



July 1, 2020

Andrew Cuomo
Governor
Executive Chamber
Capitol Building
Albany, NY 12234

Andrea Stewart-Cousins
Majority Leader
State Senate
Legislative Office Building
Albany, NY 12247

Carl Heastie
Speaker
State Assembly
Legislative Office Building
Albany, NY 12248

Robert Ort
Minority Leader
State Senate
Legislative Office Building
Albany, NY 12247

William Barclay
Minority Leader
State Assembly
Legislative Office Building
Albany, NY 12248

Re: Appropriate review and limitations on the emergency powers granted to the executive and that the legislature reconvenes for session.

Dear Gov. Cuomo, and Legislative Leaders Stewart-Cousins, Heastie, Ort, and Barclay,

We write to urge you to review and place new limits on the emergency powers granted to the governor earlier this year. We also strongly urge the Legislature to reconvene for at least one month to conduct legislative business that was not considered during the month of May and to consider the budget adjustments – and likely cuts – made by the Governor’s Division of the Budget.

We are well aware of the extraordinary circumstances and unprecedented challenges that led to the legislature granting so much power to the Governor. We also understand the public health difficulties of continuing to convene session during the COVID-19 pandemic. Nevertheless, the technology exists to allow both houses of the Legislature to conduct all legislative activities, including hearings and voting, remotely.

As the state cautiously begins the process of reopening and with the benefit of experience, we now believe a review and changes in the delegation of authority are necessary. The American form of representative democracy primarily hinges on the balance of power between co-equal branches of government. It goes without saying that this structure was embedded in our democracy at its formation and reflected in the state’s Constitution. The Legislature is the primary policymaking branch and in our republican form of democracy, the part of state government “closest to the voters.”

The legislation that granted the Governor extraordinary powers commensurately reduced the power of the legislative branch. Under the new law, the Governor has the authority to suspend a “statute, local law, ordinance, order, rule or regulation or part thereof” so long as such action is to protect the “health or welfare of the public” and it is “necessary to aid the disaster effort.” The duration of these decisions are limited to no more than thirty days, unless “that upon

Reformers' Letter, July 1, 2020, Page 2

reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each to be suspended.”¹

The Legislature retained a role to play, as emergency decisions can be overturned by legislative action and these powers expire in April of 2021. Those powers have now been in effect for three months. As the state moves out of the most severe quarantine restrictions, we believe it is time to review and revise the delegation of power.

Accordingly, we urge that the powers of the Governor be limited to a specific period of time and only extended as the result of legislative approval by the Legislature. It must not be “automatic.” There appears to be bipartisan support for such legislative action, most notably the public statements of the Senate Deputy Minority Leader (who has introduced legislation co-authored by Assembly Democrats).² Now that the June primary has concluded, the need for legislation to expand and improve absentee voting for the November general election takes on additional urgency.

As a result, we see no reason for the Legislature to only meet under limited circumstances to act on a limited agenda. While we agree that the global pandemic and the recent upheaval over police tactics are reasons for action, there can be no doubt that other pressing problems continue to exist and fester—including those exacerbated by the pandemic and the resulting economic dislocation.

Of course, that is not to say that no legislative work has been done – most notably measures to repeal Civil Rights Law Section 50-a and measures to respond to the pandemic – that are meaningful and the Legislature and the Governor deserve credit for acting. However, there is more work to be done.

The session was scheduled for a total of 57 days, but so far only 43 session days have occurred. Undoubtedly, there are issues that are important to New Yorkers that have been left unaddressed.³ There is simply no way to evaluate the current legislative session as other than incomplete.

Of course, this session is unique. However, the fraction of normal legislative activity means that a small number of issues have been addressed during this session. There can be no question that a state of emergency exists which demands considered policies that address how we, as a state, will emerge from this crisis. The Legislature is uniquely situated to look beyond the immediate triage needs and lay the foundations for recovery. Actions are needed.

In urging these actions, we are mindful that the pandemic has not disappeared and we must be alert to its resurgence. Thus, we urge that both houses reconvene, while being protective of the health of the members, the staff, and members of the public. You have adapted your rules⁴ to

¹ New York State Executive Law Section 29-a.

² Senate bill 8387, Assembly bill 10502. The Assembly Minority has expressed similar views, see <https://nyassembly.gov/Minority/?sec=story&story=92618>.

³ Legislative “productivity” is impossible to measure. However, some crude examples exist. For example, by the end of the 2019 legislative session 935 bills had been approved by both houses. This year – as of the date of this letter – only 132 bills have passed both houses.

⁴ Assembly resolution 854 and Senate Resolution 3108.

Reformers' Letter, July 1 2020, Page 3

allow remote legislative actions and have done so successfully. We urge that your Houses act to address the people's business.

Sincerely,

Susan Lerner
Executive Director, Common Cause NY

Laura Ladd Bierman
Executive Director, League of Women Voters of New York State

Blair Horner
Executive Director, NYPIRG

John Kaehny
Executive Director, Reinvent Albany
