



**TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
JOINT LEGISLATIVE BUDGET HEARING ON HIGHER EDUCATION
FOR THE 2015-2016 BUDGET
FEBRUARY 10, 2015
Albany, New York**

Good afternoon. My name is Aileen Sheil and I am the Chairperson of the New York Public Interest Research Group's (NYPIRG's) student Board of Directors and a Queens College student. With me today is Blair Horner, NYPIRG's Legislative Director. NYPIRG is the state's largest non-partisan student advocacy organization. Our Board of Directors consists of college and university students elected from campuses with NYPIRG chapters across the state.

We appreciate this opportunity to share our perspectives on the 2015-2016 Budget for Higher Education in New York State. In addition, we offer testimony on other aspects of the executive budget for Fiscal Year 2015-16. As you will see, this testimony covers higher education, environment & energy, health, and government reform proposals contained within the executive budget.

NYPIRG'S COMMENTS ON THE EXECUTIVE'S PLAN FOR HIGHER EDUCATION

Problem: The skyrocketing cost of higher education results in greater college student debt. New York State should embark on proposals to reduce debt and tuition costs.

A recent report found that state funding for public higher education in New York is down since 1991/92.¹ The so-called "rational tuition" policy has jacked-up the cost of tuition at public colleges by over 24%.²

At the same time, the ability of typical New York families to absorb these costs has been limited. A recent survey found that from 1979 through 2011 the wealthiest 1% of New Yorkers saw an income

¹ Fiscal Policy Institute, New York State's Underinvestment in Public Higher Education, January 15, 2009.

² The State University of New York estimates that in academic year 2014-15, average tuition and fees are: \$6,170 tuition. The so-called "rational tuition" policy allowed for \$300 annual increases for 5 years, or a total tuition increase of \$1,200 so far. Thus, SUNY tuition has increased 24% since the plan went into place. See: <http://www.suny.edu/smarttrack/tuition-and-fees/>. Calculations performed by NYPIRG.

growth of 241.0%, while the bottom 99% saw an income growth of only 8.5%.³ Moreover, the lower the income, the more stagnant the wages.⁴

This combination has eroded college affordability: Stagnating State support plus rising tuition that outpaces family income growth has resulted in rising *debt* for college students. In New York, 60% of college graduates now carry debt loads that exceed \$25,000.⁵

Help reduce college costs by bolstering the Tuition Assistance Program (TAP). The Legislature’s support of the State’s public higher education institutions, New York’s TAP, and its opportunity programs, in this year’s budget can have a very meaningful impact on students across the state seeking a quality, affordable education.

New York has long recognized the importance of supporting immigrant students, including funding programs to support English Language Learners and college readiness programs. Approximately 65,000 undocumented students graduate from U.S. high schools each year (an estimated 4,550 of these graduates are in New York State), but barriers to their ability to access higher education – including financial limitations – result in only 5-10% of these undocumented high-school graduates going to college.⁶ In 2002, then-Governor Pataki and the Legislature agreed to grant undocumented students access to in-state tuition rates.⁷ Moreover, in most instances these college-ready students have gone through the state’s K-12 educational system—representing a significant investment in their education.

The governor took a positive step toward fixing an outdated financial aid program by including \$27 million for the so-called DREAM Act in his executive budget. The DREAM Act is essentially an expansion of the TAP program to otherwise eligible college students are able to get needed aid. We urge support.

Help offset students’ college costs by enhancing state support for SUNY and CUNY. According to NYSUT, SUNY and CUNY have been cut nearly \$2 billion since 2008.⁸ This disinvestment has shifted the burden of filling state budget gaps onto the backs of students and their families. During this time, NY SUNY 2020 has raised tuition at SUNY and CUNY \$300 each year for five consecutive years. These changes made college less – instead of more – affordable. Bolstering state support will help reduce increasing fees.

In addition, increase community college base aid. Community colleges are a local, affordable path to a higher degree or a better job for many New Yorkers, including those who need to be close to their homes, families, and jobs. Moreover, community colleges provide crucial job training and re-training for under-employed and unemployed workers in a rapidly shifting economic environment.

³ Sommeiller, E., and Price, M., “The Increasingly Unequal States of America, Income Inequality by State, 1917 to 2011,” Economic Policy Institute, February 19, 2014, see: <http://www.epi.org/multimedia/unequal-states-interactive/#/NewYork>.

⁴ Leonard, D., “The Great Wage Slowdown,” The New York Times, October 7, 2014, see: <http://www.nytimes.com/2014/10/07/upshot/the-great-wage-slowdown-of-the-21st-century.html?smid=tw-share&abt=0002&abg=0>.

⁵ The Institute of College Access & Success, “College In Sight,” see: http://projectonstudentdebt.org/state_by_state-view2014.php?area=NY.

⁶ New York Immigration Coalition, “New York State DREAM legislation Update,” December 2011, http://www.thenycic.org/sites/default/files/NYSDREAMUpdate_Dec52011_FINALFINAL.pdf. May, 2012.

⁷ See New York State S.7784/A.9612, see: <http://assembly.ny.gov/leg/?sh=printbill&bn=A09612&term=2001>.

⁸ New York State United Teachers, “Support The Public Higher Education Quality Initiative,” available at: <http://www.nysut.org/resources/special-resources-sites/quality-higher-education>.

We applaud you for the \$75 increase per FTE in community college based aid in last year's budget and strongly urge the Legislature to support the request from CUNY and SUNY to increase State Base Aid by \$250 per FTE. This would restore funding that has been lost since 2008 and bring the State closer to fully funding community colleges at 40% of their costs as required by law.

Help offset college loan debts by supporting – and improving – the executive's "Get On Your Feet Loan Forgiveness Program."

The executive proposes that the state supplement the federal "Pay As You Earn" program. Under the plan, these college graduates would be eligible for state support for two years as long as they earn under \$50,000 annually. A college graduate would still have to make the 10 percent payments out of their pocket. Under the executive's "Get On Your Feet Loan Forgiveness Program," the state would then pay the difference between the standard repayment and the PAYE program for two years.

While the program is limited, it is worth supporting. However, there is a technical flaw in the way the proposal is drafted. The executive's proposal calculates the \$50,000 threshold for the college graduate, the graduate's spouse, and the college graduate's parents. The proposal should not include parents' income.

Strengthen support for opportunity programs that work. These programs, which are designed for the "educationally and economically disadvantaged," have a steady track record of success in increasing graduation rates among the most at-risk students. In general, students in opportunity programs are individuals who have come from low-income communities and often times rank low on traditional measures of collegiate admissions standards, such as SAT scores, high school GPA, and class standing.[i]

Restore cuts to the state's opportunity programs. The executive budget recommends several budget cuts to critical programs including the Search for Education, Elevation, and Knowledge (SEEK) program (\$1.12 million reduction) and College Discovery (\$26,900 reduction).

In addition, the executive budget cuts \$1.7 million from the highly successful and nationally known Accelerated Study in Associate Programs (ASAP) that provides top-to-bottom financial support and academic services for students at CUNY community colleges. It should be noted that ASAP students graduate at more than double the rate of non-ASAP students, with increases in graduation rates after three years of at least 30%.

NYPIRG strongly urges the Legislature to restore the proposed cuts to CUNY SEEK and ASAP. In addition, the legislature should take steps to increase funding to these and other opportunity programs.

Take additional steps to help offset the college costs. TAP should cover more of the cost of tuition for those who qualify, and be flexible enough to meet the needs of all types of New Yorkers, not just the "traditional" straight-from-high-school-to-college full-time student that it was initially designed to serve. Unfortunately, the executive budget does not propose any changes additional changes to TAP.

NYPIRG is member of the *Reform TAP* coalition. We've attached the platform which outlines our recommendations for the TAP.

Rapidly rising tuition, state disinvestment, outdated and inadequate financial aid, and growing student loan debt all conspire to put college out of reach for many New Yorkers. The demand to graduate more students from college with less student loan debt must be matched with an effort to lower costs and increase financial aid programs such as TAP.

We urge the Legislature to restore funding levels to CUNY and SUNY, support the CUNY and SUNY budget request to increase State Base Aid to community colleges by \$250 per FTE, reform the Tuition Assistance Program (TAP), include the New York State DREAM Act in this year's budget, embrace an amended version of the executive's loan forgiveness program, and strengthen support to opportunity programs that work.

NYPIRG'S COMMENTS ON THE EXECUTIVE'S PLAN FOR THE ENVIRONMENT

Increase Funding For Environmental Protection. The state's environmental funding needs far outstrip the funding proposed in the executive budget. NYPIRG greatly appreciates the Legislature's commitment over the years to helping to more adequately the state's Environmental Protection Fund (EPF).

This year, the executive proposes to add \$10 million to the EPF. This is a good step toward restoring the program up to \$200 million with an ultimate goal of EPF funding at a level of \$300 million.

Reject the executive's raid of \$36 million in funds from the Regional Greenhouse Gas Initiative. The executive proposes taking \$36 million in funding from the New York State Research and Development Authority that is generated from RGGI auction. The executive argues it will use that money to fund a boost in the EPF, and supporting solar tax credits.

NYPIRG urges you to reject the executive's plan. Instead, boost funding for EPF with others funds and reject the RGGI funding raid.

Need to secure long-term financing for the state Superfund program. There are currently more than 800 toxic waste sites awaiting cleanup through the state's Superfund program, and more sites get added to the list every year. Unfortunately, the State's 10-year bonding authority for the state's Superfund expired last March. The executive proposes including \$100 million in this year's budget to extend the Superfund program for one year, along with some portion for the Environmental Restoration program, which funds the cleanup of municipal properties.

This is a radical shift from how the Superfund has been financed in the past, and will have negative impacts on the program. The program has always been funded through long-term bonding. The Superfund was initially financed through the \$1.6 billion Environmental Quality Bond Act in 1986. That funding expired in 2001, and cleanups of these dangerously polluting sites virtually ground to a halt for several years before the Legislature finally refinanced the Superfund in 2003, with \$1.2 billion bonding over ten years.

The State needs to make a long-term commitment toward the cleanup of its most toxic hazardous waste sites, not subject this program to the vagaries of year to year budget appropriations. We urge the Legislature to extend the State's bonding authority for another ten years to support Superfund and ERP cleanups.

Brownfield Cleanup Program Reforms. We commend the governor for advancing a proposal to reform the state's Brownfield Cleanup Program (BCP). For years, the state has been hemorrhaging hundreds of millions of dollars for development projects that did not need the program's lucrative tax credits to move forward.

The executive proposal appropriately separates redevelopment credits from credits awarded for cost of cleanup itself, and limits eligibility for redevelopment credits to three basic areas; high-

poverty, high unemployment areas (En-Zones), sites where the property is upside down (the cost of the cleanup exceeds the estimated value of the property after cleanup), and sites that will provide affordable housing.

Additionally, the executive proposal will force projects accepted into the program under previous tax credit structures to either receive a certificate of completion by the end of 2017, or reapply under the new system. This will make projects that have lingered for years while imposing significant tax liability on the state either complete their work quickly or be subject to the rules of the much improved and more targeted tax incentive program.

While we support many aspects of the governor's brownfields reform proposal, we have concerns about the details. These include:

First, the legislature should restore funding to the state's Brownfield Opportunity Area (BOA) program. Under the BOA, state funding is used to complete revitalization plans and implementation strategies for areas affected by brownfield sites. The executive proposes that the BOA awards additional credits to projects redeveloped consistent with BOA plans and makes it become easier to designate BOAs. However, the executive's proposal is hindered by a lack of funding to support these plans.

The proposal eliminates bonus credits for Track 1 ("unrestricted use") site cleanups, despite the law's stated preference for permanent site cleanups. The proposed "BCP EZ" fast-track voluntary cleanup option offers weaker cleanup requirements as an incentive for participation; this is unacceptable for sites that will be receiving a liability release from the state at the completion of the project.

Child Safe Products Act. This proposal, contained in the State of the State policy book, represents a paradigm shift over current federal and state laws that fail to prevent toxic exposures. It would oblige the state to respond to the devastating health and environmental problems caused by toxic chemicals *before* injuries occur. This intelligent legislation proposes a preventative, science-based approach—as already adopted by the European Union.

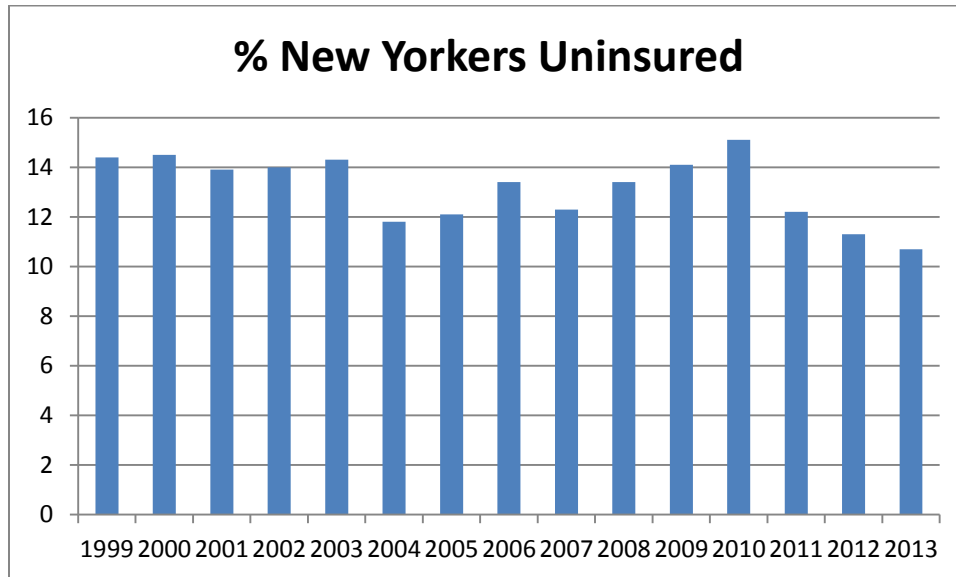
The primary federal law intended to protect the public from toxic chemicals, the Toxic Substances Control Act ("TSCA"), is woefully inadequate. TSCA was supposed to protect public health and the environment by establishing a way to review the safety of chemicals and, if based upon that analysis a chemical was found to be toxic, ban its use in the U.S. However, when TSCA became law in 1976, some 60,000 chemicals in use were "grandfathered" in as safe and no review was conducted. In the nearly 35 years since the law's enactment, only 200 of the nearly 83,000 chemicals since produced and used in commerce have been reviewed. Only five have been banned. Chemicals such as asbestos—proven to cause cancer and lung disease—have not be banned under TSCA.

Toxic chemicals are suspected of playing a role in many of most pressing health issues—including cancer, heart disease, obesity, learning disabilities, autism, reproductive problems, children's developmental disorders and injuries, and asthma.

New York should lead the way towards safer products, healthier kids and a cleaner environment by adopting this preventative approach to toxic chemical use. NYPIRG urges your support for the executive's proposal.

NYPIRG’S COMMENTS ON THE EXECUTIVE’S PLAN FOR HEALTH

Support Funding For The New York State Health Exchange. As you know, the numbers of New Yorkers who lack health insurance is considerable. According to the US Census Bureau, in 2013 roughly 2 million New York residents were uninsured (10.7 percent of the population). This represents both the lowest percentage and number of New Yorkers who lack health insurance since 1999.⁹



What has happened to drive down the number of uninsured? Nationally, the percentage of Americans without health insurance is at the lowest since 2009,¹⁰ but given the fact that many states have been slow to embrace reforms, the national impact is hard to assess. However, the drop in the percentage of the uninsured has followed the timeline of the implementation of the federal health care law. Starting in the Fall of 2010, coverage under the law started to kick in. Thus, it seems reasonable to conclude that the changes brought about by the Affordable Care Act (ACA) contributed to New York’s decline.

It is estimated that roughly half of the state’s uninsured will obtain coverage after the ACA is fully implemented.¹¹ While that will require the continuation of many of the state’s programs to help the uninsured, it is quite clear that New York must continue its implementation of the ACA in order to provide coverage to the million plus New Yorkers who will ultimately obtain coverage.

NYPIRG urges that you support the governor’s proposal to fund the state’s health exchange.

⁹ United State Census Bureau, see: <http://www.census.gov/hhes/www/hlthins/data/incpovhlth/2013/acs-tables.html> accessed 2/8/15, Table HI06, “Health Insurance Coverage Status by State for All People: 2013.”

¹⁰ *Ibid.*

¹¹ Various sources, including, “Implementing Federal Health Care Reform: A Roadmap for New York State,” New York Health Foundation, August 2010, see: http://www.healthcarereform.ny.gov/research_and_resources/docs/roadmap_for_nys.pdf.

Reject the executive's proposal to eliminate the physician profiles program. The Physician Profile program allows consumers to access, at one website,¹² key information on the credentials, discipline and malpractice records of physicians practicing in New York State.

The elimination of the Physician Profile program represents a dangerous step backwards in the effort to achieve greater transparency in healthcare. The executive has been a vocal proponent of greater transparency in the public interest, yet the 2015 executive budget proposes to eliminate one of the few health care related programs that embody transparency. While this move to take away information helpful to the public is rationalized by a claim that elimination would save \$1.2 million,¹³ the state is currently advancing health care awareness programs costing far more.

The Physician Profiles website is unique; no publicly sanctioned accessible database currently includes malpractice history or other discipline actions such as loss of hospital privileges. The assertion in the Executive Budget that “much of the information is duplicated on other publicly accessible websites”¹⁴ is simply not correct. Without Physician Profiles, people who are dealing with healthcare issues will be forced to rely on searching among alternative sources of information, most of them proprietary and of unknown accuracy.

We are concerned that this proposed repeal arises just as the Office of Professional Medical Conduct was reported to have been stepping up its activities as regards sanctioning physicians who were failing to obey the law. Postings in *MDNews* and an e-newsletter of the Medical Society of the State of New York (MSSNY) warned doctors that the OPMC had, as *MD News* put it, “undertaken a more aggressive approach to investigate and, in some cases, begin disciplinary action against physicians who have failed to update their New York State Physician Profile.”¹⁵

Instead of abandoning the Profiles program, the law should be strengthened to *require* dissemination of information about the availability of Physician Profiles directly to patients. While the current law requires DOH to “develop and distribute a notice suitable for posting that informs consumers of the availability of Physician Profiles,”¹⁶ it does not require the posting of this information in patient areas at hospitals, clinics or doctors’ offices or the dissemination of this notice to patients. Also, the Governor and Legislature should establish an OPMC consumer assistance office to help consumers navigate the complaint process. Finally, we urge that the Office of Professional Medical Conduct receive stronger funding to carry out its mission. This can be accomplished by returning to the principle that fee revenue from physician licensing and recertification be dedicated to supporting OPMC.

Reject The Governor's Proposal To Consolidate Funding For Public Health Programs. As you know, in recent years the governor’s budget has called for the consolidation of public health programs coupled with cuts in funding. Thankfully, both houses rejected the executive’s plan in their one house budget bills. Unfortunately, the governor’s insistence on cuts to these vital programs resulted in reductions in funding.

¹² See New York State Physician Profile Website, available at <http://www.nydoctorprofile.com/>.

¹³ See, <https://www.budget.ny.gov/pubs/executive/eBudget1516/fy1516littlebook/BriefingBook.pdf>, p. 110.

¹⁴ *Id.*

¹⁵ See J. Barbera, “New York State Physician Profile – Practice Alert!” (Sept. 1, 2014) (available at http://www.mdnews.com/news/2014_09/new-york-state-physician-profile-%E2%80%94-practice-alert!.aspx); “MSSNY, “OPMC Taking Action v. Physicians Who Do Not Update Profile,” *Weekly Update for New York State Physicians*, Vol. 14, No. 23 (June 13, 2014) (available at http://www.mssny.org/MSSNY/Publications/MSSNY_eneWS/June_13_2014.aspx).

¹⁶ PHL §2995-a(12).

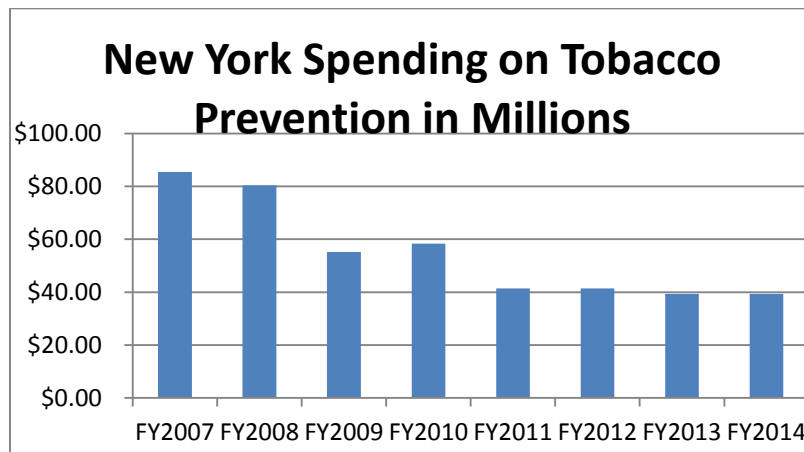
This year, the governor’s budget has again proposed consolidation coupled with cuts in funding. The executive proposes to consolidate 41 separate public health programs into five separate pools and then cut those programs by 15%, or \$21.3 million.

Instead of clearly disclosing his budget proposals in an item-by-item basis, the governor instead re-allocates those public health programs into five areas and allows the Health Department to award grants from that pool.

If the executive wishes to cut funding for public health programs, it should do so openly and specifically. Unless it does so, *NYPIRG urges you to reject the governor’s proposed consolidation of public health programs and the corresponding cuts.*

Restore funding to the state’s tobacco control program. When it comes to New York’s tobacco policies, one huge inconsistency stands out: the state raises billions in tobacco revenues, yet spends pennies on the dollar funding programs to help smokers to quit (and thus avoid the taxes) and to keep kids from starting.

New York has raised billions in tobacco revenues over the past eight years, but only a tiny percent has been spent on tobacco control programs. Worse, as seen below, over the past few years funding for the tobacco control program has been cut by more than half. In the current fiscal year, New York will spend on tobacco control a mere two percent of tobacco revenues, and only 15 percent of the amount recommended by the CDC.¹⁷



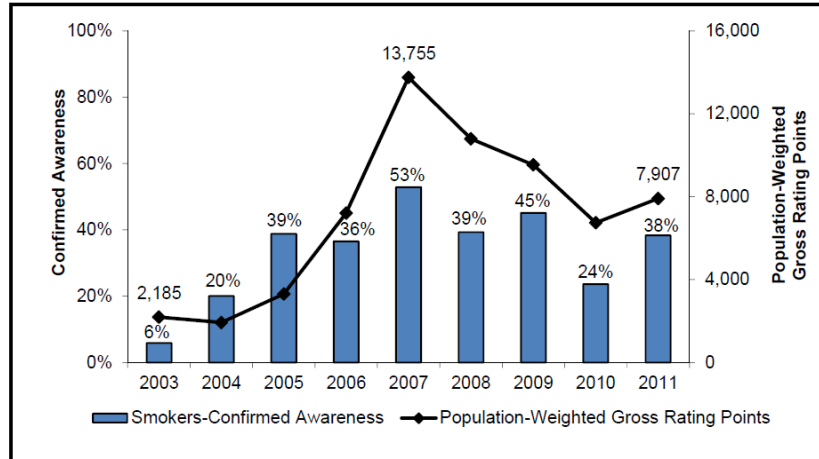
The state’s tobacco control program is subject to an annual independent audit.¹⁸ The audit bases its analyses on the how well the program complies with best practices, in particular those recommended by the U.S. Centers for Disease Control and Prevention. New York’s program, while justifiably lauded for its efforts, is woefully underfunded.

¹⁷ Budget information from the New York State Division of the Budget, U.S. Centers for Disease Control and Prevention (CDC), “Best Practices for Comprehensive Tobacco Control Programs – 2007, October 2007, p. 90 (NY). See: http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2007/BestPractices_Complete.pdf.

¹⁸ Notably, New York State’s Health Department has ignored this legal requirement. The audits are required by law to be released by September 1st. However, last year’s audit, dated December, 2012 was released in the Fall of 2013. **The 2013 report has not been released.**

Not surprisingly, these cuts have had an impact. Once 5th in the nation, New York now ranks 21st in tobacco control efforts.¹⁹ Programs have been drastically curtailed, or eliminated altogether. The program’s advertising budget has been substantially cut back. As seen below, those cuts have negatively impacted on smokers’ awareness of the program.²⁰ Lack of such knowledge makes it far more likely that smokers who wish to quit are deprived of the services that can help them to do so.

Figure 22. Confirmed Awareness of Paid Advertisements among Smokers and Population-Weighted Statewide Average Gross Rating Points, Adult Tobacco Survey 2003–2011



NYPIRG urges you to increase the funding levels of this lifesaving program and commit to annually increasing the appropriation until New York meets the standards set by the CDC.

Support the executive’s proposals to enhance oversight of medical procedures performed in ambulatory surgical centers and physician offices. The executive proffers two proposals: (1) to empower the Public Health and Health Planning Council (PHHPC) to review the procedures performed in outpatient settings and make recommendations for changes; and (2) to include office-based anesthesia in office-based surgery requirements as well as to standardize and limit the procedures permitted in such settings. As you know, increasingly medical procedures are performed in facilities outside of hospitals. As the number and complexities of such outside procedures grows, it is important for regulators have the tools necessary to monitor those settings.

NYPIRG urges your support for these two measures.

Restore funding to the state’s lead poisoning detection and prevention fund. The executive budget proposes moving childhood lead poisoning detection and prevention funding out of Department of Health into Department of Financial Services. The Assembly Yellow Book (p. 33) states: “Department of Financial Services (DFS) Program Funding: program funding is transferred from DOH to DFS, including \$4.7 million for the Childhood Lead Poisoning Prevention program and \$275,700 for the Lead Poisoning Prevention program.” In addition to concerns regarding the transfer of funding, it appears to be a significant cut in funding, down to about 30% of the funding in the 2010-2011 budget.

¹⁹ Campaign for Tobacco Free Kids, see: http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2014/3.%20FY2014%20Rankings%20of%20Funding%20for%20State%20Tobacco%20Prevention%20Programs.pdf.

²⁰ *Ibid*, p.38.

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NYPIRG urges restoration of the program's funding to 2010-2011 levels.

NYPIRG'S COMMENTS ON THE EXECUTIVE'S PLAN FOR GOVERNMENT REFORM

The governor has proposed a number of reform measures. He has some of his ideas included in the executive budget, but has promised to offer additional measures in his 30-day amendments. We will respond both to those included in the budget and, to the extent possible, to his recently advanced plans addressing ethics.

GOVERNOR CUOMO'S CAMPAIGN FINANCE PROPOSALS

The Executive recommends Article VII legislation that would:

- enact a public financing system modeled on New York City's, where contributions are matched \$6 to \$1. No funding is provided for public campaign financing since it is not effective until the 2018 election year.
- lower contribution limits for all state offices. Specifically, contributions to "housekeeping accounts" would be limited to \$25,000 per year, party committee transfers or spending for candidates would be limited to contributions less than \$500 per contributor, transfers between committees will be limited to \$5,000, corporate contributions would be reduced to \$1,000 per year and LLCs will be treated as corporations rather than individual contributors.
- establish a new tax return checkoff allowing resident taxpayers to contribute to the "New York State Campaign Fund."
- limit the personal use of campaign contributions to expenses that are directly related to elections or public duties and enumerates a list of prohibited expenditures.

New York has long been on notice about the failure of its state's campaign finance law. Twenty years ago, the final report of the Commission on Government Integrity was issued. The Commission's report condemned New York's lax ethical standards calling them "disgraceful" and "embarrassingly weak." The

Commission then scolded state leaders for failing to act, “Instead partisan, personal and vested interests have been allowed to come before larger public interests.”²¹

Yet, the necessary steps have not been taken to overhaul the state’s campaign finance system. Indefensibly high contribution “limits,” coupled with utterly inadequate disclosure requirements and nonexistent enforcement, have created a system that cries out for change, starting with the need for establishing a voluntary system of public financing.

Problem: New York’s campaign contribution limits are too high resulting in a heavy reliance on a small number of donors who often have business before the government.

New York State relies on private donations to fund its political campaigns. Thirty seven states limit the size of contributions individuals can make to candidates for office. New York’s limits - \$60,800 to a candidate for statewide office – are the highest of any of these, and are more than twenty times the limit of the majority of these states.²² Since New York State has the highest campaign contribution limits of any state with limits, candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.²³

Individuals donating to candidates for statewide offices, for example, can give up to \$60,800. One individual has been able to directly give Governor Cuomo \$800,000 this election cycle and has given even more to the State Democratic Committee’s “housekeeping” account, which has spent money on the governor’s behalf.²⁴

Another result is that candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.²⁵ For example, between 3/5 and 2/3 of all the money entering the political system comes from lobbying firms or their clients.²⁶

This system shuts out ordinary New Yorkers. In the 2012 legislative election cycle (most recent analysis),

- Only 3.3% of money entering the system came from individual donors who gave aggregate totals of \$250 or less;
- By contrast, 61.7% came from businesses or unions;
- 15.40% came from individuals giving \$2,500 or more;²⁷ and,
- Only 40,381 individual state residents, or 0.21% of the state’s population, donated.

In addition, New York’s sky-high contribution levels have fueled a shift away from smaller donors toward reliance on bigger ones. This reliance undermines the public’s involvement in a system that can only be described as a money chase.

²¹ New York State Commission on Government Integrity, “Restoring the Public Trust: A Blueprint for Government Integrity,” Volume 1, December 1988.

²² National Conference of State Legislatures, *State Limits on Contributions to Candidates* (June 1, 2012): http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012v2.pdf

²³ See, e.g., NYPIRG, *Albany’s Pay-To-Play Culture*, 19 April 2013.

²⁴ NYPIRG, *Governor Cuomo’s Fundraising in the First 31 Months of the 2014 Election Cycle*, 15 July 2013.

²⁵ See, e.g., NYPIRG, *Albany’s Pay-To-Play Culture*, 19 April 2013.

²⁶ NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

²⁷ NYPIRG, *Capital Investments 2012* (January 7, 2013).

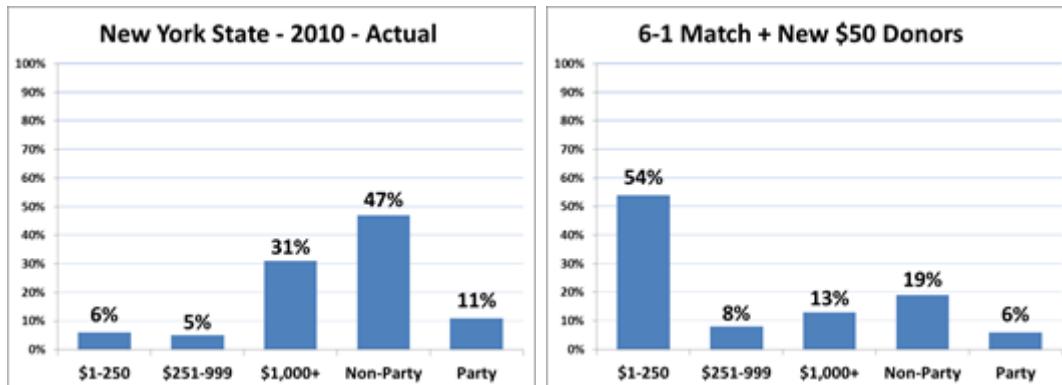
The Shift from Small to Big Campaign Donors, 2000 Compared to 2012

Contribution Level	% in 2012	Contribution Level	% in 2000
>=\$10,000	28.83%	>=\$10,000	14.60%
<\$10,000, >\$2,500	23.29%	<\$10,000, >\$2,300	20.07%
<=\$2,499, >=\$1,000	17.81%	<=\$2,300, >=\$1,000	19.92%
<\$1,000, >=\$250	18.99%	<\$1,000, >=\$200	29.67%
>\$250	11.09%	>\$200, <=\$100	11.91%
		<\$100	3.84%

Key Recommendation: Establish a system of public financing of elections.

New York State relies on private donations to fund its political campaigns. Since New York State has the highest campaign contribution limits of any state with limits, candidates focus their fundraising on those who can give the most – and those individuals and entities usually have business before the government.²⁸

Political campaigns in the United States are typically financed by a relative handful of donors. In New York State in 2012, only 6% of candidates’ money came from donors who give \$250 or less. In contrast, 78% came from non-party-organizations (such as PACs) and individuals who gave \$1,000 or more.²⁹



New York City has a system of voluntary public financing. Candidates who voluntarily choose to participate see their contributions enhanced when they raise donations of \$175 or less. In those cases, each \$1 raised is matched with \$6 in public funds.

That system has shifted the balance of relying on a small number of large donors to a system relying on a large number of small donors. It has given candidates an incentive to turn their attention toward small donors through a program that matches donor contributions 6 for 1 up to \$175. A study by the Campaign Finance Institute showed that a similarly dramatic result would be likely in state elections. It shows that even if matching funds brought no new donors into the system, the role of the small donors under a six-

²⁸ See, e.g., NYPIRG, *Albany’s Pay-To-Play Culture*, 19 April 2013.

²⁹ Campaign Finance Institute, “Public Matching Fund System Would Reverse the Importance of Small and Large Donors in New York State Elections,” 4/17/12, see: http://www.cfinst.org/Press/PReleases/12-04-17/Public_Matching_Fund_System_Would_Reverse_the_Importance_of_Small_and_Large_Donors_in_New_York_State_Elections.aspx.

for-one system would shoot up from 6% to 30%. But that 30% number is almost surely too low. It assumes no new donors at all.

New York State's donor participation rate is near the bottom of the country nationally. New York State's candidates for the legislature in 2012 raised 76% of their money (through the final pre-election disclosure reports) from donors who gave them \$1,000 or more, and from interest groups. Only 8% came from donors who gave \$250 or less.³⁰ If the match would lead state candidates to attract just enough new \$50 donors to bring participation up to the city's rate, the small donors would be worth 54% of the total amount raised.

This would be a dramatic change: from 8% to 54%. Small donors would be the most important financial constituents instead of the least important. If the goal is to connect candidates more strongly with the people they are supposed to represent, the New York City system is the model to emulate.

In sum, a key way to minimize that obvious conflict is to create a system of public financing of elections. New York City has a system of public financing in which candidates who voluntarily opt into the system receive \$6 public for every \$1 raised from small contributions (up to \$175), thus encouraging the solicitation of large numbers of small donors.³¹ This stands in stark contrast to the state, in which as mentioned earlier, candidates rely on a small number of big donors.

NYPIRG urges support for a voluntary system of public financing.

Problem: Donations to “housekeeping accounts” are unlimited.

New York exempts from contribution limits for donations to so-called “housekeeping” for “party building activities.”³² There have been widespread abuses of this exemption. For example, in 2012, the Independence Party admitted to using soft money to pay for ads attacking specific candidates mere days before an election. \$311,000 of the funds used to buy these advertisements came from the Senate Republicans' housekeeping account.³³ Candidates for office must use campaign contributions for all of their administrative costs, why shouldn't the parties? The housekeeping loophole has allowed donors to circumvent New York's already-weak campaign limits.

The governor's proposal places a \$25,000 limit on these donations, but they it is still too high. New York State must eliminate this loophole and require party and political committees to raise and spend money just like candidates – through direct campaign contributions.

Problem: Limited Liability Companies (LLC) are allowed to give contributions far in excess of corporations.

The “LLC Loophole,” which treats each Limited Liability Company as an individual for purposes of how much may be donated, has allowed some donors to give well over a million dollars. This exemption is not found in the state's Election Law. Rather, a 1996 opinion from the Board determined that these

³⁰ Campaign Finance Institute, “Lower Contribution Limits with Public Matching Funds in NY State, Reversing the Role of Small & Large Donors, Would Leave Candidates “Whole” While Costing New Yorkers only \$2/year,” see: http://www.cfinst.org/Press/PReleases/13-04-01/Updated_CFI_Research_on_Public_Matching_Funds_Proposal_for_New_York_State.aspx.

³¹ New York City Campaign Finance Board, see: <http://www.nyccfb.info/candidates/candidates/publicmatchingfunds.aspx>.

³² New York State Election Law §14-124(3).

³³ Kenneth Lovett, “Independence Party Goes Along With GOP Scheme. . .,” *NY Daily News*, 4 March, 2013.

business entities – creatures of state statute – should be treated as individuals, not corporations, for the purposes of calculating contribution limits.

Since the Board’s administrative decision, the role of LLCs in New York’s political system has skyrocketed. In the first six months of 2013, they accounted for 14% of all money raised by state-level candidates and party committees, giving more than three times as much as individuals who wrote checks smaller than \$1,000. While the Board in 1996 claimed the power to interpret this area of election law, when petitioned to reconsider their opinion, they have claimed that they do not have this power, and refuse to revisit the issue. This is true despite the fact that the FEC - which the Board used to justify its 1996 decision – has reversed course.³⁴

Through various entities and campaign accounts, real estate developer Leonard Litwin has given Governor Cuomo \$1 million for the 2014 election cycle. He is perhaps the most frequent user of the LLC loophole, and often uses it to give more than \$1 million in a calendar year.

It is often difficult to tell the source of many of these donations by looking at the names of the donors or even performing an internet search. One side effect of the LLC loophole is the obfuscation of the true source of campaign funds. Mr. Litwin is *not* the only donor who has made use of this loophole. During the first six months of 2013, state-level committees received at least \$4.6 million from donors that used LLCs.

The governor proposes that LLCs be treated in the same manner as corporations – subject to a \$1,000 annual aggregate donation limit. However, “affiliated” LLCs and corporations would be counted as separate entities. Thus, the governor’s restriction is undermined. NYPIRG urges that LLCs and corporations, plus their subsidiaries and affiliates, be subject to one limit.

Additionally, the governor’s proposal does not address the lack of a contribution limit for LLCs and corporations. A \$1,000 contribution limit per election cycle coupled with his proposal for annual \$1,000 donation limits would strengthen this proposal.

Problem: The ‘personal use’ of campaign contributions.

Election law says that no funds may be “converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.”³⁵ Despite the apparent limitation on the use of campaign funds in state law, the Board of Elections has interpreted the law to mean that unless candidates “out-and-out stick it in [their] pocket and walk away, everything’s legal.”³⁶

The Board of Elections’ informal approval of the permissible use of campaign funds has given campaign committees *carte blanche* to spend money however they want. Candidates have taken full advantage of this. For example, former state Senator Bruno used his campaign funds to purchase an in-ground pool cover, ostensibly because he held political party meetings at pool side.³⁷ In a typical year, legislators spend around half a million dollars on golf, \$200,000 on new cars, \$70,000 on flowers, and \$30,000 on cigars.³⁸ Effectively, this means that legislators from districts in which they rarely see serious electoral challenges can treat their campaign donations as a way to boost their personal lifestyles.

³⁴ Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400).

³⁵ New York State Election Law Section 130-4.

³⁶ Jennifer Medina, “State Campaign Finance Rules Need Tightening, Study Says,” *The New York Times*, May 26, 2006.

³⁷ “Gov. Cuomo’s Next Big Task,” *The New York Times*, December 23, 2011.

³⁸ Information compiled by NYPIRG with information obtained from the Board of Elections.

Another practice that runs contrary to the spirit of the Election Law’s ban on personal use of campaign contributions is the widespread practice of spending these funds on criminal defense. Between 2004 and 2012, nearly \$7 million was spent on this purpose.

The governor’s proposal clearly identifies certain expenditures – childcare payments, tuition, and fines for ethical lapses – as personal use. Many of the prohibitions in his budget, including those on rent, sporting tickets, and vehicles, are meaningless due to the inclusion of language saying that these do not count as personal use if they are related to running for or holding office. In recent years, candidates have shown that any expenditure can be defined to fit into one of these categories.

NYPIRG urges that personal use restrictions be mirrored after the definition of personal use created by the IRS. This problem will only truly be addressed, however, with the creation of a robust and independent regulatory agency which can regularly update the definitions of permissible campaign expenditures.

Problem: Contributions which are “bundled” are not disclosed.

While lobbyists give large amounts of money directly from their personal bank accounts, they are able to deliver even more through “bundling” money on behalf of their clients. Participants in this practice multiply their political contributions and influence by aggregating checks written by members, clients, or associates. Other governments, notably New York City’s, require committees to disclose which of their donations were bundled and by whom.³⁹ Bundling is a key way in which lobby firms magnify their influence and ingratiate themselves to decision makers.

In 2012, NYPIRG attempted to understand the practice of bundling at the state level by looking at the firm Featherstonhaugh, Wiley & Clyne, *et al.* Our review showed that 62 different political committees received donations from various combinations of their clients and firms within the time of one week; these donations were often reported on the same day. There were 287 such donations overall, totaling \$559,383. An additional \$978,256.87 in donations came from the firm, its clients, or related organizations over the past year, though these donations were not reported by committees during the same weeks in which they reported donations from other clients. While there is nothing unlawful about this conduct, taken together, these numbers total \$1,537,639.87, meaning that more than 3% of the total money raised by all candidates and state parties during the time period examined came from one lobby firm.

It is difficult, however, to establish exact numbers reflecting the extent of this process. New Yorkers deserve to know which interests have bought access to their elected officials; complete disclosure of bundling is the only way for them to do so.

NYPIRG supports the governor’s proposal to require the disclosure of intermediaries.

Problem: The employers of any donors who contribute more than \$99 in a calendar year to any one committee are identified.

The purpose of campaign finance disclosure is to enable voters to discern who is contributing to their elected officials. Often, the appearance of a name, especially a common one, is not enough for a viewer

³⁹ New York City Administrative Code Section 3-701 (12) defines bundlers as follows: “The term ‘intermediary’ shall mean an individual, corporation, partnership, political committee, employee organization or other entity which, (i) other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity to a candidate or authorized committee; or (ii) solicits contributions to a candidate or other authorized committee where such solicitation is known to such candidate or his or her authorized committee.”

to determine whether or not a donor has a unique relationship to the government, perhaps as a recipient of state funds. The New York City Campaign Finance Board’s regulations can be used as a model.⁴⁰

THE GOVERNOR’S PROMISES ON ETHICS REFORMS

Last week, Governor Cuomo proposed a new “**5 Point Plan**” to bolster Albany’s ethics.

The centerpiece of the governor’s package is his plan on requiring disclosure of lawmakers’ outside income.

Unlike the members of the executive branch and members of Congress, New York State legislators are considered part-time and can have outside jobs. The governor proposes that lawmakers fully disclose the sources of their outside income, meaning, for example, that lawyers would have to disclose their clients. Essentially, the governor argues that disclosure and public oversight would deter future unethical working arrangements.

The governor’s proposal is surely an improvement, but a better approach would be to follow the Congressional model and just cap the amount of outside income a lawmaker can make. If the problem is that lawmakers are using their public office for their private gain, simply tell them that they can’t – allowing them to do so openly does not solve the problem.

Moreover, the governor said nothing about improvements in the enforcement of his plan. Even the best laws require oversight, and an inadequate enforcement will undermine even the best laws.

The governor also advanced additional measures, including a change to the state constitution that would deprive a convicted public official of a pension and curtail legislative “per diem” payments to cover only actual expenses.

Regarding changes to the “per diem” and reimbursement system, it makes sense to us to make reimbursements based on specific expense receipts.

Lastly, the governor has proposed that future executive and legislative salaries be determined by an independent commission. While we agree that such pay should be based on objective measures instead of political deals, we urge that such a commission – if approved – have members who are independent of the political process and look to objective criteria – such as tracking the wage changes for the media resident of the state – when determining future salary rates.

In addition, there needs to be additional ethics measures that the governor’s plan did not address.

Structural flaws in the state’s ethics oversight

The recently-created Joint Commission on Public Ethics (JCOPE) has obvious structural flaws resulting from political compromises that must be remedied.

- JCOPE’s board consists of 14 members, 6 of whom are appointed by the governor.⁴¹ The panel’s size is far too large, the largest in the nation.⁴² Instead, the board should be smaller in number.

⁴⁰ New York City Campaign Finance Board, see: <http://www.nycfb.info/act-program/rules/index.aspx>

⁴¹ New York State Joint Commission on Public Ethics, see, e.g., *About Us*, <http://www.jcope.ny.gov/about/commission.html>.

⁴² National Conference of State Legislatures analysis shows that no other ethics agency has as many members as New York. For more information, see: www.ncsl.org/research/ethics/state-ethics-commissions.aspx.

Large boards are unwieldy, inhibit substantive discussion and make decision making more difficult. The law also must be bar the involvement of elected officials from the ethics watchdog panel.⁴³

- The current provision giving appointees of legislative leaders a veto on JCOPE investigations of the legislators must be repealed.⁴⁴
- There should be a “revolving door” limitation that prohibits legislative or executive staff from becoming JCOPE staff.
- The executive directors of both JCOPE and the Legislative Ethics Commission (LEC) should serve for a fixed term (with removal during that term, only for cause) to enhance her or his independence from political retribution.
- JCOPE and the LEC should be covered by the provisions of the Freedom of Information and Open Meeting Laws requirements and make all investigation records open to public inspection when a matter is closed, as was the practice of the Temporary State Commission on Lobbying.
- Both JCOPE and the LEC must have budgets that are predictable, adequate, and not subject to political pressures.

Improve Ethics Disclosure

The Public Integrity Reform Act of 2011 made significant improvements in the disclosure of elected officials’ outside business interests. For the first time, the narrow ranges showing the values of their outside incomes were made public. There is, however, room for further improvement. Under the current system, legislators send their forms to the in-house Legislative Ethics Commission, which has over a month to make these filings available. These filings should be posted immediately.

Disclosure forms should be submitted and displayed in a digital format. Under the current system, many forms are submitted electronically, but these are printed and scanned by the Legislative Ethics Commission. Submissions must be made in an electronic format.

There should be some disclosure of real estate transactions, which are often exempted under the current law. Finally, the method of disclosing large investments in which a legislator has a share of should be adjusted. Under current rules, officials are required to disclose the total value of an investment and the percentage they own; when the investment is worth a significant amount, this system effectively hides their share.

Improve Lobbying Disclosure

In 2013, JCOPE posted spreadsheets containing lobbying information on their website for the first time. These should be posted more frequently. They currently post information only twice a year, meaning that money spent in January does not appear online until September. The public deserves to know which interests are attempting to influence legislation as quickly as possible. Posting these forms on a daily basis reflecting new filings would require a minimal investment of time, and would let voters understand debates over issues such as the budget before they are concluded. All filings *do* appear in JCOPE’s searchable database, but the limited options available on this tool would require a user to perform thousands of unique searches to capture every large spender. Thus, the online database should also be modernized.

Under the current system, there is little standardization of information of the information that is entered. For example, bill numbers are entered with scores of variations: One might expect to see A.1234, A 1234,

⁴³ National Conference of State Legislatures analysis shows that the overwhelming majority of states prohibit public officials from membership on their ethics agencies. For more information see: www.ncsl.org/research/ethics/state-ethics-commissions.aspx.

⁴⁴ New York State Executive Law §94 13(a).

(A)1234, Assembly Bill 1234, etc. A recommended formatting in areas such as bill numbers and agencies lobbied would make it easier for voters to understand which groups are weighing in on particular issues.

NYPIRG recently identified a loophole in the state's lobbying disclosure requirements.⁴⁵ Lobbying of localities with fewer than 50,000 residents is secret – there are no lobbying rules. Thus, lobbying of important local governmental policy decisions – such as casino siting and regulation of hydraulic fracturing – were exempt from public disclosure. We believe that loophole should be closed.

Finally, JCOPE should work with the campaign finance enforcement entity to link the information contained in their respective databases. Asking filers of lobbying reports to submit the Filer IDs of any PACs they control would be a fairly simple way of doing so.

“Pay-to-play” restrictions should be established, creating lower donation limits for lobbyists than regular individuals.

Lobby firms donated over \$2.3 million in the 2012 legislative election cycle. This figure is even higher with the inclusion donations from their employees. In the first half of that two-year period alone, lobby firms, their PACs, and their employees directly donated \$1,838,009.84 to state-level candidates and party committees. This figure represents about 4% of the total money raised during this time, and indicates that lobbyists working for retained firms donated nearly 70,000 times as much money per capita as other state residents.

Most lobbyists appear to donate simply to win favors from the politicians whose votes they hope to sway. Democracy is healthier if candidates' fundraising relied more on individuals who gave solely because they liked their positions, and not those who attempt to change them.

How much money comes from lobbyists and their clients overall? Since neither bundling nor the employers of individuals is disclosed it is difficult to come to an exact number, but our best estimate is that it falls somewhere between 3/5 and 2/3 of all the money entering the political system.

- In *Central New York*, 70% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 52.9% of all itemized donations came from these interest groups.
- In *Western New York*, 64% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 43.5% of all itemized donations came from these interest groups.
- In the *Finger Lakes Region*, 68% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 49.44% of all itemized donations came from these interest groups.⁴⁶

Whether intentionally or not, most of these legislators introduced legislation directly benefiting their donors.

Unique restrictions on the campaign involvement of lobbyists are not unusual. According to the National Conference of State Legislatures, 18 states place campaign fundraising restrictions on lobbyists.⁴⁷

⁴⁵ NYPIRG, “Drilling Down: Local Fracking Decisions Highlight Failures in New York’s Municipal Ethics Laws” report, December 2014, available at: http://www.nypirg.org/pubs/enviro/complete_drilling_down_3.pdf.

⁴⁶ NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

⁴⁷ National Conference of State Legislatures, “Contributions by lobbyists,”

See: <http://www.ncsl.org/research/elections-and-campaigns/prohibited-donors.aspx>.

Typically, there are restrictions on campaign fundraising during the legislative session. However, some states go beyond that, for example:

- Alaska: A lobbyist cannot contribute to a candidate for legislature while lobbyist is subject to registration requirements and for one year after, except to candidate in the district where the lobbyist will be eligible to vote on the day of the election (AS §15.13.074(g)).
- California: Lobbyists may not contribute to state candidates or officeholders if registered to lobby the candidate's or officeholder's agency (Govt. Code §85702).
- Kentucky: Lobbyists may not contribute to legislative candidates, nor may legislative candidates accept contributions from lobbyists (KRS §6.767 and §6.811(6)).
- Massachusetts: Contributions by executive and legislative agents are limited to \$200 per calendar year to an individual candidate or committee.
- South Carolina: A lobbyist shall not offer, solicit, facilitate, or provide contributions on behalf of any member of the General Assembly, the Governor, the Lieutenant Governor, any other statewide constitutional officer, any public official of any state agency (SC Code §2-17-80).
- Tennessee: Lobbyists are prohibited from making any campaign contributions to any candidate for governor or the general assembly (Tenn. Code §3-6-304(j)).

Thank you for the opportunity to testify.