

## **TESTIMONY OF SUSAN LERNER, EXECUTIVE DIRECTOR, COMMON CAUSE/NY TO THE 2022 JOINT BUDGET HEARING ON PUBLIC PROTECTION, JANUARY 25, 2022**

We submit this testimony to comment on provisions which appear in the Public Protection General Governments Article VII Legislation and appropriations which are made to the State Board of Elections for its operations, as well as large unconditional and uncontrolled appropriations to the Executive. We will submit additional testimony regarding special elections appropriations to the Hearing on Local Governments.

### **Appropriations to the State Board of Elections**

It is a welcome relief to see appropriations which provide full funding for the State Board of Elections. For too many budget cycles, we have joined in the State Board's pleas for adequate funding, only to see the Board receive only a portion of the amounts requested. While we support various measures to improve the State Board and its oversight of elections, we also recognize that the election reforms we have supported and continue to request, when implemented place increasing demands on election administrators. Accordingly, we are pleased to see the appropriations made for the State Board's operations in this budget and hope to see that level of funding continue and, if anything, expand as New York's voters continue to benefit from new election reforms with the assistance and support of the Senate.

### **Appropriation of Billions Without Controls**

Common Cause/NY shares Reinvent Albany's concern regarding the continued appropriation of large sums in the budget that can be spent without Comptroller review. The Legislature should put a stop to the inclusion of large slush funds that can be paid out without any oversight and few, if any, reporting requirements. These appropriations have been too readily abused in the past.

### **Parts N & O to PPGG Article VII Legislation – Elections Reform**

Part N would move the voter registration deadline back from 25 days before an election to the constitutionally permitted 10 days. It is identical to S2951, which has already passed the senate on January 10. We strongly support this bill and are pleased to see the Governor's support for this needed reform.

Part O would require Boards of Elections to place polling places on or near college campuses. This provision is similar to S4658, which has also passed the Senate on January 10. However, S4658

requires that polling places be located on college campuses for both general elections and early voting. Part O only requires placement of polling places on college campuses for general elections but not also for early voting. Common Cause/NY and Let NY Vote support S4658/A117, as the Let NY Vote Coalition's Youth Working Group argues strongly that early voting locations also need to be placed on, or conveniently located near, college campuses based on the difficulties college students have faced to be able to access early voting. We hope to see the measure which is ultimately passed include early voting polling locations on college campuses as well as for general elections.

## **Part Z to PPGG Article VII Legislation – Ethics Reform**

This Part contains a much needed proposal to completely revise ethics oversight for New York State Government. It proposes a completely new ethics commission, replacing the failed Joint Commission on Public Ethics (JCOPE). New York badly needs a functioning and trustworthy ethics oversight process. JCOPE's lack of credibility and very poor reputation makes it pointless to attempt to make improvements within the fatally flawed existing structure. It needs to be replaced with a new and truly independent oversight commission, not simply revamped. The primary problems with JCOPE were its lack of independence and transparency and the barriers it had to jump in order to effectively enforce the law. The Governor's proposal is a reasonable approach to achieve the goal of a credible ethics system.

### ***Selection Process***

We believe that the Governor's proposal provides a workable framework to achieve independent ethics oversight. We do have specific suggestions for strengthening it. Common Cause/NY favors a selection process that utilizes a committee made up, at a minimum, of the law school deans of New York's 15 law schools who select commission members based on a public set of criteria. Consideration should be given to expanding the selection committee to include deans of schools representing other relevant disciplines, such as Social Work and/or Public Policy. We recognize that the Deans of law schools that are part of public university systems may appear to be more susceptible to pressure from state elected officials in naming commission members. To alleviate that appearance we believe that there should be express prohibitions on communications between the deans and any state elected official during the selection process other than reported lobbying communications on specific pending legislation or budgets.

Requiring that the criteria for selection to serve on the new independent commission on ethics and lobbying in government ("new commission") be released publicly is an excellent requirement. The selection committee should also be required to publicize how interested members of the public can submit application to be considered for appointment to the new commission. Common Cause/NY does not support making any meeting where individual candidates are discussed and selected a public meeting. Allowing discussions of individual qualifications to take place in a closed meeting encourages the candor that such discussions require and avoids any embarrassment to those who apply but are not chosen. The proposal to allow the release of submitted documentation from those chosen to serve on the new commission after they are appointed is a well-balanced middle ground

between the need for candid review of individual qualifications and the public's right to gauge whether the appointment process is working correctly and as independently as envisioned. In that regard, we recommend that the selection committee be required to provide a publicly released report to the Legislature and Governor upon completion of its selection process, that indicates the number of applications received and the number rejected as not satisfying the published criteria, and a breakdown of the diversity of the applicant pool, including gender, occupational, geographic, and ethnic diversity.

Paragraph 3(f)'s list of categories of individuals who cannot be appointed should apply not only to individuals who themselves fall under the prohibited category but to spouses and immediate family members of such individuals, to appropriately maintain the new commission's independence and credibility. We also believe that no individual who serves as a government official at any level should serve on the new commission.

#### ***Prohibit Political Contributions by Members & Family***

Similarly, paragraph 4(e)'s prohibition on political contributions to state candidates should be expanded to prohibit contributions to any candidates for state or local office and should include prohibitions on contributions to political parties while serving on the new commission. Additionally, spouses and immediate family members should be prohibited from serving on the steering committee or finance committee for any candidate running for state office during the commissioner's term in office. We note that the current law's prohibited categories of appointees prohibit appointees who have held office or engaged in certain activities in the past 3 years rather than the proposed 2 year prohibition period. A 3 year prohibition period is preferable.

We suggest that the new commission's executive director be hired for a term of 5 years, to provide continuity as the members of the new commission serve their staggered terms. The executive director should be subject to the same prohibitions regarding political contributions as the commission members.

#### ***Penalties for Failing to Complete Ethics Training***

Common Cause/NY supports the requirement that new state officials and state employees take ethics training within 90 days of starting their jobs, as well as the annual refresher requirement. However, there appears to be no real consequence should an official or employee simply ignore this requirement. Negligent employees should receive a reminder at 90 days of employment if they have not completed the required training and given an additional 30 days to comply. If the official or employee fails to complete the required training after the 30 day reminder, they should be subject to automatic sanctions in the amount of 10% of their post-tax salary automatically deducted from their paycheck until they complete the required training. If that penalty is ineffective, the names of officials and employees who fail to complete ethics training within 6 months of employment should be publicized.

## **Transparency**

Common Cause/NY concurs with Citizens Union's recommendations regarding transparency for the new commission. To wit:

- Once the new commission makes a finding that probable cause exists that a violation took place, any subsequent hearing should be made open to the public.
- Determinations following such a hearing should be made public promptly, along with the new commission's votes.
- Settlement agreements should be made public.
- The new commission should be subject to the Freedom of Information Law and the Open Meetings Law, to the extent that does not interfere with the investigative and deliberative processes.

We concur that ex parte communications should be prohibited regarding enforcement proceedings.

We further join Reinvent Albany's recommendations regarding improving the transparency and useability of the required financial disclosure statements:

- Require lobbyists to specify whether lobbying is in support or opposition to legislation or other governmental action.
- Lobbyists should report political contributions and fundraising activity, as done in NYC.
- Political parties should be made explicitly subject to the Lobbying Law.
- Financial disclosure filers should be expanded to include economic development entities.
- Financial disclosures should be required to be made electronically, with full public disclosures in machine-readable format on the commission's website.
- Financial disclosure forms should be streamlined and require more specificity in reporting, including information about domestic partners (in Governor's proposal).

