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**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**TESTIMONY BEFORE THE NYS ASSEMBLY
STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS
STANDING COMMITTEE ON ELECTION LAW
STANDING COMMITTEE ON ETHICS AND GUIDANCE
JUNE 9, 2009
ALBANY, NEW YORK**

Good afternoon. My name is Sally Robinson, and I am Vice President of the League of Women Voters of New York State. With me today is Barbara Bartoletti, our Legislative Director. Thank you for having this hearing and for inviting us to speak.

The League of Women Voters is a multi-issue, nonpartisan political organization, which encourages informed and active participation in government and seeks to influence public policy through advocacy and education. Along with improvements in the voting process, good government issues such as ethics have long been a main focus of the League's advocacy efforts.

We appreciate the opportunity to discuss the ethics reform issues addressed in the Governor's ethics reform program bill. We commend all those who have recently spoken up in support of ethics reform, the Senators and Assembly members who have introduced legislation, and Governor Paterson for submitting his own proposal. We hope that both chambers and the Governor will devote the same energy to passing ethics legislation this session. While proposals are good, effective laws are much better.

Strengths and Weaknesses of Ethics Structure Before and After 2007 Reforms

The inadequacies of New York's ethics agencies, both before and after the 2007 reforms, have been well documented. There is no public record of effective oversight from the post-2007 Legislative Ethics Commission or its predecessor, the Legislative Ethics Committee. Concerns about the performance of the other post-2007 agency, the Commission on Public Integrity, are part of the reason for this hearing and the recent reform proposals.

Prior to the 2007 law that abolished it as a separate entity, the Lobbying Commission had a reputation for aggressive enforcement of the lobbying laws.

Ensuring Independence of a New Ethics Commission

Ensuring the independence of any new Ethics Commission is critical for creating an effective oversight body and restoring public confidence in state government. The League recommends that three key elements be included in ethics legislation to ensure independence:

- Consolidating oversight functions into one new entity
- Achieving greater independence in the appointment process
- Ensuring staff independence by appointing an executive director for a fixed term

Consolidating Oversight Function into One New Entity

The League, along with our other good government colleagues, supports consolidating the Commission on Public Integrity and the Legislative Ethics Commission into one new entity with independent and effective oversight over both branches of government. Only four other states follow New York's current approach in which ethics laws for the executive and legislative branches are enforced by two different agencies. The majority of states provide external oversight through one body that oversees both branches.¹

The Governor's program bill would create a new independent five-member Commission to oversee and enforce ethics, lobbying and campaign finance for both the legislative and executive branches. We agree that New York should have an independent and unified Ethics Commission so that one oversight process applies to both branches.

Achieving Greater Independence in the Appointment Process

Elected officials should not be picking who monitors their own behavior and that of their employees. Under both the Governor's proposal and reform bills in the Senate and Assembly, no single official or set of leaders will appoint the majority of the members of the Ethics Commission. This is in contrast to the current Commission on Public Integrity dominated by gubernatorial appointees and the Legislative Ethics Commission appointed by the legislative leaders, and should result in greater independence and public confidence.

The Governor's program bill contains an additional independence measure. A State Government Ethics Designating Commission would designate the members of the Commission rather than direct appointment by elected officials. The League was an early supporter of an independent commission-based selection process for judicial nominations. We think that the use of a designating commission for appointing members of the Ethics Commission deserves serious consideration.²

¹ "Ethics Reform Act of 2009" Briefing Paper for Policy Makers, February 2009, prepared by Blair Horner and Alex Freundlich.

² Several states have a process through which members of ethics boards are appointed from a list submitted by an independent commission. For example, in Wisconsin the nonpartisan Government Accountability Board is composed of six former justices of the Supreme Court who are appointed by the Governor from a list compiled by appellate judges and confirmed by the

We agree with the restriction in the Governor’s proposal that lobbyists, members of the legislature, state government employees, and officers of political parties, cannot be appointed to the Designating Commission and believe that this restriction should be extended to appointments to the Ethics Commission itself.

Ensuring Staff Independence by Appointing an Executive Director to a Fixed Term, Removable only for Cause

The League believes that the executive director of the Ethics Commission should have a fixed term, and only be removable for cause. We believe these provisions, which are not part of the Governor’s proposal, are important to further ensuring the independence of the new Ethics Commission

Improving Effectiveness of Ethics Commission

A good Ethics Commission should vigorously investigate violations of ethics laws and issue advisory opinions. Many ethics commissions also develop and adapt through issuing regulations and advisory opinions. Ethics legislation should improve the effectiveness of the new Ethics Commission by addressing funding and enforcement powers. The new body should be adequately funded with the power to conduct random compliance audits and investigate complaints, including the power to issue subpoenas.

The Governor’s bill empowers this unified agency to enforce Article 14 of the election law with respect to campaign finance. It states that the new Commission should study and recommend legislation or administrative measures to reduce contribution limits that we already know are too high. Conversely, the penalties for campaign finance violations are too low.³ Enforcement should occur administratively, providing a simpler and more cost-effective means of campaign finance enforcement.

The League has set out a clear plan to improve campaign finance enforcement by setting up a separate, independent and adequately funded enforcement division within the Board of Elections. Moving campaign finance enforcement out of the Board of Elections is not in itself a magic bullet, without addressing the funding and enforcement deficiencies of the current system.⁴ The

state Legislature. Hawaii and Louisiana also have a nominating process that restricts the field of potential appointees to ethics commissions.

³ The Governor’s bill proposes stiffer penalties for lobbying violations than campaign finance violations. While we do not suggest that penalties should necessarily be identical for all violations, we do believe that there must be a rational system, in which the amount of the penalty is matched to the severity of the violation. Failure to adopt adequate penalties sends the message that legislators do not sufficiently value Article 14 mandates to impose penalties likely to deter noncompliance.

⁴ Campaign finance disclosures and enforcement are separated from the function of administering elections in about half of states. Alaska, Georgia, Iowa, Kansas, Maine, Minnesota, Missouri,

League testified in joint budget hearings in January on the impact of the decrease in the Executive Budget for the Board of Elections. We need adequate funding for both ethics and campaign finance enforcement.

We do not think that the Office of Congressional Ethics (OCE), created in 2008 to review and submit formal complaints of wrongdoing, without conclusion on their validity, to the Committee on Standards of Official Conduct for the House of Representatives should be used as a model for New York. The League of Women Voters of the United States has expressed concerns that the OCE will not provide effective and independent oversight.⁵

The OCE board acts in secrecy in all matters and communicates solely with the House Committee on Standards of Official Conduct. Authority to investigate or dismiss a case referred to the OCE is still the responsibility of the Committee on Standards of Official Conduct, which retains authority for discipline over members or staff of the House.⁶

We look forward to working with you, the Senate, and the Governor to adopt legislation that will make New York a leader in state government ethics and improve the public's confidence in our elected officials.

Montana, Nebraska, Texas, Oklahoma, South Carolina, Louisiana and California are exceptions and combine enforcement of ethics and campaign finance laws. In Washington, New Jersey, Connecticut, Hawaii, Kentucky, Massachusetts, New Mexico and Tennessee, campaign finance enforcement, ethics oversight, and election administration are all in separate agencies. In Wisconsin, all three functions are under the jurisdiction of one board.

⁵March 12, 2008 LWVUS press release on the new Office of Congressional Ethics. "This does not provide the independent ethics enforcement process that is needed to clean up the House and protect the public interest," said Mary G. Wilson, national president of the League of Women Voters. "The investigative powers of the Office of Congressional Ethics are simply insufficient," Wilson continued. "Without access to subpoena power, investigators will not be able to compel cooperation from outside entities and individuals, congressional staff and Members," she said. ". . . Voters continue to have high expectations for ethics reform. They want changes that will be strong and effective," Wilson said. "This agreement falls short," she said. "This proposal will prove to be inadequate and will have to be revisited, probably when the next wave of public scandals arrives," Wilson said.

⁶Congressional Research Service Report for Congress, "House Committee on Standards of Official Conduct: A Brief History of its Evolution and Jurisdiction", updated November 25, 2008, p. 11.