

New York Coalition for Open Government

Thursday October 12, 2023, 6:30 PM

Via Zoom

Email paulwolf2@gmail.com for the meeting link

Public Comments Are Welcome At Any Time During Our Meetings. Don't Be Shy To Ask A Question Or To Make A Point!

AGENDA

- 1) Meeting Minutes from September 14, 2023 **PG 3-4**

- 2) Treasurer's Report – 91 total paid members (from 31 counties) **PG 5**
Balance as of 9/30/23 \$5,238.56

- 3) 2023 Calendar **PG 6-8**

- 4) Open Meetings Law Committee **PG 9-10**
 - A) Discussed contacting towns we identified in our recent report that do not allow public comments at their meetings to encourage them to do so.
 - B) Executive Session training on 10/19 at 5:30 pm
 - C) Discussed doing a training regarding hybrid meetings in January

- 5) Freedom of Information Law Committee
 - A) FOIL project regarding state agencies tracking FOIL requests ongoing.
 - B) Held Article 78 training on September 21st at 12:00, via Zoom, with attorney Mike Higgins as the presenter (44 people registered)
 - C) Discussed possible FOIL training sessions for 2024

- 6) Public Relations/Education Committee **PG 11-13**
 - A) Our open government guide booklet has been posted on our website
 - B) New Coalition website (need Board photos, bios, calendar management)
 - C) The Committee is working on a lobbying plan for getting our legislative bills

passed in Albany.

D) Albany in person meeting Saturday November 18th, 1:00 pm to 6:30 pm,
Hampton Inn Hotel

E) Committee discussed whether the Coalition should file an Article 78 lawsuit against the City of Buffalo regarding their violation of the City Charter in how they went about passing pay raises for city elected officials. Ten members were present when a motion to recommend that the Board support such a lawsuit was made. The motion failed with 5 votes in favor, 1 against and 4 abstained.

7) Letter to NY Committee on Open Government **PG 14-18**

8) Letter to Gov. Hochul regarding LLC transparency legislation **PG 19-22**

9) National Freedom of Information Coalition Conference Report (Michelle)

10) New Business

11) Next Meetings

Executive Session Training October 19th at 5:30 pm

Open Meetings Law Committee October 19th, at 6:30 pm

Freedom of Information Law Committee October 26th, at 6:30 pm

Public Relations November 2, at 6:30 pm

Coalition Board Meeting November 9th, 6:30 pm

In Person Meeting in Albany, November 18th, 1:00 -6:30

Coalition Social, November 30th, 6:30 pm

9-14-23 NY COALITION FOR OPEN GOVERNMENT BOARD MEETING

PRESENT ON ZOOM; Maria Tisby, Michelle Allen, Janet Vito, Lawrence Vito, Annmarie Reeb, Marylou Kling, Carol Calvin, Linda Bond, Axel Ebermann, Christine Czarnik, Felicia, Robert Godlewski, Sue Kelly, Paul Wolf. Paul Andreassen came late as new member.

NY COALITION FOR OPEN GOVERNMENT BOARD MEETING CALLED TO ORDER AT 6:32 PM ON 9-14-23 BY President Paul Wolf.

MEETING MINUTES FROM AUGUST 10, 2023; Approval of meeting minutes 8-10-23 on motion made by Janet Vito and seconded by Maria Tisby. Motion carried.

TREASURER'S REPORT; 91 total paid members from 31 counties with \$5,258.56 in bank as of 7-31-23. Motion to accept Treasurer's report made by Michelle & seconded by Maria.

CALENDAR; This is provided in Agenda for informational purposes only.

DESIGNATE THE FOLLOWING PEOPLE AS COMMITTEE Co-CHAIRS; Motion made by Marylou Kling to accept as Committee Co-Chairs Annmarie Reeb- FOIL, Robyn Gray -OML, Ken Guarino-Public Relations and seconded by Lawrence Vito. Motion carried.

OPEN MEETINGS LAW COMMITTEE; Michelle Allen Chair spoke.

A. Report to support amending the OML to mandate that public comments occur at meetings was released on 9-14-23 at 11 am. Article already posted and youtube channel avail. Annmarie acknowledged group effort of volunteers in this.

B. Next report seeking to have advisory committees covered by the OML, which is the case in 31 states.

C. The Committee recommends doing training about executive sessions and discuss dates as on Thursday 10-19-23 at 5:30 pm so as not to interfere with the Board meeting. Michelle make motion for 10-19-23 5:30 pm and Janet second. Motion carried.

FREEDOM OF INFORMATION LAW COMMITTEE; Report by Maria.

A. FOIL project tracking state agencies tracking FOIL requests on going.

B. Article 78 training set for Sept. 21 at 12 n on zoom with Attorney Mike Higgins as presenter. Recording to be made available.

PUBLIC RELATIONS/EDUCATION COMMITTEE; Report by Axel.

A. Committee is working on an open government booklet that can be distributed to the public electronically and physically. The document will provide a brief overview of FOIL and the OML, which will be helpful to the public. The PDF is ready to go. No questions posed.

B. Axel is working on a new Coalition website. Michelle made a motion to go live with the new website and Maria seconded. Motion carried. Axel acknowledged for developing site.

C. The Committee is working on a lobbying plan for getting our legislative bills passed in Albany. There is arranged a meeting with David to explore lobbying on Oct 5th Thurs.

D. Albany in person meeting SATURDAY NOVEMBER 18TH AT 1 PM TO 6:30 PM HAMPTON INN HOTEL. Train travel works for same day from Buffalo.

E. Committee recommends that the Board support the establishment of a process to provide titles to our members, when appropriate which will be subject to Board approval. Motion made by Michelle for the Board to support the establishment a process to recognize volunteers' work and seconded by Axel. Motion carried. Discussion on what work areas are needed and what job entails, especially in communication with other people. All are subject to delegation by Board.

NATIONAL FOI COALITION ONLINE CONFERENCE OCTOBER 3-5, 2023:

Registration can be done at www.nfoic.org, for \$30 or \$25 if a Coalition Member.

NEW BUSINESS: Paul invited to speak to speak at Town of Tonawanda Republican committee re open government. Christine who is Head of this Committee is here with us tonight. Also Paul is invited by Journalism professor in Albany to speak to her class on Zoon. Paul A. new member here tonight and has filed many FOIL requests and lives near Kingston-Ulster Co.

Meeting adjourned at 7:45pm on motion by Maria and second byn Marylou. Motion carried.

NEXT MEETINGS:

ALBANY IN PERSON MEETING SAT. NOV. 18TH 1-6PM

PUBLIC COMMENT REPORT PRESS CONFERENCE SEPT. 14TH AT 11 AM

ARICLE 78 TRAINING ON SEPT. 21ST AT 12 NOON

OPEN MEETINGS LAW COMMITTEE SEPT. 21ST AT 6:30 PM

FREEDOM OF INFORMATION LAW COMMITTEE SEPT. 28TH AT 6:30 PM

PUBLIC RELATIONS OCTOBER 5TH AT 6:30 PM

COALITION BOARD MEETING OCTOBER 12TH AT 6:30 PM

EXECUTIVE SESSION TRAINING OCTOBER 19TH AT 5:30 PM

Respectfully submitted by Alberta Roman Secretary- communicated absent- with assist from Annmarie Reeb and video recording.

Zoom Meeting October 12, 2023

NEW YORK COALITION FOR OPEN GOVERNMENT

Treasurer's Report September 30, 2023

Paid Members = 91 as of 9/30/2023

Bank Balance - as of August 31, 2023 \$5,238.56

No activity this statement period.

Check Book/Bank Balance 9/30/2023 \$5,238.56

Janet Vito
Treasurer



New York Coalition for Open Government 2023 Goals

Internal Goals

- Increase membership (81 as of 12/31/22)
- Start Sharing Our Stories Through Videos
- Increase Facebook followers (579 as of 12/31/22)
- Increase Twitter followers (242 as of 12/31/22)

Project Goals

- Report On The Need For An Enforcement Entity, Which Will Include Reforming The Committee on Open Government, The Need For Mandated Training and The Need For Mandatory Attorney Fees
- Report Highlighting How Local Governments Are Doing Live Streaming
- Report On Mandating Public Comments
- FOIL report regarding state agency tracking of FOIL requests
- Lawsuit Regarding Posting of Meeting Documents & Minutes
- Sunshine Week Event
- Annual Meeting
- Regional Meetings/Events

January

Op-Ed regarding open government resolutions for New Year
January 1, 1977, anniversary of Open Meetings Law
Plan Sunshine Week Event for March
Start gathering info Report on the need for an enforcement entity
Press conference regarding caucus meetings report

February

Plan Sunshine Week Event for March
Draft Op-ed for Sunshine Week
Press Conference regarding need for an enforcement entity
Plan May Annual Meeting
Start gathering info for report regarding live streaming of meetings

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March

Sunshine Week Op-ed
Sunshine Week Event (March 12 to 18 Sunshine Week)
Membership Renewals
Plan May Annual Meeting
Continue gathering info for report regarding live streaming of meetings
Plan regional meeting in Albany

April

Planning for Annual Meeting
Press Conference regarding Live streaming report
Start gathering info regarding public comments
Regional meeting Albany

May

Annual Meeting
Continue gathering info for report regarding public comments

June

Press conference regarding public comments report
Start gathering info for FOIL report

July

Op-ed regarding anniversary of Freedom of Information Act
Continue gathering info for FOIL report

August

Continue gathering info for FOIL report

September

FOIL report press conference
Sept 1, 1974, anniversary of FOIL
Sept 15th, Democracy Day
Sept 17th Constitution Day, 17-23 Constitution Week

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Sept. 28th universal access to information day

October

October 17th, School Board Recognition Week
Plan upstate regional meeting

November

Regional Meeting Upstate

December

End of year review, 2024 goals
Plan Board and Officer elections for 2025

NY Coalition for Open Government
Open Meeting Law Committee
September 21, 2023, at 6:30 pm, via Zoom

Meeting called to order by the Chair, Michelle.

Members present: Michelle, Pat, Robyn and Annmarie. (There was no quorum.)

Minutes for August 17, 2023 and June 15, 2023 need to be approved at the October 19, 2023 meeting.

New Business

1. Report regarding public comments at meetings – Michelle wants to know how we might contact the Towns that did not allow for public comment?
 - a. Robyn suggested that we ask them, why they don't do it and are they willing to do it? Or What would prevent them from doing it?
 - b. Annmarie stated that the report was based on online data only. She provided information explaining this. A discussion ensued.
 - c. Michelle explained that minutes are the legal record.
 - d. Pat provided insight about a court case and minutes. She suggested pulling recordings because minutes may not be accurate. Annmarie provided additional information that was found when pulling the data.
 - e. Robyn addressed that minutes do not need to be posted if a video recording is done. Others provided additional information on this point. Annmarie talked about auto transcribing and the problems with this.
 - f. Michelle wants to know if we should reach out to them and how? Several members provided input. The committee addressed a possible letter or template. This should be referred to the PR Committee per Michelle. Several provided suggestions. Robyn brought up information relating to the Legislation.
 - g. Pat suggested a friendly letter, which would also introduce our organization.
 - h. Robyn will draw up a template possibly by the next meeting. Annmarie to send Robyn the Exhibits.
2. Public Comment Legislation – Assemblymember Carrie Woerner – will provide more information as it becomes available.
3. Report on Advisory Committees and the Open Meetings Law – Annmarie and MaryLou are currently pulling information from the 50 states. They are hoping to complete this by the end of October. The report will be with the participation of all the members if possible.

- a. Annmarie wants to wait on further direction from Paul as to what information he wants us to provide. Suggested we wait to the next meeting until we get further information such as when do they meet or just the name of the advisory committee. What data are we gathering? Additional questions and concerns were brought up.
4. Training regarding Executive Sessions on October 19th 2023 at 5:30 pm prior to the next OML Committee meeting.
 - a. Michelle provided an overview. She will probably be providing the training or Axel.
 - b. Robyn asked what will be addressed.
 - c. Robyn used to do a lot of training and will help as a Co-Chair for this training. Suggested an interactive training.
 - d. Annmarie suggested that you review all the emails that Paul has received regarding questions on Executive Sessions and the responses and/or links. Add links to our slides that we make public.
5. Topics for next training session
 - a. Topics for the next training session – Michelle suggested that we do training in January that will tie in with the FOIL and OML Bills. Provided several topics included Hybrid meetings.
 - b. Robyn offered her opinion on Hybrid meeting training. Others provided input.
 - c. We would like to recommend Hybrid meetings.
6. Annmarie informed of a speech that Paul gave for a local group and a recent change to caucuses based on a recent case. She would like to see the case put on our Facebook.
7. Robyn provided an overview of the upcoming meeting in Albany. Annmarie provided some other minor details.

Adjourn meeting at 7:47 pm - Motion by Robyn and seconded by Annmarie. All were in favor.

Next OML meeting is October 19, 2023, at 6:30 pm, via Zoom.

New York Coalition For Open Government

Public Relations and Education Group meeting held October 5, 2023

via Zoom

Meeting called to order at 6:36 pm by the Co-Chair: Ken

Members in attendance: Ken, Axel, Paul, Janet, Lawrence, Mary, Maria, Darlene, Robyn, Pat and Annmarie.

1. Approval of Minutes September 7, 2023 – Motion by Annmarie, seconded by Axel. All in favor. None opposed. Motion carried.
2. Coalition Booklet/Flyer – Axel provided an overview. We need to decide the size and format for printing. He will research this and the costs before we commit. Then we have to put it in a layout program and determine colors.
 - a. Ken asked if we will shop for vendors? Axel answered this.
 - b. Darlene addressed the 4x6 option if we will be using it as a mailing. Axel addressed the mailing option but will not be doing a 4 x 6 size.
 - c. Robyn suggested Vistaprint.
3. Update regarding the New Website – Axel would like people to go on it and let him know if anything is wrong. Please take a screen shot and provide that with your comments. He provided some additional information.
 - a. Ken asked about putting the color map of the counties on the new website. Paul will send the map to Axel.
 - b. Maria would like to know where members are located. Axel did a tremendous job on the website.
4. Legislative Plan – Paul provided an overview of Bills that are in the works. We have a scheduled meeting to review this next week. Contact Paul if you are interested in attending. The meeting will be with David Siffert so we can learn how to do this. The meeting is by invite only.
 - a. Axel talked about a conference he was on this week regarding pulling everyone together for the Legislative effort. Has there ever been a roundtable with other organizations? Paul addressed this.
 - b. Robyn asked about contacting the Justice Center.
 - c. Axel asked if the roundtable can be turned into a quarterly meeting. It should have a name. This will provide a good exchange of information. More details were provided by Axel. Paul agreed that there is value with the groups.
 - d. Pat suggested other groups. We should have a catchy name. Paul commented on the other groups.

- e. Janet asked if enforcement had any interest. Paul addressed what bills had interest and how state funding could affect the bills and other information.
 - f. Darlene expressed concerns on monitoring of the website and other areas.
 - g. Other comments were made on this topic.
 - h. Maria thinks this is great but that we can still keep our autonomy. Informed what she is interested in.
5. Meet up on November 18, 2023 – Paul explained that a draft agenda is attached on page 5 and then provided details of how the meeting will run and details about each topic. 18 people are currently signed up.
- a. Ken likes the plan.
 - b. Maria can do the writing.
 - c. Axel also likes the agenda. Can we rally members on the legislative end.
 - d. Annmarie asked if the meeting will be livestreamed? Paul said it is being worked on. Need to make sure the address is listed. Hampton Inn & Suites is on 25 Chapel in Albany NY.
 - e. Robyn and Axel addressed how to create an event for Sunshine week. Balloons, buttons, cookies, etc. Others commented.
 - f. Several members addressed food, bandwidth (livestreaming), etc. at hotel.
6. Creating Titles and Tasks – Paul provided an overview of some of the different responsibilities. We can add to this list.
- a. We need to create job descriptions and review them.
 - b. Axel suggested someone to manage a calendar for the website. Darlene offered to help with this.
 - c. Paul suggested the Calendar task for the Chair and/or Co-Chair.
 - d. There were more suggestions regarding the calendar.
7. Article 78 – Update with details provided by Paul. The focus would be that the charter was not followed. Is this something that the group will want to do.
- a. Annmarie questioned who would litigate this? Paul provided the answer.
 - b. Robyn brought up a FOIL case. Supports this.
 - c. Axel has concerns.
 - d. Darlene brought up issues in her town on code and OML.
 - e. Maria supports this based on the benefits.
 - f. Ken thinks it will be important to.
 - g. Annmarie would like to know more and sided with Axel.
 - h. Paul provided additional information. Other questions were asked that Paul answered.

Maria motioned that we recommend to the board that we are in favor of the Article 78 lawsuit. Seconded by Robyn. A vote was taken: Darlene abstained; Robyn yes; Pat yes; Janet abstained; Lawrence abstained; Annmarie abstained; Maria yes; Axel no; Ken yes; Paul yes. Abstained – 4; No – 1; Yes – 5; Motion fails. Mary left the meeting early and did not vote.

Annmarie thought that the motion passed based on 9 members present.

8. New Business:

- a. Axel showed a video regarding Mt. Vernon Library regarding an illegal Executive Session and a member who spoke out.
- b. Annmarie spoke about the recent meeting of the NY Committee on Open Government that she and Paul attended via phone.

Our next meeting is November 22, 2023 at 6:30 pm, via Zoom.

Motion by Maria, seconded by Robyn to adjourn the meeting. All were in favor and none opposed. Motion carried. Meeting ended at 8:06 pm.

New York Coalition



For Open Government, Inc.

Advocating for timely access to information & meaningful citizen participation

www.nyopengov.org

September 25, 2023

NYS Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231

Via Email Only

Re: Committee Annual Report Suggestions

Dear Committee Members:

On July 6, 2023, we forwarded a letter to your attention with several suggestions for items to include in your upcoming Annual Report. This letter will provide an update of where our proposals stand as far as bills being introduced in the New York State Legislature.

Amending the NY State Constitution

Four states have the right to open government stated in their Constitution (California, Florida, Louisiana, Montana). The legislature has done recent Constitutional amendments regarding the environment and equal rights, the same should be done for the right to open government. **Assemblymember Phil Steck and Senator Rachel May have introduced A4429/S01063.** The legislation simply states:

“The right to public information, being a necessary and vital part of democracy and public deliberation, shall be a fundamental right of the people. The right of the people to inspect and/or copy records of government, and to be provided notice of and attend public meetings of government, shall not be unreasonably restricted.”

Around the country, state legislatures are seeking to weaken the public’s right to information and we should take steps to prevent that from ever happening in New York.

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Mandatory Attorney Fees

New York's current attorney fee statute is weaker than many other states and it is more difficult to obtain attorney fees when litigation is successful. In California, Colorado, Delaware, Florida, Illinois, Louisiana, Michigan, Montana, New Jersey, Rhode Island, and Washington, attorney fees are awarded if a party "prevails" in a lawsuit. New York's statute requires that a party "substantially prevail" before attorney fees will be awarded, which is a higher standard. After a plaintiff is successful in an Article 78 action, a legal debate occurs as to whether the plaintiff "substantially prevailed" in order to receive attorney fees. New York's statute has an additional hurdle in that there must be an additional finding by the court that there was no reasonable basis for the agency to deny the FOIL request. This additional finding is not required in the states listed above.

Under the Open Meetings Law, if an agency believes there was a reasonable basis for holding an improper executive session, attorney fees will not be awarded. Whether there was a reasonable basis or not if a court determines that an executive session was improperly held, a successful plaintiff should be reimbursed their attorney fees.

Assemblymember Steck and Senator Liu have introduced a bill A05357/S05801, which incorporates the points made above. This legislation passed the Senate in June.

Livestreaming of Meetings

New York City Community Boards were mandated in 2014 to livestream their meetings and to post video recordings online. In 2015, state agencies were required to do the same as "best as practicable" and in 2019, Industrial Development Agencies were required to livestream and post video recordings of their meetings online "as best as practicable".

In 2022, Governor Hochul signed legislation that expanded use of videoconferencing by public bodies to conduct meetings. This new law allows members of a public body to participate in a meeting remotely provided written procedures have been adopted that set forth what the body determines to be "extraordinary circumstances."

What is interesting about the new hybrid meeting legislation is that it is geared totally towards accommodating public body members who cannot attend a meeting in person due to disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event. Interested members of the public who encounter such issues and cannot physically attend a village board or town board meeting are not provided any accommodation under current New York law. If elected officials can be accommodated and allowed to attend meetings remotely, that same opportunity should be made available to the public at large.

In a recent review of over 1,200 villages, towns and cities, we determined that 23% are livestreaming their meetings. It is not difficult or expensive to livestream and post video recordings online. In some communities residents or government officials livestream and film board meetings using a cell phone and a tripod. During the pandemic, with the ability to watch meetings live and to view recordings anytime, the number of people following local government meetings skyrocketed.

We support providing additional funding to local governments to address any technology needs or assistance required so that they can livestream and record their meetings.

Oregon and Indiana recently passed laws requiring local governments to livestream their meetings and to post recordings online. Similar bills have been proposed in Virginia, Mississippi, Rhode Island and Maryland.

Senator Addabbo and Assemblymember Paulin have introduced S4475/A2700, which requires “local governments” to Live Stream meetings and post recordings online. We have pointed out to legislator Paulin that the bill does not define “local governments” and should be amended to apply to public bodies as they are defined in the Open Meetings Law. It is our understanding that Paulin will be amending the bill.

Enforcement Powers

No entity has the power to enforce New York’s Open Meetings Law. Unlike other states, New York does not have an independent body with enforcement powers to address violations of the Open Meetings Law and Freedom of Information Law. Other states also impose fines or criminal charges for violations of open government laws, such penalties are not available in New York. The only recourse available to the public in NY is retaining an attorney to file an Article 78 proceeding and hope that the court will award attorney fees.

In the 1980’s homeowners across New York State were angry about increasing property taxes. The only recourse homeowners had to challenge their property assessments was to hire an attorney to file a lawsuit in Supreme Court, which was not easy or affordable. To assist homeowners, the New York State legislature in 1982 passed legislation creating a hearing officer system to hear property tax assessment cases, through Small Claims Assessment Reviews (SCAR).

Through this system, homeowners complete a simple application, pay a filing fee and the New York State Office of Court Administration appoints a hearing officer to decide the complaint. Hearing officers are attorneys, realtors and others with experience in dealing with real property valuations.

In 2020, 102,000 assessment complaints were handled across the state through this system. Applicants pay a \$30 filing fee and the Court Administration pays hearing officers \$75 per case.

The same system can and should be replicated to handle Freedom of Information Law and Open Meetings Law appeals. **Assemblymember Rosenthal has introduced a bill to create a hearing officer system A07933**. We are seeking a Senate sponsor.

Require State Agencies to Track FOIL Requests

Last year Governor Hochul issued a memo requiring 70 state agencies to prepare a Transparency Plan. Reinvent Albany, the New York Coalition For Open Government and other organizations sent a letter to the Governor calling for state agencies to go beyond just having a plan. State agencies should be required to complete an annual report regarding their transparency plans.

Federal agencies are required to submit an annual report to the Dept. of Justice. These reports provide helpful information as to the number of FOIL requests, appeals, average response time, reasons for denials etc. Requiring state agencies to complete an annual report will provide a great deal of useful information, which is currently not being tracked or made available to the public.

Making data available to the public will allow us to see how well FOIL is working and where changes need to occur. The Committee has pointed out that FOIL reform efforts revolve around anecdotal stories and not data. State agencies are in the best position to track and report on FOIL data. The Committee's support in requiring such tracking and reporting would be a significant step towards making this happen.

Assemblymember Epstein and Senator Holyman-Sigal, are working on this legislation.

Open Government Training

Since 2007, it has been mandatory for members of planning boards, zoning boards, to receive a minimum of four hours of annual training. Members of a public authority board are also required to complete training regarding their fiduciary, financial and ethical responsibilities.

Newly-elected school board members are required to complete training within their first year of service. This training requires topics on the essentials of school board governance and a minimum of six hours in fiscal oversight, accountability and fiduciary responsibilities of a school board member.

Every year newly elected Judges in NY attend a week long training prior to taking the bench. Attorneys and other professionals are required to complete continuing education programs.

There should be a law requiring elected officials at the village, town, city, county and school board level to complete annual training regarding the Open Meetings Law and Freedom of Information Law.

Assemblymember McMahon has expressed interest in this bill and is reviewing information we forwarded.

Mandating Public Comments

Many people are shocked to learn that they do not have a right to speak at their town board, city council or county legislature meetings. The NY Open Meetings Law does not mandate that there must be a public comment period. While most local governments provide an opportunity for the public to speak, not all do. The right to be heard which is a fundamental democracy right should be required by law.

13 states that mandate hearing from the public at meetings (Alaska, Arkansas, California, Hawaii, Louisiana, Montana, Nebraska, Nevada, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont)

In a recent Coalition report we documented that 177 towns in NY State do not allow for public comments at their meetings. **Assemblymember Woerner has expressed interest in sponsoring this legislation** and is working on a draft.

We hope that the Committee will support and include these items in your 2023 Annual Report.

Sincerely,

Paul W. Wolf, Esq.

President

New York Coalition for Open Government

392 Evans Street

Williamsville, New York 14221

(716) 435-4976

American Economic Liberties Project • BetaNYC
Beyond Plastics • Churches United for Fair Housing
Common Cause NY • Fight Corporate Monopolies
Financial Accountability and Corporate Transparency Coalition
Good Jobs First • Housing Justice for All • Housing Rights Initiative
League of Women Voters of New York State • Legal Aid Society
New York City and Vicinity District Council of Carpenters
New York Public Interest Research Group
New York State Council of Churches
New York StateWide Senior Action Council
NY Coalition for Open Government
North Atlantic States Regional Council of Carpenters
OpenOwnership • Reinvent Albany
Stabilizing NYC Coalition • Strong Economy for All
Tenants PAC • Westchester for Change

September 22, 2023

Governor Kathy Hochul
New York State Capitol Building
Albany, NY 12224

Re: Approval of the LLC Transparency Act (A3484A/S995B)

Dear Governor Hochul,

We, the undersigned, write to request your unconditional approval of Assembly bill A3484A (Gallagher) / S995B (Hoylman-Sigal).

Approval of this legislation would make New York a national leader on the issue of corporate transparency by creating the first public beneficial ownership database in the country and setting a standard other states would follow.¹ Beneficial ownership databases have been created or are being implemented in 130 countries worldwide, and the majority are publicly-accessible, unlike the private database currently being implemented by the federal Treasury Department. Groups including Small Business Majority and The Clearing House, a consortium of lenders in New York City who process nearly \$2 trillion in transactions daily, have endorsed the enactment of beneficial ownership transparency measures.² The national Financial Accountability

¹ Michael Bologna, "New York State Poised to Unmask the Owners of Shell Companies," *Bloomberg Tax*, July 7, 2023.

² John Arensmeyer, "Comments Submitted to Federal Register," *Small Business Majority*, May 5, 2021 ("In two scientific, nationwide polls conducted by Small Business Majority and Main Street Alliance, most small business owners surveyed – 77 and 81 percent respectively backed legislative efforts to require businesses to list their true identity when forming. Respondents viewed transparency to prevent fraud and abuse, level the playing field, and protect small businesses").

See also "A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement," *The Clearing House*, Feb. 2017 ("Federal regulations require financial institutions to know their customers and conduct ongoing monitoring of account information. FinCEN's new customer due diligence rule will soon require financial institutions to collect beneficial ownership information from

and Corporate Transparency (FACT) coalition, which includes organizations like the AFL-CIO, Oxfam, and Transparency International among many others, has offered its full support for the legislation.³ Within New York, a diverse array of groups including labor unions, housing activists, and transparency advocates support this bill unequivocally, and in the Assembly the legislation featured bipartisan co-sponsorship. The bill has already inspired copy-cat efforts, for example SB 594 (Durazo) in California.⁴

Beneficial ownership transparency offers unalloyed benefits for business, local government, civil society, law enforcement, tenants, homeowners, and organized labor. In Ernst and Young's 2016 global fraud survey, 91% of senior executives thought that knowing the beneficial owners of corporations they transacted with was very important.⁵ Lenders and title agents need this information to facilitate compliance with federal Know-Your-Customer (KYC) and Anti-Money-Laundering (AML) regulations.⁶ Public beneficial ownership information helps facilitate law enforcement investigations by allowing journalists and others to more easily identify and report suspicious activity and by allowing investigators more easily to "follow the money."⁷ For local government, it facilitates routine activities such as code enforcement by allowing officials to identify the true owners of problematic properties.⁸ For the bar, public beneficial ownership

certain legal entity customers. Yet there is currently no requirement that states record the beneficial ownership of the legal entities they incorporate. This makes it easier for money launderers and terrorist financiers to obscure their identities from both law enforcement and the financial institutions with which they deal").

³ "FACT Supports Corporate Transparency Legislation in Briefing for New York Legislature," *FACT Coalition*, May 3, 2022, accessible online here: <https://thefactcoalition.org/wp-content/uploads/2022/05/New-York-LLC-Transparency-Act-Testimony.docx>.

⁴ California State Senate, Int. SB 594, L. 2023 (Durazo), accessible online here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB594

⁵ "Corporate misconduct — individual consequences: 14th Global Fraud Survey," *Ernst and Young*, 2016, p. 4.

⁶ "Re: Request for Comments Regarding Beneficial Ownership Information Reports," *Bank Policy Institute*, Mar. 20, 2023 ("BPI has been and remains a strong supporter of ending the use of anonymous shell companies and continuing ongoing efforts to modernize the U.S. anti-money laundering/countering the financing of terrorism regime").

⁷ Steven M. D'Antuono, "Combating Illicit Financing by Anonymous Shell Companies: Statement Before the Senate Banking, Housing, and Urban Affairs Committee," *Federal Bureau of Investigation*, May 21, 2019 ("The FBI has countless investigations, spanning criminal and national security threats, in which illicit actors, operating both domestically and internationally, use shell and front companies to conceal their nefarious activities and true identities. The strategic use of these entities makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information. This practice is both time consuming and costly. The ability to easily identify the beneficial owners of these shell companies would allow the FBI and other law enforcement agencies to quickly and efficiently mitigate the threats posed by the illicit movement of the succeeding funds").

⁸ "Final Investigative Report: Code Enforcement in New York State," *New York State Senate Committee on Investigations and Government Operations*, Aug. 5, 2019, p. 69 ("The lack of accountability of LLCs allows violations to persist, contributing to the difficulties of enforcing the Uniform Code for the protection of

information allows attorneys to identify responsible parties more easily, potentially lowering insurance premia for defendants and preventing innocent parties from being unnecessarily named in complaints. For homeowners, public beneficial ownership information can help deter deed theft schemes, and for renters can help identify common ownership of neglected buildings. For agencies, beneficial ownership transparency allows conflicts of interest and fraudulent contractors to be identified before they can rig bids on public contracts.⁹ And for workers, especially in the building and construction trades, it allows malicious contractors to be identified and held to account.¹⁰

Anonymous shell companies have been used for far too long to break the law and harm New Yorkers. They are a favorite tool of narcotics traffickers, tax cheats, and oligarchs, including those responsible for supporting Russia's bloody invasion of Ukraine.¹¹ This legislation balances public and private interests by deterring these types of wrong-doing while allowing individuals with legitimate privacy interests to request waivers. Detractors seem to come from exactly one place: the real estate market for luxury condominiums in New York City, a market historically rife with money laundering facilitated by anonymous shell companies, exactly the type of illicit activity this legislation is designed to curb.¹² We cannot claim it is a panacea, but approving this bill is a much-needed step in the right direction with tangible benefits for an unusually

public health and safety. This loophole must be addressed on a State level to assist local governments in their code enforcement responsibilities”).

⁹ Aaron Katersky, Teddy Grant, “Construction fraud scheme faked ties to minority, women-owned businesses: Manhattan DA,” *ABC News*, May 2, 2023. See also “Defense Procurement: Ongoing DOD Fraud Risk Assessment Efforts Should Include Contractor Ownership,” *U.S. Government Accountability Office*, Nov. 2019 (finding that Department of Defense contractors used opaque shell companies to conceal relationships to sub-contractors to inflate prices, bill for work not performed, disguise conflicts of interest, artificially create the appearance of competition, and fraudulently take advantage of contracts set aside for small businesses owned by service-disabled veterans, women, minorities, or economically or socially disadvantaged individuals).

¹⁰ Maurizio Guerrero, “Wage Theft Scheme Tied to Brooklyn Address Where 2,000 LLCs are Registered,” *Documented*, June 6, 2022.

¹¹ Chris Glorioso, “Russian Oligarchs Hide Their Assets in NYC Real Estate and Intricate Shell Companies,” *NBC New York*, Mar. 3, 2022. See also Zack Kopplin and Basma Humadi, “How Oligarchs Stash Money in Foreign Real Estate,” *The American Prospect*, Apr. 6, 2022; “Queens Man Admits Orchestrating \$653 Million Money Laundering Conspiracy, Operating Unlicensed Money Transmitting Business, and Bribing Bank Employees,” *United States Attorney's Office for the District of New Jersey*, Feb. 22, 2022; “Local Businessman and Associate Indicted on Fraud and Money Laundering Charges,” *United States Attorney's Office for the Western District of New York*, Nov. 20, 2015. See also “Hidden in Plain Sight: How Corporate Secrecy Facilitates Human Trafficking in Illicit Massage Parlors,” *Polaris*, Apr. 1, 2018.

¹² Louise Story and Stephanie Saul, “Stream of Foreign Wealth Flows to Elite New York Real Estate,” *The New York Times*, Feb. 7, 2015. See also Matthew Collin, Florian M. Hollenbach, David Szakonyi, “The impact of beneficial ownership transparency on illicit purchases of US property,” *Brookings Institution*, Mar. 7, 2022 (“In recent years, shell companies have been a key conduit for corrupt politicians from countries such as the DRC, Malaysia, and Ukraine to buy luxury real estate in the U.S. and other advanced economies”); “Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream,” *Global Financial Integrity*, Aug. 2, 2021.

broad swath of society.

When you first took office as Governor, you pledged to usher in a new era of transparency in New York. We ask that you please approve this bill unconditionally to demonstrate your unwavering and ongoing commitment to that pledge.

Sincerely,

American Economic Liberties Project
BetaNYC
Beyond Plastics
Churches United for Fair Housing
Common Cause NY
Fight Corporate Monopolies
Financial Accountability and Corporate Transparency Coalition
Good Jobs First
Housing Justice for All
Housing Rights Initiative
League of Women Voters of New York State
Legal Aid Society
New York City and Vicinity District Council of Carpenters
New York Public Interest Research Group
New York State Council of Churches
New York StateWide Senior Action Council
NY Coalition for Open Government
North Atlantic States Regional Council of Carpenters
OpenOwnership
Reinvent Albany
Stabilizing NYC Coalition
Strong Economy for All
Tenants PAC
Westchester for Change