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Participatory Politics Foundation • Sunlight Foundation  
League of Women Voters NYS • Tri-State Transportation Campaign**

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## **Transparency Groups Urge Gov. Cuomo to Issue Executive Order Requiring Agencies to Keep Emails 7 Years**

*Stop the Automatic Deletion of Emails*

Today, on the eve of the “Email Summit” our groups renew our call to Governor Cuomo to stop the automatic deletion of state emails and instead to issue an executive order requiring state agencies to keep emails for 7 years, per the “Capstone” policy adopted by the federal government.

We are among the large of coalition of state and national transparency and watchdog groups that have repeatedly urged Governor Cuomo to stop deleting state emails.

Governor Cuomo’s policy of automatically deleting unarchived emails after 90 days reduces the transparency and accountability of New York State government. The governor’s policy inevitably results in the destruction of emails that are considered public records under the Freedom of Information Law, and it undermines accountability laws like the False Claims Act.

In this era, government runs on email, and public access to complete email records is a cornerstone of government transparency. The federal government has recognized this by establishing the “Capstone” policy. Capstone is the result of extensive research and consultation. It requires agencies to keep the emails of federal employees for 7 years and of executive staff permanently. A model executive order based on Capstone is attached below.

We urge Governor Cuomo to issue this executive order and renew his stated commitment to open government:

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# DRAFT EMAIL RETENTION EXECUTIVE ORDER

WHEREAS, the state's freedom of information law, first enacted in 1974, has served as a critical vehicle under which the public has gained access to records of state and local governmental entities; and

WHEREAS, in this era, government runs on email, and access to email and electronic records is a cornerstone of public transparency; and

WHEREAS, advances in technology have made the retention, search, and retrieval of vast quantities of email more simple and more cost-effective than ever;

NOW, THEREFORE, I, [NAME], Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

## A. Definitions

As used herein, the following terms shall have the following meanings:

1. "State Agency" is defined as any agency, department, division, board, bureau, office, council, commission, authority, public benefit corporation, or other governmental entity performing a governmental or proprietary function for the State of New York, except the judiciary or the state legislature.
2. "State Email" is defined as any electronic mail, including metadata, sent or received by any State Agency in pursuance of law or in connection with the transaction of public business of a State Agency, such as evidence of an agency's organization, functions, policies, decisions, procedures, operations, or other activities, or that is relevant and useful to the execution and implementation of ongoing agency work.
3. "Personal Email Account" is defined as any email address and accompanying account on any computer network which is configured to send electronic mail, receive electronic mail, or both, except those provided to an employee of any State Agency by the State Agency which employs him or her.
4. "Official Email Account" is defined as the email address and accompanying account on any computer network configured to send electronic mail, receive electron-

ic mail, or both, which is provided to an employee of any State Agency by the State Agency which employs him or her.

## **B. Retention of Email**

1. Each State Agency shall retain all State Email for a minimum of seven years.
2. Nothing in this section shall require or permit any employee of any State Agency to delete an email which is the subject of a request for records under Article 6 of the Public Officers Law, the subject of any records retention schedule described in Title U of the Arts and Cultural Affairs Law, or the subject of any obligation to preserve records relating to anticipated or filed litigation.

## **C. Personal Email Use**

1. Employees of any State Agency shall not create or maintain State Email through the use of any Personal Email Account.
2. In the event that any State Email is sent to any Personal Email Account belonging to any employee of any State Agency, that employee shall forward that State Email to his or her Official Email Account within five days.