

New York State's System of Ethics Oversight and Enforcement Hearing **WRITTEN TESTIMONY FROM COMMON CAUSE NEW YORK** **August 25th, 2021**

The events of the last few weeks have not only produced a new Governor but forcefully shown the wholesale failure of ethics oversight in the Executive branch. Attorney General Leticia James's report detailing the cascade of failures in protecting state employees and the impunity with which Governor Cuomo's enforcers and enablers wielded power, threats and humiliation as cudgels shocked many.

We can not, however, say we are surprised as the toxic culture on the Second Floor was openly flaunted and done so publicly on social media, directed at the media and organizations such as ours. The brazen behavior was ultimately sanctioned by the lack of ethics oversight for elected officials in this state.

As many of our esteemed partners have undoubtedly noted and presented in excruciating detail, the state of ethics oversight and enforcement is so lax it is, in effect, nonexistent. The New York State Joint Commission on Public Ethics (JCOPE) is operating as it was intended - a farcical structure that was created through political wheeling and dealing by former Senate Majority Leader Dean Skelos and former Assembly Speaker Shelly Silver who've both since been convicted on federal corruption charges.

Reforming JCOPE is no longer an option, it must be torn down and replaced with something entirely new that instills confidence in New Yorkers and is not the punchline to a bad joke. We must break the cycle where demand for ethics reform results in an ineffective entity being replaced with a new ineffective entity. Our testimony therefore will not focus on JCOPE's greatest failures, but instead focus on the road ahead:

- **Ethics oversight must be truly independent.** The status quo is simply broken. While this will require a constitutional amendment, it is imperative to finally create a truly independent and effective ethics oversight body. Commissioners can not be indebted to their political appointer and function as a rubber stamp for that elected official.

- **Any future ethics oversight body must expand to represent the millions of New Yorkers who are politically unaffiliated voters.** The current appointment structure for Commissioners is simply a function of the control exerted by the two major political parties despite the fact that there are more politically unaffiliated voters¹ than registered Republican voters statewide.
- **The leadership of the future ethics oversight body should reflect New York.** There needs to be diversity from the top down which should reflect the geographic, gender and ethnic diversity of the state.
- **Ethics oversight must be accompanied by enforcement ability.** The need to get permission to conduct investigations, issue subpoenas or refer civil violations for enforcement to the State Legislature or other agencies hobbles the effectiveness of any oversight body.
- **There should not be a blanket confidentiality requirement mandating secrecy of deliberations and of ethics enforcement.** The need for confidentiality to protect the privacy of investigated individuals must be balanced against the need for transparency to restore public confidence in the independence and effectiveness of the ethics oversight process.
- **Harassment and discrimination is its own specialized area of the law and should not be included in the jurisdiction of any new ethics oversight body.** While some aspects of harassment claims may overlap some aspects of ethics, appropriate harassment and discrimination claims should be handled by a completely separate and unrelated entity made up of staff and decision makers with the requisite experience in this particularized area of expertise. We do not support the creation of a harassment and discrimination unit within any new ethics oversight body. We are a supporter of the NY Bold Agenda, which includes various bills and proposals for legislation to combat harassment and discrimination. A copy of the NY Bold Agenda is attached.

¹ Politically unaffiliated voters in this context refers to voters who have declined to enroll in a political party for voting purposes.

Accordingly, we make the following initial recommendations regarding a new ethics oversight entity for further discussion and refinement.

- **The new body should be composed of 5 members.**
 - The Attorney General and the Comptroller should convene a blue ribbon panel of no less than 9 law school deans out of the total of 15 law school deans in New York to create a pool of 18 potential appointees.
 - The pool should contain 6 candidates registered Democratic, 6 candidates registered Republican, and 6 candidates not registered in any political party and should reflect the geographic, gender and ethnic diversity of the state.
 - The pool can not contain any individual who has held elective, judicial, or political party office or been a registered lobbyist within the last 4 years.
 - The Solicitor General should be empowered to choose 2 appointees who are registered Democratic, 2 appointees who are registered Republican and 1 unaffiliated appointee not registered in any political party to constitute the members of the new ethics body, striving to reflect the diversity of New York in the appointments.
 - The 5 members shall be appointed to 5 year staggered terms, except for the initial term.
 - 1 Democrat and 1 Republican to serve an initial 2 year term
 - 1 Democrat and 1 Republican to serve an initial 3 year term
 - The unaffiliated member to serve an initial 5 year term.
 - The 5 members shall choose their own chair.
 - The management staff of the new body shall be chosen in consultation with the Solicitor General, without regard to political affiliation, based on professional experience and familiarity with ethics.
- **The new ethics body should be able to:**
 - Open and conduct investigations without approval by any other entity or individual
 - Have the ability to issue its own subpoenas and conduct depositions

- Assess fines and other appropriate sanctions (training, suspension, etc.) for civil violations
- Publicly refer findings of criminal conduct to the Attorney General for prosecution
- **The blanket secrecy provision which burdens JCOPE should not be carried over to the new ethics entity.**
 - Consideration should be given to allowing the public release of reports that conclude or end an investigation.
 - Institute a black-out for public release in the period preceding an election

What can be done in the meantime.

- All measures which exempt state contracts from Comptroller review and approval must immediately be repealed or rescinded.
- The Attorney General should be given the authority to instigate and conduct investigations into public corruption, wherever it might occur, including investigations into the Executive and the Legislature.
- A consent and reporting system should be set up covering volunteer political and other work undertaken by Executive and Legislative staff, to ensure that state assets and state compensation are not being misused.

Equally importantly, a cultural shift must occur in Albany.

Strengthening laws and establishing improved oversight is only half of the challenge. Those changes will not be completely successful without a change in the culture. If those who are appointed to positions like ethics oversight, the New York State Inspector General's Office and the Governor's Office of Employee Relations are chosen because of their expectation that they will function independently and they are instructed and permitted to do their job independently, corruption will be curtailed. The Fair Political Practices Commission of California is responsible for ethics, campaign finance and lobbying oversight for California state government. Established by initiative, its five members are appointed by the governor. Yet, they are expected to, and do function, independently. The members of the New York City Campaign Finance Board are appointed by the Mayor, yet they also function independently, in a body that is

expressly charged with being nonpartisan, because they and the public expect that level of ethical conduct.

The appointments that Governor Hochul will make to JCOPE, who she appoints as Inspector General and chooses for GOER, can set the tone and shift the culture for ethics in our state, as will action by the Legislature to replace JCOPE with an effective, independent entity. We look forward to working with our new Governor and the Legislature to assist with this long overdue cultural shift.

We commend Senator Biaggi for convening this public hearing and hope to see an ongoing public conversation that will shape the future of ethics oversight in New York.

August 12, 2021

Coming into office on the heels of yet another sexual harassment crisis, it is imperative that Governor Kathy Hochul address gender equity, sexual violence, and sexual harassment in a systematic and decisive way. This is critical to re-establish confidence in the Office of the Governor and to earn the trust of all New Yorkers.

This document summarizes a proposal for an agenda that will root out some of the causes of gender inequity and bring much-needed accountability to those who inflict harm through sexual and gender-based violence and harassment. Governor Hochul must actively and publicly work to advance this package, including long-needed executive action and immediate passage – through both the Senate and the Assembly– of critical legislation that addresses problem areas where women, BIPOC, and non-binary people are disproportionately affected.

This is a moment for bold action.

Priorities for a sexual/gender-based violence & harassment free New York include:

The Adult Survivors Act: S.66 Hoylman / A.648 L. Rosenthal Modeled after the Child Victims Act, this bill gives a one-year window to time barred adult survivors of sexual assault to bring a civil case against a perpetrator or negligent institution. There are many reasons why survivors do not come forward right away including trauma, fear, retaliation, economic dependency on an abuser and immigration status. All survivors deserve an adequate pathway to justice

Include New York State and all public employers as employers subject to the provisions of the human rights law S.3395-A Gouardes / A.2483-B Niou This bill eliminates the "license to harass" by codifying that under the New York State Human Rights Law, staff of elected and appointed officials are employees of the governmental entity(ies) for which they work, whether it is New York State, or a city, county or municipality. Current federal Title VII contains a carve-out for the "personal staff" of elected officials, exempting those workers from protections against discrimination and harassment. This has been used to deny employees recourse. Some government entities have argued that they are not the employer of a victim who works for an

elected or appointed official. This distinction has been used to try to deny employees legal recourse for the harassment, discrimination, abuse, or retaliation they suffered.

A real statewide “\$15 for All” including immediate executive action requiring all restaurant employers to pay the state’s full minimum wage with tips on top. This executive order would raise the state’s subminimum wage for tipped workers from 66% of the wage to 100% of the minimum wage, potentially over 5 years (2026). The seven states that require restaurants to pay One Fair Wage have one half the rate of sexual harassment as states that require employers to pay the federal subminimum wage for tipped workers, and thus this executive action would immediately cut sexual harassment in one of New York’s largest industries.

Providing grant support to independent restaurant employers who are transitioning immediately to the \$15 minimum wage with tips on top. As mentioned above, mayors and governors in six states have implemented the High Road Kitchens program, which provides grant support to restaurateurs who commit to paying a \$15 minimum wage with tips on top and undergoing a three-part Equity Training program that teaches them how to profitably raise wages and equity in their businesses, including addressing rampant sexual harassment in the industry. In New York, this program could have special focus on women-owned and BIPOC-owned restaurants.

Expanding the statute of limitation on employment discrimination S.849-A Gounardes / A.2233-A L. Rosenthal: Extends the statute of limitations for harassment suits to six years. Currently, survivors only have three years to file their claim in court before the statute of limitations expires. Processing trauma and choosing to move forward in a formal and public way, can take much longer than three years.

Solutions Not Suspensions Act A.5197 Nolan / S.7198 Jackson: Encourage the use of positive and age-appropriate disciplinary strategies and eliminate the use of out-of-school suspensions for minor infractions, among other provisions. Across New York State, students of color, students with disabilities, and students that identify as LGBTQ and gender non-conforming are subject to discriminatory, disparate, punitive, and unfair school discipline policies and practices. Students lose hundreds of thousands of days in the classroom each year because of suspensions, often for normal youthful behavior. Black and Latinx girls are disproportionately impacted by the state’s biased and ineffective school discipline policies. Outside of NYC, *Black girls in elementary/middle schools are 4 times more likely to be suspended compared to White*

girls in elementary school. Outside of NYC, *Black girls in high schools are 9 times more likely to be suspended compared to White girls in high schools. In NYC, Latinx girls are 3 times more likely to be suspended and Black girls are 8 times more likely to be suspended than their White peers.*

Executive action to authorize the Office of Victim Services to accept alternative documentation, other than a police report, when considering the eligibility of crime victim reimbursement. This action will make grants more accessible to men of color, undocumented New Yorkers, criminalized survivors, and victims of police violence.

Reform the State's Ethic Oversight System: Since its creation, the Joint Commission on Public Ethics —the ethics body tasked with holding legislators and their staff accountable for all ethics violations including gender-based harassment and discrimination — has been harnessed for political cover. Combined with the similar lack of independence of the other various state entities that play a role in maintaining accountability (such as the Inspector General's Office, Governor's Office of Employee Relations, and the Legislative Ethics Commission), it's not surprising to see how people in positions of power continue getting away with corruption, harassment and other abusive behaviors. The entire system must be rebuilt and this cannot be done in a silo; that's how we got to where we are today. Public hearings carry powerful and unique value, creating space for experts, advocates, and people with lived experiences to share their stories and recommendations. Governor Hochul can and should convene a series of public hearings on how to best address ethical issues, including and especially harassment and discrimination, in state government.

Increase Transparency: The key to public faith in their leaders' decisions is good communication and transparency. Clear, enforceable statements of ethical standards and guidelines which are put in place to deal with conflicts of interest are imperative to maintaining credibility with the public and the press. New York's Freedom of Information Law and Open Meetings Law have not been effectively updated in decades, and the previous administration was infamous for its disregard of those laws. Governor Hochul can and should strike a new note of transparency and openness, starting with assuring that her administration supports prompt and open compliance with FOIL requests, rather than obfuscation and delay, and providing verifiable details on how the administration will deal with conflicts of interest. In doing so, she will set herself apart from the Cuomo Administration.

Empowering People in Rights Enforcement (EmPIRE) Worker Protection Act S.12 Hoylman / A.5876 Joyner: 55% of New York employers use forced arbitration clauses to deny workers the right to go before a judge and jury when companies break the law. Its justice denied in the fine print! Female workers (at 57.6%) and Black workers (at 59.1%) are subjected to forced arbitration at the highest rates. Once a worker has signed a forced arbitration clause, one of the only options to address violations is private arbitration, where the deck is stacked against workers and in favor of employers. Faced with this choice and the staggering cost of arbitration, 98% of workers abandon their claims and law-breaking employers get off the hook. The EmPIRE Act empowers New Yorkers to combat retaliation, pay discrimination, and other labor violations by allowing whistleblowers to file claims on behalf of the state against an employer for violations of State labor laws and brings much-needed revenue into the state's coffers through fines on abusive employers.

Expand Insurance Coverage for Women and Immigrants: The Hochul Administration must look for ways to expand health insurance coverage for women and immigrants in her first Executive Budget Proposal. Women are more likely to manage the healthcare needs of their families and women immigrants, in particular, lack access to health insurance. Quality and accessible health and mental health services are also vital to survivors of sexual and domestic violence.

The following organizations, businesses, and community leaders have signed on to endorse the #NYBOLD Agenda:

Supportive Organizations:

ACT UP NY
Alliance for Quality Education
America Loves Kids
Bend the Arc
Bowen Public Affairs Consulting, Inc.
C.A. Goldberg, PLLC
Callen-Lorde Community Health Center
Carroll Gardens Association
Campaign for NY Health
Chinese-American Planning Council (CPC)
Citizen Action of New York
Commission of the Public's Health System
Common Cause/NY

Crime Victims Treatment Center
Cuti Hecker Wang LLP
Dame
Day One New York, Inc.
Downstate Coalition for Crime Victims
Downtown Women for Change
Dr. Celia McIntosh-McIntosh Advocacy and Consulting
Empire State Indivisible
Equity Now
Foundation for Survivors of Abuse
Greater NYC for Change
HEAL (Health, Environment, Agriculture, Labor) Food Alliance
Housing Works
Hunger Free America
Indivisible Mohawk Valley
Indivisible Nassau County
Indivisible Nation BK
Indivisible Ulster
Interfaith Center on Corporate Responsibility
Jews for Racial & economic Justice
Just Equity for Health
Literacy Assistance Center
Long Island Activists
Make the Road New York
Model Alliance
Morningside Heights Resistance
Nassau NOW/Patty Pastor, President
National Employment Law Project
National Partnership for Women & Families
National Women's Law Center
NELA/NY
New York Civic Engagement Table
New York Communities for Change
New York State Council of Churches
New York State Public Affairs Committee of the Junior Leagues
New York Working Families Party
Nobody Leaves Mid Hudson

Nonprofit New York
NYCD16-Indivisible
One Fair Wage
One Fair Wage Action
Outten & Golden LLP
Peekskill Progressives
Peer/NYPAN (Progressive East End Reformers)
Progressive Doctors
Progressive Schenectady
Progressive Women of Pelham
Release Aging People in Prison Campaign/RAPP
Robert F. Kennedy Human Rights
Rochester Regional Coalition Against Human Trafficking
Safe Horizon
Sanctuary for Families
Sexual Harassment Working Group
Staten Island Women Who March
Strong Economy for All Coalition
Survivors Network of those Abused by Priests
The Sex Workers Project of the Urban Justice Center
Together We Will Long Island
Tompkins County Progressives
UltraViolet
V-Day/One Billion Rising
Violence Intervention Program
VOCAL-NY
VOICE
Vote Run Lead
Women Together Global, Inc.
Worker Justice Center of NY
ZA'AKAH
Zevin Asset Management

Supportive Individuals:

200 victims & survivors of Columbia OB/GYN Robert Hadden, represented by Anthony T. DiPietro, Esq.
Alison Turkos, Survivor/Advocate

Alessandra Biaggi, Survivor/State Senator
Alysia Reiner, Actress/Activist
Alyssa Milano
Amelia Tramontano, Survivor/Advocate
Asher Lovy, Survivor/Advocate
Bellamy Young
Beverly Neufeld
Brian Toale, Survivor/Advocate
Bridie Farrell
Camille Rivera, Survivor
Carrie Goldberg
Charlotte Clymer
Chris Gavagan, Survivor/Documentarian
Christy Turlington Burns
Donald Gardner
Elish Melchiade, Survivor
Emilia Decaudin, Democratic District Leader
Emily Adams, executive committee member of the NYS Democratic Committee
Holly G. Atkinson
Ilse Knecht, Director of Policy & Advocacy, Joyful Heart Foundation
Jane Fonda
Jessica González-Rojas, Survivor
Kristin Wunder, MPH
Marissa Hoechstetter, Survivor/Advocate
Mariah Grant, Survivor/Advocate
Mary Ellen O'Loughlin, Survivor & Executive Director of the Foundation for Survivors of Abuse
Melanie D'Arrigo, Survivor
Natasha Anushri Anandaraja, MD, MPH
Nicolas Suarez
Rosanna Arquette
Rosie O'Donnell
Sally Kohn
Susan Celia Swan
Taylor Schilling
V (formerly Eve Ensler)
Yuh-Line Niou, Survivor

Supportive Small Businesses:

baodega

Barbara Sibley, Owner, La Palapa Restaurant

Chamo's Arepas Bar

Coast and Valley

Dirt Candy

Elisa's Love Bites Dessert Atelier

La Adelita de Woodside

McIntosh Advocacy and Consulting

momofuku

Nick's Luncheonette LLC, DBA Gaskins

PLG Hospitality LLC

Punda Tibetan Restaurant

RAISE High Road Restaurants

Sarah Suarez, Owner, Gaskins Restaurant

Thai BKK

Tin Chi House

Uthai