



BY HAND

January 20, 2016

The Honorable Andrew Cuomo
Governor, State of New York
Executive Chamber
Capitol
Albany, NY 12224

Re: Support for your reform proposals and additional recommendations.

Dear Governor Cuomo:

We write to applaud the reform proposals included in your executive budget plan and to offer our recommendations on how those measures can be strengthened.

The stunning and unprecedented scandals that have rocked the state Capitol are the direct result of the shortcomings of New York's ethics laws and enforcement. Our organizations believe that you and the legislature need to start by doing three things to reduce the risk of corruption and restore public trust: set strict limits on outside income; close the so-called limited liability company campaign finance "loophole;" increase the transparency of lump sum and MOU appropriations in the budget.

Your package of reforms goes beyond those three important measures and while we are generally supportive of and will make recommendations on those other measures, the three mentioned above are essential to restoring public confidence and must be part of any final agreement. *Failure to enact such reforms can be seen as nothing less than a failure of Albany's political leadership.*

Below are our specific comments and recommendations on your ethics legislation.

Congress-style limits on outside earned income. Your proposal goes a long way toward reducing the obvious conflicts of interest that result from allowing elected officials to have significant outside employment. However, we believe limits on earned income should apply to

the legislature and all statewide offices, instead of only the legislature. Your proposal tracks the Congressional approach to limiting outside income,¹ which was an outgrowth of the Watergate scandal and has a proven track record of being effective in removing outside conflicts.

As you know, when the Congress adopted its system, it observed that,

“. . . substantial outside income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.”²

We agree that this potential conflict exists in Albany and the recent convictions of elected officials underscore how lucrative it can be for lawmakers to inappropriately use the powers of their public office for private gain.

Your legislation mirrors the Congressional system and appropriately states that “royalties from the sale of a book” must be considered as income for the purposes of a cap on outside income and “that no advance fees shall be permitted.” Yet, as your legislation is drafted, it applies to the legislative branch only. We believe that caps on outside income should cover the statewide elected officials as well. Accordingly, we urge that the limitation be extended to the executive branch as part of your 30 day amendments.

Limited Liability Companies. Your legislation would close the so-called "LLC Loophole" in state election law that allows some business entities to donate much larger campaign contributions than other businesses. Moreover, under the current LLC Loophole often the true identity of the source of the contribution behind the company is shielded from public disclosure. Those weaknesses are not merely academic ones: the LLC Loophole allowed a small number of entities to give enormous amounts of campaign contributions and has been featured in the recent scandals in Albany. Your legislation would remedy those failings and we urge support.

Greater budget transparency. We appreciate that your budget proposal begins to establish a more transparent budget. Your plan allows the public to “access more information about where and how money flows from the state to private citizens.” Your budget presentation correctly points out that the state attorney general and comptroller's office do not "coordinate" when auditing state vendors' contracts. As a result, you propose that both of those offices and the Office of General Services develop a plan to better allow the public to track state contracts.

However, we believe that additional steps can, and must, be taken regarding the distribution of grants by elected official through lump sum appropriations and other discretionary funds. Specifically, we call for legislation that identifies the purpose for, and recipients of, all state

¹ We do note, however, that the Congressional model not only restricts the *amount* of outside income, but also restricts the *sources* of outside income, barring the types of work that create conflicts of interest, such as legal and accounting services.

² House Bipartisan Task Force on Ethics, Report on H.R. 3660, 101st Cong., 1st Sess. 12.

funds allocated to be spent at the discretion of legislators and the governor to increase transparency and eliminate conflicts of interest. Ideally, all such funding should be itemized in the state budget with greater detail about the purpose of the spending and identifying the sponsoring elected official, so that spending decisions are made in full public view. In your FY 2015 30-day amendments to the

Capital Budget, you proposed some reforms to require an affirmation by legislators that lump sum funds will be used for a public purpose and ensure that there are no conflicts of interest. You should expand upon this by applying this level of vetting to all lump sum funds directed by any elected official and ensure that there is full online disclosure of all lump sum and discretionary grants or contracts directed by elected officials to identify sponsors, recipients, and the purpose and subsequent usage of funding.

Campaign Finance and Enforcement. Your package advances a number of additional measures designed to strengthen state laws. In the area of campaign finance: your plan enhances disclosure by requiring that contributions that exceed \$1,000 must be disclosed every 60 days; it requires the identities of campaign bundlers; it lowers campaign contribution limits; and establishes a voluntary system of public financing. All of these measures are important and we support them. However, it is a failing of New York law that the occupation and employer of contributors is not included in the information contributors are required to provide, unlike New York City and federal campaign finance law. We believe that this obvious omission should be corrected as part of your 30 day amendments.

In the area of ethics enforcement, your plan extends the provisions of the Freedom of Information and Open Meetings laws to the Joint Commission on Public Ethics (“JCOPE”), authorizes JCOPE to seek documents in support of information on financial disclosure statements; increases enforcement authority against lawmakers who failed to comply with JCOPE audits; and creates district attorney oversight over those who submit deceptive information. The bill also requires lawmakers to put the exact amounts of their outside income on disclosure forms (rather than ranges of income), and imposes financial penalties for all violations of the Public Officers Law regulating ethics. Finally, your proposal allows for the forfeiture of pensions by public officials convicted of corruption.

While we are generally in support of these measures, more must be done to fix the structural weaknesses in JCOPE. For example, the JCOPE board should have a smaller number (and odd number) of appointees; allow for appointments by the state Comptroller and Attorney General; eliminate the three-member minority legislative “veto” over investigations; and prohibit elected officials from sitting on JCOPE’s board since it regulates the lobbying industry, a tremendous source of campaign contributions. In addition, the executive director and other staff should not be hired directly from the executive or legislative branches. A state government employment “cooling off” period should be part of the law. We urge you to reconsider your less than complete approach to strengthening ethics enforcement. The ethics law will ultimately only be as good as it is regulated and enforced. It is a stringing rebuke to the law governing New York State’s oversight agencies that the significant recent ethics enforcement has been undertaken by the U.S. Attorney offices.

In a related area, your package included a requirement that political consultants advising elected officials register as lobbyists. We agree with this plan.

In the area of voting and elections, your plan would allow New Yorkers to vote early in all elections. We agree and support the provision of state funding to help counties institute this system. The plan proposes automatic voter registration, a concept which we vigorously support. However, your plan utilizes only the Department of Motor Vehicles (“DMV”) as the agency which would be responsible for automatic registration. We strongly believe that such a system must be expanded to all state agencies. As you know, many urban residents as well as those of modest means, do not seek the services of the DMV. The lowest voter participation rates include just those residents. We urge that this provision to be expanded to all agencies as part of your 30 day amendments.

But as we stated earlier, our view is that the way the public should measure the success of this reform effort by whether the outside income of elected officials is dramatically limited, the LLC loophole is closed, and there is comprehensive transparency in budget appropriations.

We appreciate the steps you have taken to achieve these three priorities and pledge to work with you and the Legislature to ensure that these measures become law.

Sincerely,

Dick Dadey
Citizens Union

Susan Lerner
Common Cause New York

Blair Horner
NYPIRG

John Kaehny
Reinvent Albany

cc: Senate Majority Leader Flanagan
Senate Coalition Leader Klein
Senate Minority Stewart-Cousins
Assembly Speaker Heastie
Assembly Minority Leader Kolb