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EXPLAINER

Let's Not Waste the Cuomo Crisis

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The Government Law Center's explainers concisely map out the law that applies to important questions of public policy.

Winston Churchill's putative admonition never to let a good crisis go to waste may be in danger of falling on deaf ears in New York State.¹ With no need or legal ability to impeach former governor Andrew Cuomo,² any opportunity to reform the process of removing or appointing a statewide official may have been squandered. Additionally, with little prospect of a public forum for the airing of the charges and witnesses against Governor Cuomo, there may be limited ability for the public to assess the validity and the significance of the charges against the former governor. All we are likely to have are summary reports of how individual investigators viewed the evidence against Governor Cuomo.

This is a total disservice to the fundamentals of good, responsive and responsible government. The process has not one iota of transparency. It provides no remedy for improving the processes of handling legislative removals or impeachments of statewide officials. It also provides no mechanism for the airing and the conscientious examination of the potential charges against Governor Cuomo.

These flawed processes should not be inevitable in New York. The state legislature in New York once regularly utilized specially empowered joint investigating committees with subpoena powers to investigate corruption both in government and in regulated industries.

These special joint committees produced significant results and spurred reforms throughout government. These committees provided effective oversight and specific answers for the problems faced by state government.



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A joint legislative committee in 1875 helped to end the corruption in the State canal system.³ The 1910 Merritt Committee uncovered corruption in campaign contributions to state legislators.⁴ The Hofstadter Committee (more popularly known as the Seabury Committee after its counsel Samuel Seabury) uncovered monumental corruption in the governance of New York City by Tammany Hall operatives in the early 1930's.⁵ It also helped bring about the resignation of New York City mayor Jimmy Walker.

The Stevens Committee⁶ dealing with gas utilities in 1905 and the Armstrong Committee⁷ of 1906 on life insurance companies not only revealed massive frauds but resulted in reforms which changed the ways that these industries were regulated in New York State and in the rest of the nation.

The Frawley Committee⁸ in 1913 provided a framework for the eventual impeachment and removal of Governor William Sulzer.

Not only did these joint committees get substantive results, they achieved these results in a manner that was responsive to the public interest. Their hearings and proceedings were largely open to the public thus spurring transparency and permitting the public to have an informed look at the issues of the day. The proceedings were bipartisan allowing for a greater ability for all voices to have a role. These are not proceedings where a small group of bosses can dictate the scope of the inquiry. The joint committee system can be structured to allow the subjects of the inquiry to have a direct say or to question the evidence against them. This makes for an investigation that is both procedurally fair and straightforward. It can work in the best interest of the general public and all affected direct participants.

In the absence of a public bipartisan inquiry into the Cuomo issues, a single reviewing source, such as an investigation established by a legislative leader or other elected official, could easily put its own partisan spin into the issues. This could result in a report that is hypocritical of Cuomo because it is currently both a facile and popular position and Cuomo is no longer in a position of power to challenge the report. Conversely, a private report could simply take the position that little is to be accomplished by



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rehashing the Cuomo allegations and do a less than comprehensive review of potential charges.⁹ In any event, a public review is to be greatly preferred to private subjectivity.

Perhaps more importantly, a joint legislative review can put into context an action plan to review how governmental impeachment actions should be conducted. The impeachment clause in the State Constitution is a mess.¹⁰ Nearly all state officials are technically subject to impeachment. There are no standards for determining the basis for an impeachment action. There is no longer a reason for the judges of the Court of Appeals to serve as jurors in an impeachment proceeding—especially in the case of the governor—where the governor nominates the judges. There is no clear indication whether impeachment and removal would apply to individuals who relinquish their offices. There is no clear indication whether impeachment charges can be filed based on actions taken in a previous term by an officeholder. There is no certainty whether impeachment would be authorized when it is based on improper conduct occurring during a time when the subject of the impeachment was not a government official. Most everything about the impeachment provision of the State Constitution needs to be rethought.

Similarly, the process for appointing a new lieutenant governor is seriously flawed. The Court of Appeals in 2009 authorized the governor to simply name a replacement when there is a vacancy in the office of lieutenant governor.¹¹ This now allows the governor to appoint anyone—whether elected or not or qualified or not—to serve as lieutenant governor. There is no review of the selection. Surely, there ought to be some way to make sure that the selection of the second highest office in the state receives some serious legislative review. We do this for vacancies in the offices of comptroller and attorney-general. We don't allow governors to select Court of Appeals judges without the approval of the Senate. Shouldn't some sort of legislative consent be required to select a lieutenant governor?

These tasks may not be all that easy. But the state's history shows us a pathway to accomplishing it.¹² We don't need another partisan assessment of the Cuomo evidence with no resolution of the underlying problems of our impeachment structure. A joint



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legislative committee can do the trick. Even in the absence of a Winston Churchill in New York state government, we can turn this crisis into an opportunity.

¹ See Johns Nobelen, Making Good Use Of The Crisis Du Jour,” *Winnipeg Sun*, May 18, 2019. While this statement is often attributed to Churchill, there seems to be little proof to establish that he actually uttered this remark. It is also attributed to former Barack Obama adviser Rahm Emanuel. *Oxford Essential Quotations*, 6th ed. (online version 2018).

² Yancey Roy, “No Path for Impeachment,” *Newsday*, August 14, 2021.

³ “Canal Matters,” *New York Tribune*, May 6, 1875; “The Investigation Commissions,” *Buffalo Courier and Republic*, April 9, 1875.

⁴ “Foelker’s Story of Bribe Offer,” *Albany Evening Journal*, February 16, 1911; “Turn on the Light!,” *New York World*, July 8, 1910.

⁵ John C. O’Brien, “City Inquiry Board Named at Albany,” *New York Herald Tribune*, April 8, 1931. See Ch. 147, L. 1932, Ch. 637, L. 1931.

⁶ “Price of Cheap Gas Is Monopoly Franchise,” *New York Times*, April 27, 1905; “The Gas Investigation,” *Wall Street Journal*, April 7, 1905.

⁷ Don R. Stelzer, “The Armstrong Investigation,” 43 *Journal of the American Society of CLU & ChFC* 74 (1980); “Armstrong Committee Insurance Laws,” *Wall Street Journal*, May 18, 1906.

⁸ “Impeachment of Sulzer Frawley Probers’ Aim,” *New York Tribune*, July 18, 1913.

⁹ In short, given the lack of real-life consequences affecting the office of the governor, a politically authorized report could simply pile on charges against Governor Cuomo utilizing the concept of “no harm, no foul,” or it could choose to ignore them, finding “nothing to see here.”

¹⁰ N.Y. CONST, art. VI, § 24. See also Judiciary Law, Article 13-A.

¹¹ *Skelos v. Paterson*, 13 NY 3d 141(2009). See Public Officers Law, § 43.

¹² That is not to say that joint legislative committees have unblemished records. The Joint Legislative Committee to Investigate Bolshevism, which was in operation from 1919–1923, is generally viewed as an especially abhorrent investigation. See Todd J. Pfannestiel, *Rethinking the Red Scare* (2002).