



NEW YORK
CITY BAR

COMMITTEE ON GOVERNMENT ETHICS

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January 29, 2016

Hon. Andrew M. Cuomo
Governor
State Capitol
Executive Chamber
Albany, New York 12224

Re: A.9011/S.6411 Budget Article VII – Good Government and Ethics Reform

Dear Governor Cuomo,

I write on behalf of the Committee on Government Ethics of the New York City Bar Association. We applaud your initiative to submit a comprehensive ethics and campaign financing legislative package as part of your Executive Budget (the “Proposal”). Changes such as those presented in your Proposal would go a long way towards improving the ethical culture of Albany and making our State government less prone to corruption and conflicts of interest. We write now respectfully to request certain amendments and supplements to the Proposal within the 30 day amendment and supplementation period provided for in Article VII, section 3, of the Constitution.¹

First, we respectfully suggest that legislation be incorporated within your Proposal to implement several key recommendations and suggestions, some of which the Review Commission appointed by you and the Majority Leaders to examine the work of the Joint Commission on Public Ethics (“JCOPE”) noted in its recent report. Specifically, the Review Commission recommended that JCOPE be authorized to act by majority vote and that the current provision for veto by a partisan minority be eliminated. In addition, while stopping short of making a formal recommendation to reduce the size of JCOPE, the Review Commission commented that such a reduction would present a number of advantages. Finally, we separately and respectfully suggest that, in addition to reducing the size of JCOPE and eliminating the

¹ While we are pleased, as an initial matter, with the comprehensive nature of this Proposal, we note that there is much that remains to be done in related areas. To that end, the Committee also has under review the proper and ethical use of campaign funds, which we believe is an important element in improving the public’s understanding of the public financing of campaigns. We also may make further comments as the Proposal is considered in connection with budget adoption over the next two months. We address here only those critical points we believe are deserving of correction during the 30 day amendment and supplementation period. The City Bar takes no position on those aspects of the Proposal that are not specifically addressed herein.

minority veto, the law be changed to allow the Comptroller, the Attorney General and the Chief Judge each to appoint a member of the commission. If these changes are implemented, the true and nonpartisan independence of JCOPE can be assured in both reality and public perception.

Second, your Proposal provides that a political party may transfer to a candidate, in addition to the flat amount of up to \$5,000, an additional \$500 received from any contributor to the campaign of any nominee of that party.² We respectfully note that this provision is ambiguous in that it fails to specify whether the amount of the newly permitted transfer would be calculated by multiplying \$500 by the number of party contributors in any amount or just those who contributed \$500 or more to the political party in question. In either event, we believe that the nominees of political parties should not have significant advantages in campaign fundraising over independently nominated candidates. We therefore urge that the authority for the additional \$500 transfer received from any contributor be eliminated.

Third, while the reduction in contribution limits you have proposed are generally appropriate, we respectfully suggest that the limits on candidates to be Delegates to any Constitutional Convention are unreasonably low. Even though these candidates would, if a Convention is called, be elected either state-wide or by Senate District, the Proposal sets contribution limits at the same amount as those that apply to Assembly candidates who, of course, run in much smaller districts and have lower limits. If the assumption is that all Delegate candidates would run in party slates, we believe that setting limits on that basis would be inconsistent with the idea of independently nominated candidates and contrary to the desire to enhance the chances for an effective Convention by minimizing partisanship among the Delegates. We make the following recommendations:

- Revise the contribution limit for Delegate candidates running for the 189 positions in Senate Districts (three per District) to those limits applicable to candidates for State Senate³;
- Revise the contribution limit for Delegate candidates running for the 15 state-wide positions to those limits applicable to candidates for statewide office⁴; and
- Set the amount of public financing available to a Delegate candidate running in a Senate District at the same level as a Senate candidate (\$375,000), and with the same eligibility requirement.

We believe these recommendations are consistent with current levels for positions of equivalent geographic scope.

We also suggest that the statewide candidates for Delegate receive an amount of public funds at least equivalent to that accorded to candidates running for one of the Delegate positions

² See <https://www.budget.ny.gov/pubs/executive/eBudget1617/fy1617artVIIbills/GGER.pdf> at p. 15, ll.18-24.

³ Those limits are: \$5,000 primary, \$5,000 general, with a \$1,000 reduction for those participating in public financing. See *supra* fn. 2 at p. 14, l.12; p.11, l.23.

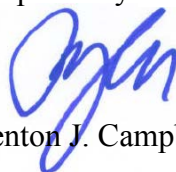
⁴ Those limits are: \$10,000 primary, \$15,000 general and \$6,000 primary, \$6,000 general for those participating in public financing. See *supra* fn. 2 at p.13, ll.6-8; p. 10 ll.10-18.

in the Senate districts. Although we recognize that there are compelling arguments in favor of providing public funds for statewide Delegate candidates in amounts available to candidates for other statewide offices, we recognize the financial burdens such funding would present and make this suggestion as one alternative, out of several, to provide at least a minimum amount of public campaign funds, subject to the eligibility requirements for Senate district candidates, for Delegate candidates running statewide.⁵

Finally we urge you to drop from your Proposal the regulation of campaign consultants as lobbyists irrespective of whether they are participating in an effort to secure or oppose the passage of legislation. The deliberations on budget bills are necessarily expedited and the question of regulating campaign consultants employed by candidates for public office involves First Amendment considerations worthy of analysis and deliberation with less time pressure. We hope to comment on that component of the Proposal at a future date when such issues can be accorded appropriate attention.

Thank you again for taking this important initiative and for your consideration of these comments.

Respectfully submitted,



Benton J. Campbell

Cc: Hon. Fredrick Akshar, Chair, Senate Elections Committee
Hon. Leroy Comrie, Ranking Member, Senate Elections Committee
Hon. Tom Croci, Chair, Senate Ethics Committee
Hon. Brian Curran, Ranking Member, Assembly Ethics & Guidance Committee
Hon. Michael Cusick, Chair, Assembly Election Law Committee
Alphonso David, Esq., Counsel to the Governor
Hon. Herman Farrell, Chair, Assembly Ways & Means Committee
Hon. John Flanagan, Senate Majority Leader
Hon. Michael Gianaris, Ranking Member, Senate Ethics Committee
Hon. Carl Heastie, Assembly Speaker
Hon. Charles Lavine, Chair, Assembly Ethics & Guidance Committee
Hon. Jeff Klein, Chair, Independent Democratic Conference Leader
Hon. Brian Kolb, Assembly Minority Leader
Hon. Liz Krueger, Ranking Member, Senate Finance Committee
Robert Mujica, Esq., Budget Director
Hon. Bill Nojay, Ranking Member, Assembly Election Law Committee
Hon. Robert Oaks, Ranking Member, Assembly Ways & Means Committee
Hon. Andrea Stewart-Cousins, Senate Democratic Conference Leader
Hon. Catherine Young, Chair, Senate Finance Committee

⁵ We note that the New York City Bar Association does not yet have a position on whether a Convention should be called and that Committee members who currently intend to run for Delegate if a convention is called participated in the preparation of this letter.