroller Thomas P. DiNapoli, “Resources and Responsibilities: New York State’s Environmental Funding” (January 2021), <https://www.osc.state.ny.us/files/reports/pdf/new-york-state-environmental-funding.pdf>.

<sup>16</sup> NY Renews Press Release, “Analysis shows urgent climate action would have significant economic benefits for NYS” (October 19, 2021), <https://www.nyrenews.org/news/2021/10/19/analysis-shows-urgent-climate-action-would-have-significant-economic-benefits-for-nysnbsp>.

While revenue from fines generated through a regulatory system capping GHG emissions or from cap-and-invest will certainly ultimately generate funding for New York’s climate initiatives, significant funding from these sources will not be available for several years. In order to meet the goals in the CLCPA, we need to start ramping up *now*. Further, revenue from both cap-and-invest and a regulatory system or a combination of both is likely to be varied from year to year. Citizen Action therefore recommends the proposals discussed below to provide reliable and consistent funding for climate transformation.

#### Invest in Our New York Bill Package

Citizen Action strongly supports the Invest in Our New York (IONY) package, which would raise over \$40 billion to support our state’s most urgent needs, including climate transformation. The package contains 5 bills: 1) extending and strengthening the 2021 corporate tax reforms (raising \$9 billion a year) (A3690, Kelles/S1890, Hoylman-Sigal); 2) restructuring the personal income tax (PIT) to make the tax code more progressive and to raise revenue from the top 5% of earners in the state (raises \$15 billion a year) (A3115, Meeks/S2059, Jackson); 3) creation of an “heirs tax” (raises \$8 billion a year) (A3193, Solages/S2782, Brisport); 4) changing of the structure of the state capital gains tax (raises \$7 billion a year) (A576, Kim/S2162, Rivera); and 5) establishment of a “mark-to-market Billionaires’ Tax” that taxes increases in the stocks and investment portfolios of high-income New Yorkers (raises \$1.7 billion a year) (A3252, Kelles/S1570, Ramos). We are deeply disappointed that the Governor declared in her State of the State address that she was opposed to raising income taxes this year on the wealthy; we hope the Senate and the Assembly together resist this misguided thinking.

#### Climate Change Superfund Act

We strongly support the Climate Change Superfund Act (A3351/S2129), sponsored by Assemblymember Dinowitz and Senator Krueger, which would create a “climate superfund” to reimburse communities for a small portion of the cost of damages that the state’s ten worst polluters have done to the climate. A 2022 federal report found that the damages caused by multiple severe storms and other severe weather events like floods in the 2000 to 2021 period cost our state between \$50 billion to \$100 billion, and up to \$20 billion in 2021 alone. The major oil companies that are the targets of this important legislation not only played a major role in causing the harm, but for decades torpedoed solutions by hiding the truth about the climate crisis and countering the need for the public to stop using the products they marketed. Under the bill,

these polluters, including major oil companies, would be forced to bear a proportionate share of the cost of infrastructure investments required to adapt to the impacts of climate change in New York State, like making defensive upgrades to roads, bridges and transit systems.

It is important to note that the Superfund Act primarily addresses climate *remediation* -- the past harms due to climate change -- and therefore is not a substitute for generating other sources of funds to prevent future harms or to transition our state to renewables.

#### Stop Climate Polluters Handouts Act

We also support the Stop Climate Polluters Handouts Act (formerly the Fossil Fuel Subsidy Elimination Act) (AXXX, Kelles/S3389, Krueger), which would eliminate over \$300 million in annual tax breaks provided by New York State to the fossil fuel industry. Not only should we impose penalties on the oil companies that have created the mess we face, but it stands to reason that it is totally unacceptable for the state to continue to subsidize their activities.

#### **V. Climate and Community Protection Fund and Climate Accountability Acts**

It is not enough merely to raise money for climate: the Legislature and the Governor must set out a clear path for spending the money that is transparent and accountable, and that wisely spends the money in a manner that ensures that the critical goals of the CLCPA, including the GHG climate mandates and the 40% “investment mandate”<sup>17</sup> are met. Further, several changes need to be made to the operation of state agencies to ensure that they can effectively implement the CLCPA. This is the purpose of two NY Renews-initiated bills to be introduced this session, called the Climate and Community Protection Fund (“CCPF”), and the Climate Accountability Act (“CAA”).

#### Climate and Community Protection Fund

The CCPF, modelled on the existing Environmental Protection Fund<sup>18</sup> and other existing “special purpose” funds, would establish four dedicated funds in which revenues dedicated for climate action would be deposited, including the revenue sources I’ve just discussed and other sources set by statute; we could, for example, dedicate a portion of Environmental Bond Act funding to the CCPF. The four dedicated funds would be devoted to: first, massively increasing investments intended to move towards a renewable energy economy, including items like transportation (e.g., electrification of school buses, mass transit) and the deployment of

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<sup>17</sup> The CLCPA investment mandate provides that a minimum of 35% (with a goal of 40%) of funding for energy and related programs must benefit “disadvantaged communities.” See ECL §75-0117.

<sup>18</sup> See State Finance Law § 92-s.



renewable energy; second, funding communities to determine their own solutions, like resilient local microgrids, new roofs and lead-abatement, and efforts to reduce heat islands; third, assisting workers losing their jobs and communities losing their tax base due to the energy transition ahead; and fourth, supporting low and moderate income New Yorkers and small businesses facing energy burdens.

Establishing dedicated funds would bring a measure of accountability to our climate funding: allowing the public, the Legislature and the Comptroller to more easily monitor how much is available in the fund year-by-year. A dedicated fund would also make it harder for the money to be repurposed for non-climate purposes in tight budget years, as has happened with other targeted state funding, like the Environmental Protection Fund.

#### Climate Accountability Act

Citizen Action also supports the Climate Accountability Act (“CAA”), legislation now developed by NY Renews and legislative sponsors, which will focus on enhancing the ability of the New York State Energy Research and Development Authority (“NYSERDA”) to implement the CLCPA, and in particular the CLCPA provisions protecting disadvantaged communities (“DACs”). The bill will include specific requirements concerning matters like building and transportation decarbonization, and distributed energy resources like rooftop and community solar, that are intended to prioritize the needs of DACs. Further, the CAA contains an important provision I have already mentioned that would ensure the ability of DEC and the Attorney General to enforce the GHG emissions caps that must be promulgated by DEC by January 1, 2024 through the setting of statutory penalties.

#### **VI. Public Buildings and the Renewable Capitol Act; First Year \$1.5 Million Appropriation**

It is critical that New York prioritize decarbonizing state operations, including electrifying public buildings owned and operated by the State. Decarbonizing state operations can provide models for private parties to follow while helping to meet the state’s climate goals.

Citizen Action strongly recommends that the State start with state-owned buildings in Albany. This would address the climate crisis while ending a long history of environmental racism by the State, including the placement of fossil fuel facilities and a trash-to-steam plant in an environmental justice community. In September of 2019, after years of opposition by local organizations, including SHARE (the Sheridan Hollow Alliance for Renewable Energy) and Citizen

Action, the New York Power Authority (NYPA) and the Office of General Services (OGS) abandoned their plans to install two gas-fired turbines at state-owned facilities on Sheridan Avenue, that were intended to heat, cool, and provide electricity to the Capitol and Empire State Plaza (ESP). The agencies also took some steps to lower the carbon footprint of the Capitol and ESP.<sup>19</sup>

However, Citizen Action and SHARE believe that NYPA and OGS have not gone far enough to address the historic harms to this environmental justice community. Instead, we are calling on the state to go further and operate area state buildings entirely on renewables. The Renewable Capitol Act (RCA; AXXX,Fahy/S2689, Breslin) would do just that. The bill mandates that several state facilities in downtown Albany, including the Empire State Plaza, the State Capitol building, the State Museum, and the Alfred E. Smith Building receive their electric power, and heating and cooling from 100% renewable energy within three years, after a planning process with local community input. And, the FY 2024-25 budget should contain a small appropriation of \$1.5 million (recommended by SHARE) to do the plan outlined in the Renewable Capitol Act to transition the state buildings in Albany covered by the RCA to 100% renewable energy.

Legislation should also be considered (presumably post-budget) to expand the concept of the Renewable Capitol Act to state facilities owned or managed by the state in other cities.<sup>20</sup>

In closing, I would like to thank you on behalf of Citizen Action for the opportunity to offer our views on climate and the FY 2023-24 state budget. Should any of your committees want more information on these issues, please feel free to contact me at [bcohen@citizenactionny.org](mailto:bcohen@citizenactionny.org) or at 518-265-6183.

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<sup>19</sup> See SHARE Web Page Article, "Progress Toward Powering the Empire State Plaza with Renewable Energy" (February 13, 2022), <https://sharealbany.org/2022/02/13/progress-toward-powering-the-empire-state-plaza-with-renewable-energy/>.

<sup>20</sup> Here is a directory by the Office of General Services of state managed buildings: <https://ogs.ny.gov/real-estate/directory-ogs-managed-office-buildings>.