



**Open Government Foundation, Inc.**

*A Project to Open Legislation to You the People*

*Setting The Empire State's Legislation and Laws **FREE***

OpenGovernmentFoundation.org

**TESTIMONY BEFORE THE NEW YORK STATE LEGISLATURE JOINT ADVISORY BOARD ON THE BROADCAST OF STATE GOVERNMENT PROCEEDINGS**

**December 10, 2009**

Good morning, good government, transparency and community advocates. Good morning to the New York State Legislature Joint Advisory Board on the Broadcast of State Government Proceedings (the "Board"), Co-Chairs Senator Jose Serrano and Assembly Majority Leader Ron Canestrari, Senators Andrea Stewart-Cousins, David Valesky and John Bonacic, Assembly Members Darryl Towns, Margaret Markey, and Jane Corwin, thank you for recognizing the importance of this issue and for your membership on this Board. Thank you to the Cable Telecommunications Association of New York (CTANY) for making this initiative possible.

My name is Benjamin Kallos, I am here before you today as a co-founder and uncompensated volunteer for the Open Government Foundation, Inc. (the "Foundation"), a New York State not-for-profit which aims to bring greater transparency, accountability and openness to government by making information available online for all to see.

We would like to recognize: the Legislature for passing Permanent Joint Rule IV (the "Joint Rule") that created this body earlier this year; the Assembly for making session available through webcast, and legislation available through the Legislative Retrieval Service for more than a decade; the Senate for its new spirit of rules reform including the adoption of an open legislative platform, live streaming of session, and for making archival clips from session and public hearings available over YouTube.

Today the Foundation seeks to respond to the Board's Report, provide a Vision for the Future, recommend Rules and Freedom of Information Reform, in hopes of ultimately Empowering the Electorate.

**RESPONSE TO BOARD REPORT**

On October 30, 2009 the Board released a report (the "Report") including specific recommendations concerning the broadcast or webcast on the Internet of all legislative committee meetings in satisfaction of the Joint Rule.

We agree with the Board's Report calling for an independent government affairs channel based upon C-SPAN, run free of government editorial control, with other governmental proceeding, public policy and related programming. In adopting the C-SPAN model, independence is truly the most important factor and the channel must operate in a similar fashion, funded completely by cable and communications companies as a public service without any donations, government funding, oversight, or appointees. Other governmental proceedings on the channel should include State



agency hearings such as those of the Metropolitan Transportation Authority over fair increases, with local counties empowered to provide programming with legislative and other content in their local area when the State Legislature is not in session or providing programming.

We also agree with the final recommendation of the Report calling upon the Legislature to “develop their websites to incorporate additional legislative materials, including but not limited to, hearings and committee meetings.” We are especially excited to see the inclusion of regular committee meetings, which have been missing until now, and look forward to seeing them included in both legislative bodies webcasts and video archives starting in 2010. Today, our Foundation will provide a vision and guidance for the proper development of websites to incorporate the aforementioned materials.

## **VISION FOR THE FUTURE**

We have the opportunity to create a living breathing record of the legislative process with the potential to incentivize true reforms and excitement by the electorate in the process. What is essential is “context.” After all, if I were to say the Legislature is “transparent,” many would hail that as a good thing, but if my significant other called me “transparent” most would speculate that I might be in trouble. “Context” is everything and our vision is to make sure that all facets of the legislative process are presented in “context” in as seamless a way as possible.

### *One Stop Shopping for Legislation*

Legislation is currently separated from its “context,” with transcripts, memorandum, fiscal notes, hearings, debates, and votes often found in completely different locations, if at all available. All of this content should be presented together as a part of the legislative search where the legislative text is presented along with all of the above in a sortable and filterable user friendly framework so that once the bill is found they need not look any further.

### *Accessibility Standards for the Disabled and Limited English Proficiency Communities*

While audio and video content are great, we have yet to achieve the technology to make this content easily searchable. But as I speak today, all of my words are being recorded in a time stamped and computer readable format called a transcript. These transcripts are often delivered to the Legislature as a physical document or in a proprietary portable document format. We should instead require that transcripts be delivered in their original computer readable format and associate these transcripts with recordings of session to provide subtitles for the deaf. This body should also consider having transcripts translated into the three languages required under the Voting Rights Act to provide subtitles in Spanish, Chinese and Korean with the ultimate goal of providing a second audio program (SAP) for these Limited English Proficiency (LEP) voters and residents. In the spirit of the Voting Rights Act it is essential that the



Disabled and LEP communities are empowered to learn about their legislators first hand so that they have an equal opportunity to be just as informed as anyone else as they cast their ballot each Election Day.

### *Linking Legislation to YouTube Content through Deep Linking*

We congratulate the New York State Senate on posting more than one thousand videos on YouTube in under a year. Many of these videos are clips with individual Senators speaking on a particular issue, but much more of the footage can be found on the Senate "Uncut" YouTube channel in videos that are hours long, often separated into several parts. As discussed earlier and as the Senate team can probably attest to, finding video footage of a particular bill or a particular Senator's statement can be like finding a needle in a hay stack. Using YouTube's deep linking technology, legislation can be linked to a specific hour, minute and second in a YouTube video. This way a New Yorker interested in a particular bill or particular legislator can find the bill, click a link, and be brought directly to a video of the discussion of the bill that day by their legislator.

### *TV Guide for the Legislative Television Channel*

When the floor debate began in the Senate over Marriage Equality, Twitter, Facebook and Google chat exploded with links to the Livestream for people to watch over the Internet. This happened because the closest the public can come to notice is that the bill is on the calendar for a specific session and will maybe get discussed at some time in the vicinity of the day when that session began. While the Deficit Reduction Plan or Marriage Equality might be difficult to time, most legislation is not quite as controversial and should be tied to a general schedule that viewers of session online and on cable can use for tuning in or out for the discussions that are most important to them.

### *Explaining Legislation to Viewers*

Many New Yorkers find government and the legislative process inaccessible simply because they don't understand what is being argued about and that is usually because no one bothered to explain it to them. We recommend having legislators record simple explanations for New Yorkers in lengths of thirty seconds to five minutes about their legislation to be presented along with the legislation over the web as well as played prior to any session where the legislation is pending for discussion or vote. These recordings would provide an opportunity for legislators to advocate for their legislation and provide New Yorkers with a friendly explanation for a bill for which they may wish to build a community of support.



## **RULES AND FREEDOM OF INFORMATION REFORM**

### *Public Domain*

In the Report the Board suggests that the channel should be based upon C-SPAN, with which our Foundation agrees. C-SPAN holds an exclusive right to all of its public affairs programming, while acknowledging the right to “fair use,” it leaves all legislative proceedings in the public domain.

Although C-SPAN is the only news media organization that regularly televises the legislative proceedings of the U.S. House and U.S. Senate, it does **not** hold a copyright in that video coverage. That government-produced video is in the public domain which means that it belongs to the American people and may be used without restrictions of any kind.<sup>1</sup>

Unfortunately, the New York State Legislature does the opposite in its rules by deeming all recorded proceedings of session as exclusive property of the body.

The televised proceedings of sessions of the [Assembly or Senate] as provided for in section one of this Rule, in any form, shall be deemed the property of the New York State [Assembly or Senate].<sup>23</sup>

We ask the Legislature to amend its rules relating to the televising of session to remove this improper assertion of copyright by following the C-SPAN model and placing them in the public domain because they belongs to the people of New York for their use without restrictions of any kind.

### *Non-Discrimination*

In addition to the restrictive copyright, the current rules governing the televising of session also fail to acknowledge “fair use” by specifically prohibiting the use of recorded proceedings for campaign, political, or ballot issues.

Any televised proceedings of sessions of the [Assembly or Senate] shall be made available for statewide television broadcast, pursuant to the following:

a. All televised proceedings of the [Assembly or Senate] session shall be unedited, except that only accredited news organizations, educational institutions, and public affairs documentary programs may utilize any portion of the [Assembly or Senate] television feed.

b. No portion of the televised proceedings (either live or taped) authorized pursuant to this section may be utilized for:

(1) campaign or political purposes or to promote or oppose a ballot issue or the candidacy of any person for any elective office; or

(2) any paid commercial advertisements.<sup>45</sup>



This prohibition completely undermines the singular purpose for recording these proceedings, which is to provide transparency for the electorate so that they can hold their legislators responsible for their performance.

With recent votes and extensive debates on issues such as Marriage Equality we can expect this footage to play a key role in the electoral process. For the first time the electorate on both sides of the aisle can see and hear first hand what their legislator said on the issue. Whether or not this Board or the Legislature is willing to admit it, when Senator Diane Savino's speech on the Marriage Equality Bill reached over a quarter million views on YouTube in one week, the name of the game changed. These recordings have already become exactly what the rules forbid. They provide a segment of passionate and eloquent advocacy for political issues that the electorate has already begun to circulate as highly persuasive arguments to their peers.

We ask the Legislature to amend its rules relating to the televising of session to be non-discriminatory as to use. The Legislature must not restrict which organizations may have a "fair use" for their content nor should they select which "news organizations" it will "accredit." Furthermore the Legislature must not restrict the use of these recordings, but must instead acknowledge their true purpose along with an ultimate inability to regulate the activities of an impassioned and a soon to be better informed electorate.

### *Freedom of Information*

As you may be aware, the New York State Freedom of Information Law ("FOIL") provides a specific exemption for the Legislature from the standards set forth for all other State and local agencies. In fact the Legislature is only obligated to make available ten sets of records specifically enumerated under the statute. We respectfully ask that the Legislature pass A.431/S.5300 a bill sponsored by Brian Kavanaugh in the Assembly and Daniel Squadron in the Senate to repeal this exemption. Failing the passage of this repealer we ask that legislative recordings be added as an eleventh set of records specifically enumerated for the Legislature to make available under FOIL.

### **EMPOWERING THE ELECTORATE**

Our Foundation is aware that some of the items suggested in our Vision might seem costly or beyond the current means of the Legislature's limited technology resources. It is for this very reason that it is essential for the Legislature to release these recordings in a non-discriminatory manner into the public domain with the full protection of the freedom of information law so that the electorate is empowered to implement new and different uses for the recordings that are much more complex and useful than anything we have suggested here today. Everyone wins in this scenario, where the public gains new ways to understand legislative information, and the Legislature is able to convey this benefit onto the public at no cost.



<sup>1</sup> "C-SPAN Copyright Policy," C-SPAN, last accessed December 10, 2009, available at <http://www.c-span.org/About/Copyright.aspx>.

<sup>2</sup> Rules of the Assembly of the State of New York, Rule X, Section 2 (2009-2010).

<sup>3</sup> Rules of the Senate of the State of New York, Rule XV, Section 2 (2009-2010).

<sup>4</sup> Rules of the Assembly of the State of New York, Rule X, Section 1 (2009-2010).

<sup>5</sup> Rules of the Senate of the State of New York, Rule XV, Section 1 (2009-2010).