



**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 2023-2024 EXECUTIVE BUDGET'S REFORM PROPOSALS CONTAINED IN
THE GENERAL GOVERNMENT LEGISLATION
February 15, 2023
Albany, N.Y.**

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

Our testimony covers several areas: ethics, voting and elections, and campaign financing. Overall, we are disappointed with the governor's budget and her lack of reform initiatives.

Voting and Elections

Much has been done to improve voter participation in New York. Once at or near the bottom in voter eligible participation, the many changes enacted over the past few years have yielded tangible, positive results. However, New York's voter participation still lags. While improving, voting rates are still lower than the national average. In the 2022 general election, a lower percentage of registered New Yorkers—43.5 percent—voted, compared to the national average of 46.6 percent.¹

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.

ALLOW EASY 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 participation from voters with work, school or childcare commitments who would not currently qualify under current law.

¹ U.S. Elections Project, "2022 November General Election Turnout Rates," <https://www.electproject.org/2022g>.

In an age when 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. While NYPIRG does not have a position on moving to a vote by mail election, Oregon's experience shows that widespread use of mailed-in ballots has not resulted in fraud but has increased overall turnout to among the highest in the nation.²

Moreover, New York's experience with the widely used pandemic-inspired "no-excuse ballot by mail" underscores the benefits of allowing voters to mail in their ballots instead of going to the polls: *e.g.*, safer for voters and poll workers, more convenient for voters with physical limitations, and reduced voter traffic at early voting and election day polling sites.

Clearly, allowing voters an easy opportunity to vote through the mail is an important way to make civic participation easier in the modern age. Much of the rest of the nation is moving ahead in this area: Currently, all states will mail an absentee ballot to certain voters who request one. The voter may return the ballot by mail or in person. In 19 states, an excuse is required, while 28 states and the District of Columbia permit any qualified voter to vote absentee without offering an excuse.³

ENACT SAME DAY REGISTRATION (SDR)

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 offering Same Day Registration through the passage of an amendment to the State Constitution. Evidence continues to mount that SDR is closely associated with higher voter participation.⁴

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

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 has fallen to shockingly low levels. 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).⁶

² Oregon notes that its convenient vote-by-mail system is related to its consistent high voter turnout rates, see <http://sos.oregon.gov/voting/Pages/voteinor.aspx>.

³ National Conference of State Legislatures, see: <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁴ University of Wisconsin-Madison, "The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections," see: https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2009/uwisconsin1pdf.pdf.

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

⁶ Street, A., Murray, T. et al, "Estimating Voter Registration Deadline Effects with Web Search Data *Political Analysis* (Spring 2015) 23 (2): 225-241.

REFORM NEW YORK STATE'S BOARDS OF ELECTIONS

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

Over the years, that system has allowed for political patronage, collusion between the parties at the expense of the public, scandals, and incompetence. The past decade of elections have shown that, if nothing else, the public is fed up with the long lines, disenfranchisement, lost ballots, and partisan arrogance. They want reform.

Instead of relying on the political parties to watch out for the voters' best interests, an independent, non-partisan, professional agency should replace this aging, failing system.

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

The Constitution states:

[Bi-partisan registration and election boards]

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

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

However, it does not say that the state must have county boards of elections, that every employee must have an opposing political party counterpart, or 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.” In addition, 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 New York State Election Advisory Board (NYSEA) 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.

Enforcement.

The State Board has seemed incapable of tackling the issue of enforcement of the state’s limitation on coordination between candidates and independent expenditure campaigns.⁷ At its core, the problem lies with the lack of independence for the election law counsel. At the time of its creation, we had argued that the position was insufficiently independent.

Instead, you should look to the nation’s best practices in this area in order to boost enforcement of the election law generally and coordination of independent expenditures specifically. According to a recent survey conducted by the Coalition for Integrity, the state of Washington’s system ranked first, with New York in the middle of the pack. We urge review of New York’s election law enforcement and advance reforms that match up with the nation’s “best practices.”⁸

Campaign Finance

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

⁷ Fandos, N., Rubenstein, D., “Zeldin Campaign Investigated Over Charge of Coordinating With Super PACs,” *The New York Times*, October 27, 2022, <https://www.nytimes.com/2022/10/27/nyregion/zeldin-super-pac.html>.

⁸ Coalition for Integrity, “The State Campaign Finance Index 2022,” June 21, 2022, <https://www.coalitionforintegrity.org/state-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.”⁹

Unfortunately, the Commission on Public Financing and Elections’ work and the subsequent actions by the governor and the Legislature fell far short of what is needed. Instead of relying on the time-tested New York City system, the state established an untested system. Whether this will 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. We hope that it does.

LOWER CAMPAIGN CONTRIBUTION LIMITS

New York State relies on private donations to fund its political campaigns. As mentioned above, New York 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 \$6,126.¹⁰

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.¹¹

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.”¹² There have been widespread abuses of this exemption. 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.¹³ **Bundling is a key way in which lobby firms magnify their influence and**

⁹ New York State Commission on Government Integrity, “Restoring the Public Trust: A Blueprint for Government Integrity,” Volume 1, December 1988.

¹⁰ 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>.

¹¹ NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

¹² New York State Election Law §14-124(3).

¹³ 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

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.

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 contributions during the legislative session.¹⁴

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

Recent media reports have disclosed that Albany’s lobbying elite have rushed to fund the governor’s re-election effort, one describing how “Albany lobbying firms like Bolton St. Johns and Mercury Public Affairs jockeyed to hold private fund-raisers for the governor within weeks of her taking office.”¹⁵

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

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.”

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

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.¹⁶ The rule, under the Investment Advisers Act of 1940, prohibits an investment adviser from providing services, directly or indirectly, to a government entity in exchange for a compensation for two years after the adviser or an employee or an executive makes contributions to political campaigns of a candidate or an elected official, above a certain threshold.

Moreover, the rule prohibits an investment adviser or an employee or an executive from providing or agreeing to provide payments to a third party, on behalf of the adviser, in order to seek business from a government entity. The only exception to this is if the third party is a registered broker dealer or a registered investment adviser, in which case the party will be subjected to the pay-to-play restrictions.¹⁷

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.¹⁸

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.¹⁹

THE PUBLIC CAMPAIGN FINANCE MATCHING SYSTEM

Starting in 2024, New York State will hold its first elections using a system of matching small donations for candidates in statewide and state legislative elections. We have concerns about the reliance of this new system on a small, recently-created publicly financed system instead of New York City's. Yet, without adequate funds, there would be no chance of success. The governor's proposed budget includes \$14.5 million for the operations of the Public Campaign Finance Board program, an increase of \$4 million. Additionally, the governor recommends \$25 million for the payment of matching funds to participating candidates, which will first apply to the 2024 election cycle. This is a far cry from the Public Campaign Finance Board's request of \$114.5 million.²⁰ NYPIRG urges funding that matches the request from the Public Campaign Finance Board.

Ethics

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

¹⁶ Advisers Act Rule 206 (4)-5, addressing pay to play law.

¹⁷ 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>.

¹⁸ New Jersey Election Law Enforcement Commission, <http://www.elec.state.nj.us/pay2play/laws.html>.

¹⁹ 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/>.

²⁰ Geringer-Sameth, E., "What's Next for New York's New State Campaign Finance System?" *Gotham Gazette*, January 31, 2023, <https://www.gothamgazette.com/city/11812-new-york-state-campaign-finance-system>.

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.

***MAKE THE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT TRULY
INDEPENDENT AND ELIMINATE THE LEGISLATIVE ETHICS COMMISSION***

As you know, NYPIRG and other civic organizations opposed the creation of the Commission on Ethics and Lobbying in Government (CELIG). When that deal was cut, we joined with other to argue that the law was flawed, we wrote

“We believe the new ethics commission being proposed in the forthcoming state budget agreement is fatally flawed, and from the onset lacks the credibility to enforce state ethics laws without fear or favor.

“New York’s elected leaders are missing an historic chance to create an independently appointed ethics commission free from the conflict of interest and political machinations that have made the Joint Commission on Public Ethics (JCOPE) a public embarrassment to the people of New York.

“The cornerstone of real ethics enforcement for scandal-plagued New York State government is an ethics commission insulated from the elected officials it regulates. Not only does the budget agreement create a commission that is directly appointed by state leaders, it also creates a partisan commission that the Governor and legislative majority leaders can control.

“We would much rather celebrate than criticize, but we reject the ethics commission being advanced in the budget as an obstacle to real reform. In sum:

“We urge legislators to OPPOSE this terribly flawed ethics commission proposal, voice their opposition, explain their opposition during a vote on the floor, and to go back and create the independent ethics commission that the Governor promised, and New Yorkers deserve. The ethics box is not checked, this is not the needed step forward.”

Unfortunately, our analysis proved correct. For months there were insufficient decisions on appointments to the new commission, the state ignored the transition contemplated in the legislation (leaving existing staff in a legal limbo), and the governor’s budget cuts funding for this new agency – despite significantly more responsibilities. The governor proposed funding of \$7.8 million, a *decrease* of \$94,000 compared to SFY 2022-23. This supports a workforce of 68 FTEs, an increase of 21 FTEs compared to SFY 2022-23.

LAST YEAR’S PLAN FELL SHORT

Last year’s reform attempted to solve the problem of inadequate independence in ethics oversight by creating a selection committee of the state’s law school deans who would make the decisions on who would serve on the new ethics commission. Relying on “trusted outside” decisionmakers is one way to solve the independence problem.

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

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

Simply by dint of being a law school dean, these individuals are selecting the new ethics commission membership. In addition, under last year’s plan the commission membership cannot include state elected officials but can include local electeds. CELIG regulates lobbying and as you know lobbyists and the clients are a major source of campaign contributions to candidates for political office. Allowing elected officials to serve on the agency that oversees lobbying is a fatal flaw.

REPLACE THE LEGISLATIVE ETHICS COMMISSION

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

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

STRENGTHEN THE INDEPENDENCE OF THE STATE’S INSPECTORS GENERAL

A report by Albany’s *Times Union* illustrated just how the former Administration viewed oversight by the state’s Inspector General.²¹ According to the deposition of Linda Lacewell, formerly a top lawyer to the former governor and the Superintendent of the Department of Financial Services at the time of his resignation, the state’s Inspector General cannot investigate complaints against the governor or the top aides of the governor.

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

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

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

Since the IG is chosen by and effectively reports to the governor, according to Lacewell, that person has a conflict of interest and therefore cannot investigate the governor. That legal logic may have contributed to

²¹ Bragg, C., “Lacewell: Inspector general can’t investigate governor, secretary,” Albany Times Union, December 2, 2021, https://www.timesunion.com/state/article/Cuomo-aide-Investigators-appointed-by-Cuomo-16666523.php?utm_source=newsletter&utm_medium=email&utm_content=headlines&utm_campaign=tu_capitolconfidential&sid=5931827c3f92a45314a7c87d.

the failure of the IG's office to compel the former governor to testify about how he learned of a secret conversation by the members of JCOPE. Leaking confidential JCOPE information is a misdemeanor.

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

Of course, Lacewell's opinion is just that, opinion. In contrast, the IG under former Governor Paterson was incredibly active, leading scores of investigations including those against Paterson and his aides.²² That inconvenient fact was not part of the apparent worldview of the Cuomo team.

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

A review of "best practices" nationwide shows that New York's law falls far short of what the public should expect. The nation's *Association of Inspectors General* offers model legislation to establish IG offices.²³

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

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

Government officials are *public servants*. They are not royalty or dictators. They are charged with serving the needs of the public. In order for the public to have confidence that their tax dollars are being used appropriately and that their public servants are behaving ethically and professionally, there must be independent oversight of all public servants—even the governor, and for that matter, even the President.

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

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

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

While this testimony has focused on structural oversight issues—JCOPE, the LEC and Inspectors General—we'd urge you to look carefully at the Code of Ethics in Public Officers Law section 74. This

²² Most notably, see Office of the Inspector General report, "Investigation Regarding the Selection of Aqueduct Entertainment Group to Operate a Video Lottery Terminal Facility at Aqueduct Racetrack," October 2010. NOTE: The problems identified in this report have been largely ignored and contribute to an "anything goes unless you're caught" culture in Albany. In addition, the *current* IG has stated that she can investigate the governor, see: <https://www.timesunion.com/opinion/article/Editorial-Big-ethical-loopholes-16680720.php>.

²³ Association of Inspectors General, "Model Legislation For the establishment of Offices of Inspector General," see: <https://inspectorsgeneral.org/>.

section is more a set of modest aspirations than bright-line standards that provide public servants clear guidelines for conduct and enforcement agencies useful tools to protect the public integrity.

State agency accountability

NYPIRG urges that in the final budget you establish a New York State version of the New York City Mayor’s Management Report.²⁴ The state Comptroller recently released a “dashboard” for New Yorkers to keep track of state spending of federal stimulus revenues released to the states to offset financial hardships due to the COVID-19 pandemic.²⁵ His efforts should be applauded and expanded. Why not a dashboard for *all* government spending? Why not mirror the MMR in order to show New Yorkers how their money gets spent and whether that spending is resulting in tangible benefits? **NYPIRG urges an agency accountability system based on the one issued in New York City.**

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

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

For example, the New York State Health Department has a trove of useful—but largely hidden—public data. The DOH hosts a physician profiles website to make it easier for patients to find out more about their doctors.²⁶ It also has a website where consumers can comparison shop for prescription drugs (there can be an enormous range in prices even within the same county for the exact same prescription).²⁷ Two notable shortcomings of the drug price website is that few pharmacies post the required website information and the pricing comparison is limited to only 150 medicines—but the state collects data on thousands. Expansion of that program could help many uninsured and underinsured New Yorkers. In addition, the DOH has information to compare hospitals, cardiac bypass, and other procedures, yet few know about them.

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

Thank you for the opportunity to testify.

²⁴ See https://www1.nyc.gov/site/operations/performance/mmr_page.

²⁵ See <https://www.osc.state.ny.us/reports/covid-relief-program-tracker>.

²⁶ See <https://www.nydoctorprofile.com/NYPublic/>.

²⁷ See <https://apps.health.ny.gov/pdpw/SearchDrugs/Home.action>.