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# POLICY OVER PUBLICITY: EVALUATING ANDREW CUOMO'S 'OUTRAGEOUSLY AMBITIOUS AND IREFUTABLY SMART' EDUCATION SPENDING DILEMMA

COLIN MCKILLOP\*

## INTRODUCTION

For low- and middle-income high school students in New York, the prospect of attending college, especially on a full-time basis, has become increasingly bleak in recent years; tuition and other attendance costs continue to grow without a rise in education quality,<sup>1</sup> “sixty-one percent of students graduate with college debt,”<sup>2</sup> and debt held at graduation is increasing at “almost double the rate of inflation.”<sup>3</sup> Thus, such students and their families were likely ecstatic on January 3, 2017, when Andrew Cuomo, the former Governor of New York, held an aggrandizing press conference to highlight the “1st signature proposal of his 2017

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<sup>1</sup> See David Lombardo, *Report Questions The Use of Increased SUNY and CUNY Tuition*, ALBANY TIMES UNION: CAPITOL CONFIDENTIAL (Oct. 22, 2019, 4:11 PM), <https://blog.timesunion.com/capitol/archives/288333/report-questions-the-use-of-increased-suny-and-cuny-tuition/> [https://perma.cc/E7PP-MEDN] (citing public interest reports questioning “whether \$2.5 billion in increased tuition collected since 2011 at four-year public colleges has been used to offset a lack of state budget funds for increased heating costs, collective bargaining expenses and inflation”).

<sup>2</sup> Daniel Squadron, *College in New York State: Affordability and Success*, N.Y. STATE SENATE DEMOCRATIC POLICY GRP. 6 (May 9, 2016), <https://www.nysenate.gov/sites/default/files/articles/attachments/311741193-white-paper-college-in-nys-affordability-and-success.pdf> [https://perma.cc/4PTE-H6M9] (noting that this debt has detrimental effects on graduates, including “impact[ing] students’ ability to make car and home purchases, start[ing] a family or a small business[] . . . and actually reduc[ing] chances of college graduation”).

<sup>3</sup> *Id.*

agenda: making college tuition-free for New York's middle-class families at all SUNY and CUNY two- and four-year colleges.”<sup>4</sup> Constituent expectations for the program were rightfully high, given that on the day it was enacted, then-Governor Cuomo proclaimed: “[t]here is no child who will go to sleep tonight and say, I have great dreams, but I don’t believe I’ll be able to get a college education. . . . With this program, every child will have the opportunity that education provides.”<sup>5</sup>

Hearing this proclamation, low-income and middle-class parents and students immediately inundated the administrations of the State University of New York (SUNY) and City University of New York (CUNY) with calls and emails asking how and when they could capitalize on the “free tuition.”<sup>6</sup> Unfortunately for 43,513 of these inquiring students in the program’s first year, sixty-eight percent of all applicants, the answer was simply “you cannot.”<sup>7</sup> While former Governor Cuomo’s public messaging that “every child will have the opportunity that education provides” was reassuring to students and their families, it was not factual.<sup>8</sup> Eligibility requirements for the Excelsior Scholarship Program, ranging from residency, citizenship, income, prior and concurrent credit enrollment, student loan status, and willingness to execute and submit the Excelsior Scholarship contract, unequivocally meant that some children in former Governor Cuomo’s anecdote would still go to sleep rightfully believing that they cannot afford a college education.<sup>9</sup> Simply put, the onerous requirements for

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<sup>4</sup> Press Release, The Office of Governor Cuomo, Governor Cuomo Presents 1st Proposal of 2017 State of the State: Making College Tuition-Free for New York’s Middle Class Families (Jan. 3, 2017) (on file with The State University of New York News).

<sup>5</sup> Press Release, The Office of Governor Cuomo, Governor Cuomo Announces First-in-the-Nation Excelsior Scholarship Program Will Provide Tuition-Free College to Middle-Class Families (Apr. 8, 2017) (on file with The State University of New York News).

<sup>6</sup> John M. Burdick, *Not Exactly Free*, INSIDE HIGHER ED (May 16, 2017), <https://www.insidehighered.com/views/2017/05/16/drawbacks-new-york-states-free-college-plan-essay> [<https://perma.cc/59XV-WRFP>] (reporting the experiences of administrators at CUNY and SUNY schools receiving an influx of phone calls following the enactment of the Excelsior Scholarship Program).

<sup>7</sup> See Tom Hilliard, Excelsior Scholarship Serving Very Few New York Students, CTR. FOR AN URBAN FUTURE (Aug. 2018), <https://nycfuture.org/research/excelsior-scholarship> [<https://perma.cc/T249-VCFC>] (highlighting that a majority of the applications for the Excelsior Scholarship were denied).

<sup>8</sup> The Office of Governor Cuomo, *supra* note 5 (quoting the Governor’s public comments about his proposal).

<sup>9</sup> See *Excelsior Scholarship Program — How Eligibility is Determined*, N.Y. STATE EXCELSIOR EVER UPWARD, <https://www.ny.gov/sites/ny.gov/files/atoms/files/Excelsior>

students to receive the Excelsior Scholarship barred sixty-eight percent of all applicants in the program's inaugural year, a far cry from what many would expect after the former Governor's press release was headlined: "Groundbreaking Initiative Makes New York State Public Universities Tuition-Free . . ."<sup>10</sup>

A half-measure to meet the critical short-term needs of students, the Excelsior Scholarship was a continuation of New York leadership's failure to meet the long-term need of balancing the state's budget while sufficiently investing in the education of its citizens to ensure broad and equitable access to higher education. At the onset of the Excelsior Scholarship's enactment, then New York State Assembly Republican Leader Brian Kolb criticized former Governor Cuomo for "simply telling New York taxpayers to write a bigger check' . . . 'once again his political ambitions will be subsidized by the highest-taxed people in America.'"<sup>11</sup> And leading Democratic lawmakers on the issue, including Assemblywoman Deborah Glick, chair of the Committee on Higher Education, was mainly skeptical of the program's overhyped scope compared to its funding: "[t]he cost estimate of \$163 million begs the question: If it costs so little, why haven't we done it before?"<sup>12</sup> The New York Times best summarized both parties' concerns in a scathing editorial that criticized Cuomo's eagerness to declare himself and New York the "first" to provide tuition-free college to middle-class families, despite lacking legitimate preparation or study of the plan's efficacy when applied to New York's higher education system.<sup>13</sup>

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ScholarshipEligibility.pdf [https://perma.cc/G8F6-SP6X] (last visited Aug. 28, 2022) (listing the eligibility requirements that exclude many people from qualifying).

<sup>10</sup> The Office of Governor Cuomo, *supra* note 4 (citing the headline of another similar press release).

<sup>11</sup> Katie Lobosco, *New York Governor Proposes Free Tuition at State Colleges*, CNN: MONEY (Jan. 4, 2017, 9:24 AM), <https://money.cnn.com/2017/01/03/pf/college/cuomo-new-york-free-tuition/index.html> [https://perma.cc/YM5H-UHAP] (quoting Assemblyman Brian Kolb, who is against asking taxpayers to foot the bill for the program).

<sup>12</sup> Carl Campanile, *Cuomo Proposes Free College Tuition For Struggling Families*, N.Y. POST (Jan. 3, 2017, 11:15 AM), <https://nypost.com/2017/01/03/cuomo-to-propose-free-college-tuition-for-struggling-families> [https://perma.cc/YWF7-RJ5Z] (quoting Assemblywoman, Deborah Glick, who is skeptical of the proposed low-cost of the program).

<sup>13</sup> Editorial Board, *Mr. Cuomo's Free\* College Plan*, N.Y. TIMES (Apr. 14, 2017), <https://www.nytimes.com/2017/04/14/opinion/mr-cuomos-free-college-plan.html> [https://perma.cc/96HG-BYUT] (criticizing the Governor's proposal by arguing how restrictive it is, while also noting that the Governor's aides say the program "should be applauded for its ambition, not faulted for its shortcomings").

By his admission, former Governor Cuomo got the idea for the Excelsior Scholarship from the 2016 democratic presidential primary election, where he “heard an ‘outrageously ambitious idea but an irrefutably smart idea . . . [that] we should make college affordable, college should be accessible, college should be free for middle-class families . . . .”<sup>14</sup> In that primary election, higher education affordability was a signature policy division between former United States Secretary of State Hillary Clinton and Vermont Senator Bernie Sanders—as Sanders called to enact free college for all, Clinton “argued the government shouldn’t subsidize education for the wealthiest Americans”<sup>15</sup> and proposed “mak[ing] college ‘debt-free’ through a series of measures including reducing college tuition, increasing Pell grants and allowing students to refinance their loans.”<sup>16</sup> Although Clinton won the Democratic primary (overall and in New York State), she committed to adopting a near-identical version of Sanders’ free-tuition plan in the 2016 general election under the threat of Sanders withholding his endorsement of her presidential campaign.<sup>17</sup> Seeing this ideological shift in the Democratic party platform, then-Governor Cuomo quickly worked to make New York enact such a program, with little time or resources spent to review the long-term effects of introducing a federally-designed policy at the state level.<sup>18</sup> This approach was best summarized by the Empire Center for Public Policy’s E.J. McMahon, who expressed that “it seemed to him that Mr. Cuomo had ‘hastily reverse-engineered’ the process to get the headline he wanted.”<sup>19</sup>

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<sup>14</sup> Mark Lord, *Gov.’s Free Tuition Bill Signed in Queens*, QUEENS CHRONICAL (Apr. 13, 2017), [https://www.qchron.com/editions/queenswide/gov-s-free-tuition-bill-signed-in-queens/article\\_1ddd6e6f-087f-5b16-b6c7-cb7ce33e6f8d.html](https://www.qchron.com/editions/queenswide/gov-s-free-tuition-bill-signed-in-queens/article_1ddd6e6f-087f-5b16-b6c7-cb7ce33e6f8d.html) [https://perma.cc/27AF-3MF8] (citing Senator Bernie Sanders as the first person to “propose such an idea on the grand stage”).

<sup>15</sup> Tara Golshan, *Bernie Sanders’s Free College Proposal Just Got a Whole Lot Bigger*, VOX (June 23, 2019, 10:28 PM), <https://www.vox.com/policy-and-politics/2019/6/23/18714615/bernie-sanders-free-college-for-all-2020-student-loan-debt> [https://perma.cc/6PVU-6REL].

<sup>16</sup> Sam Frizell, *Hillary Clinton Adopts Major Bernie Sanders’ Idea: Free College for (Almost) Everyone*, TIME (July 6, 2016, 11:28 AM), <https://time.com/4394699/hillary-clinton-free-college-bernie-sanders-tuition/> [https://perma.cc/TK5C-KR8W].

<sup>17</sup> See *id.* (“Despite losing the Democratic primary, Sanders has withheld his endorsement from Clinton in the hopes of winning more policy concessions.”).

<sup>18</sup> See Editorial Board, *supra* note 13 (noting that “Mr. Cuomo is now free to let others sort out the perplexing details while he moves on”).

<sup>19</sup> *Id.*

Succinctly, former Governor Cuomo’s decision to put publicity over policy and to rush to enact a statewide “college-for-all” program that does not provide access to college for all has left New York in a financial dilemma. As part of his higher education platform in the 2020 election, President Joe Biden pledged to “[m]ake public colleges and universities tuition-free for all families with incomes below \$125,000.”<sup>20</sup> If such legislation—which has been part of the last two Democratic presidential platforms—were enacted, much of New York’s postsecondary financial aid system would be replaced by the federal program.<sup>21</sup> This is because the Tuition Assistance Program (“TAP”), New York’s main need-based grant program for higher education, and the Excelsior Scholarship, do not allow students to receive aid from the state for costs other than tuition.<sup>22</sup> Therefore, because the income limit of President Biden’s plan would be inclusive of every student receiving aid from TAP and the Excelsior Scholarship, no funds would be dispersed from either program once such a federal program is enacted.<sup>23</sup>

While New York has a robust history of providing financial aid to its neediest students,<sup>24</sup> it has done so through a complex funding system that artificially keeps tuition prices low by allocating funds directly to SUNY and CUNY institutions.<sup>25</sup> Because the federal legislation most broadly supported in Congress and by the last two Democratic nominees for President allocates federal funding to states according to tuition prices, New York’s artificially low

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<sup>20</sup> *The Biden Plan for Education Beyond High School*, BIDEN-HARRIS, <https://joebiden.com/beyondhs/#> [<https://perma.cc/A33T-JTWX>] (last visited Aug. 28, 2022); see *infra* Part III (discussing the effects of a federal college-for-all plan).

<sup>21</sup> See N.Y. EDUC. LAW § 667(1) (Consol.) (2021) (“[N]o award can exceed one hundred percent of the amount of tuition charged.”).

<sup>22</sup> See EDUC. § 667(1) (noting that “no award shall be made unless tuition (exclusive of educational fees)”); see also *infra* Section I.B.ii.a (discussing the Excelsior Scholarship as a last-dollar program).

<sup>23</sup> See *The Biden Plan for Education Beyond High School*, *supra* note 20 (explaining that the Biden proposal would “[m]ake public colleges and universities tuition-free for all families with incomes below \$125,000”); see also EDUC. § 667(3)(c)(ii) (explaining that no tuition award from New York State can “duplicate the purposes” of federal aid); EDUC. § 669-h(2) (noting that “a student who receives educational grants and/or scholarships that cover the student’s full cost of attendance shall not be eligible for an award under” the Excelsior program).

<sup>24</sup> See *infra* Section I(B)(i) (discussing New York’s college affordability programs before Excelsior).

<sup>25</sup> See *infra* Part III (discussing effects of a federal “college for all” plan on New York’s budget).

tuition prices would hold it back from receiving an equitable share of federal money<sup>26</sup> and ultimately hold it back from providing as much support to SUNY and CUNY institutions as possible. For every dollar that New York has kept off its tuition prices by providing direct state funding for SUNY and CUNY, the state would lose sixty-six cents in federal funding from a national “college-for-all” program.<sup>27</sup> Thus, if such a funding system were put in place, New York continue providing direct funding to SUNY and CUNY through its aid programs in addition to its share of funds to operate the new federal system (indirectly through its federal taxpayers).<sup>28</sup>

This Note addresses the failure of the Excelsior Scholarship to create a postsecondary education financing system in New York where every low- and middle-income student can afford to attend college. Further, this Note discusses the incompatible nature of the Excelsior Scholarship and proposed federal regulations and argues that New York leaders at the state and federal levels need a unified approach to create a higher education financing system that makes postsecondary education accessible for every student in New York.

Part IA establishes the need for universally affordable higher education in New York and discusses the numerous benefits of implementing such an equitable funding plan. Part IB provides a summary of New York’s historical scholarship programs, the Excelsior Scholarship itself, and the current limitations of the state’s funding system. Part II examines the need for federal funding to establish the type of postsecondary education financial aid system that former Governor Cuomo purported the Excelsior

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<sup>26</sup> See *id.* (explaining how New York would receive comparatively fewer funds under the Biden plan than states that raised tuition because it did not raise tuition prices when faced with a recession); Anthony P. Carnevale et al., *The Dollars and Sense of Free College*, GEO. U. CTR. ON EDUC. & WORKFORCE 6 (2020), <https://1gyhoq479ufd3yna29x7ubjnwengine.netdna-ssl.com/wp-content/uploads/CEW-The-Cost-of-Free-College-ES.pdf> (“[A] plan that allocates federal funding to states based on the tuition prices of their public colleges and universities could disproportionately reward states that have failed to invest adequately in their higher education systems. College tuition in these states might be higher because the states have shifted more of the costs onto students instead of subsidizing education more heavily with public funds.”).

<sup>27</sup> See Carnevale et al., *supra* note 26, at 7 (showing that over 11 years, the Biden proposal would dedicate \$25,723 million in funding for New York public college and university tuition costs, which is 66 percent of the total that New York pays now).

<sup>28</sup> See *id.* at 6 (“The plan Biden has endorsed calls for the federal government to cover 67 percent of the total cost of qualified students’ tuition and for state governments to cover the remaining 33 percent.”).

Scholarship to be. Part III asserts that New York's longstanding commitment to state-funded tuition support for low-income students, compounded by the implementation of the Excelsior Scholarship, leaves the state ill-prepared for a transition to potential federal regulations in higher education financing. Part IV of this Note analyzes the possible next steps for New York's leadership to address postsecondary education access in the wake of Cuomo's resignation and proposes a tactic of artificially increasing the cost of tuition at SUNY and CUNY schools to ensure New York gets its equitable share of future federal support.

### I. NEW YORK'S RESPONSE TO THE NATIONAL COLLEGE AFFORDABILITY CRISIS

Postsecondary education is increasingly becoming necessary for job applicants in occupations that are both growing in the modern economy and paying above the national median wage.<sup>29</sup> This is critical in New York, as nearly seventy percent of jobs could soon require some form of postsecondary education.<sup>30</sup> While New York lawmakers have acknowledged that postsecondary education is as critical as a high school diploma once was, state leaders face the moral and economic challenge of ensuring that this crucial portion of modern education is affordable for all of their constituents.<sup>31</sup> Historically, New York has invested heavily in the postsecondary education of its constituents, reacting to the growing demands of constituents to make college accessible despite rising tuition and

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<sup>29</sup> See Emily Rolan, *Occupational Employment Projections Through the Perspective of Education and Training*, U.S. BUREAU OF LABOR STATISTICS 1, 3–5 (Jan. 2019), <https://www.bls.gov/spotlight/2019/education-projections/home.htm> (citing statistics that project occupations requiring some postsecondary degree or nondegree award to grow faster than the average rate of growth of all occupations and to be more likely to make greater than 1.5 times the median annual wage, while occupations requiring some college, no degree, or lesser education to grow slower than the average rate of growth of all occupations and are more likely to make between the median annual wage and 1.5 times the median annual wage).

<sup>30</sup> See Nancy L. Zimpher, Chancellor, The State Univ. of N.Y., Assembly Standing Committee on Higher Education: The Rising Costs of Higher Education and Student Loan Debt in New York State (Nov. 30, 2016), <https://www.suny.edu/about/leadership/chancellor-nancy-zimpher/speeches/2016-costs-testimony/> [<https://perma.cc/H85P-VQJ3>].

<sup>31</sup> See Press Release, Governor Andrew A. Cuomo, *supra* note 5 (“Today, college is what high school was—it should always be an option even if you can’t afford it.”).



other costs of attendance.<sup>32</sup> This tradition was extended with the Excelsior Scholarship. However, the limitations of the Excelsior Scholarship, driven primarily by budgetary constraints, hamper the ability of the program to ensure former Governor Cuomo's rhetorical goal of providing "every child . . . the opportunity that education provides."<sup>33</sup> While it undoubtedly increases the number of students eligible for tuition-free college, the Excelsior Scholarship, by design, does not give "every child . . . the opportunity that education provides"<sup>34</sup> because it does not give every child the opportunity to attend college in New York at an affordable price.

*A. The Need for Universally Affordable Higher Education  
in New York*

When former Governor Cuomo first announced the Excelsior Scholarship, he stated that "[t]oday, college is what high school was—it should always be an option even if you can't afford it."<sup>35</sup> Further, when the program was enacted, he said: "we are restoring the promise of the American Dream for the next generation and forging a bold path forward of access and opportunity . . . a college education [is] now a necessity to succeed in today's economy."<sup>36</sup> While not literally a "necessity to succeed," attainment of a higher education degree is currently,<sup>37</sup> and rapidly increasingly so, a

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<sup>32</sup> See *infra* Section I(B) (discussing historical developments of the Tuition Assistance Program).

<sup>33</sup> Press Release, The Office of Governor Cuomo, *supra* note 5.

<sup>34</sup> Eric Neutuch, *As Cuomo Proposes Excelsior Scholarship Expansion, 6 Things to Know About the Program*, GOTHAM GAZETTE: OPINION (Jan. 30, 2020), <https://www.gothamgazette.com/opinion/9090-cuomo-proposes-excelsior-scholarship-college-expansion-6-things-to-know> [<https://perma.cc/UMB5-C86X>].

<sup>35</sup> Press Release, The Office of Governor Cuomo, *supra* note 5; see Press Release, The Office of Governor Cuomo, Governor Cuomo Signs Legislation Enacting First-in-the-Nation Excelsior Scholarship Program to Provide Tuition-Free College to Middle Class Families (Apr. 12, 2017) (on file with The State University of New York News).

<sup>36</sup> Press Release, The Office of Governor Cuomo, *supra* note 35.

<sup>37</sup> *Id.*; see *Employment in New York State A Look at New York State's Highly Educated Workforce*, N.Y. STATE DEP'T OF LABOR (Sep. 2017), <https://statistics.labor.ny.gov/PDFs/enys0917.pdf> [<https://perma.cc/5DDW-L43L>] ("There is a well-established statistical connection between an individual's earning power and level of formal education. For example, workers in New York State with only a high school diploma earned a median weekly salary of \$704 in 2016, while those with a bachelor's degree earned \$1,154 per week—an increase of 64%.")

gateway to jobs that are growing in the economy and are paying more than 2.5 times the median national income.<sup>38</sup> Critically, although the vast majority of jobs are currently held by those with a high school diploma, equivalent, or no formal education credential, the U.S Bureau of Labor Statistics projects that these jobs will grow at a rate below the average of all occupations and well behind the rate of jobs requiring a postsecondary nondegree award and further educational achievements (associate, bachelor, master, doctorate, or professional degrees).<sup>39</sup>

In New York specifically, the issue of college affordability is critical. The New York City metropolitan area, the state's economic engine, is one of the most difficult areas in the nation for those without a higher degree to find a well-paying job.<sup>40</sup> Access to higher education is most often framed as an issue weighing on low-income and working-class families because of the economic mobility such a degree affords.<sup>41</sup> In New York, recent census data shows that "a bachelor's degree can be expected to generate over \$700,000 and an associate's degree or some college over \$200,000 in additional lifetime earnings compared to a high school diploma."<sup>42</sup> Additionally, more equitable access to higher education would lead to a better quality of life for low-income and middle-class families, as research shows "debt impacts students' ability to make car and home purchases, start a family or a small business; causes anxiety and other health consequences; and actually reduces chances of college graduation."<sup>43</sup> The inseparable connection between the future economic success of New York State and its ability to provide constituents with access to affordable higher education lies in the fact that "[i]n New York, less than half

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<sup>38</sup> See Rolen, *supra* note 29, at 5, 8 ("Occupations that require a postsecondary credential are projected to grow faster than occupations that do not require postsecondary education for entry. . . . Most occupations earning two or more times the median wage typically need postsecondary education.").

<sup>39</sup> See *id.* at 3, 9.

<sup>40</sup> See Eduardo Porter, *Where the Good Jobs Are*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/business/economy/good-jobs-no-college-degrees.html> [<https://perma.cc/KD7E-CE72>].

<sup>41</sup> See Press Release, The Office of Governor Cuomo, *supra* note 35 (explaining how a college education is a "necessity to succeed in today's economy").

<sup>42</sup> Squadron, *supra* note 2, at 4.

<sup>43</sup> *Id.* at 2.

of the adults hold a college degree, but 70 percent of all jobs will soon require one.”<sup>44</sup>

While low-income and working-class students are primarily and most severely hurt by the inequitable access to postsecondary education, the compounding burdens of this inequity fall on every taxpaying resident of the state.<sup>45</sup> Every New York student who is unable to access a postsecondary education becomes a taxpayer who is more unlikely to access a higher-paying job, resulting in unrealized tax revenue for the state.<sup>46</sup> Similarly, every student who is unable to access a postsecondary education is statistically more likely to be unemployed, resulting in New York State paying out increased unemployment benefits over time.<sup>47</sup> Additionally, a recent report from the New York State Senate Democratic Policy Group, entitled *College in New York State: Affordability and Success*, found that increased concentration of college-educated residents led to increased wages for workers of all education levels, that college graduates “increase the tax base and have decreased levels of criminal justice involvement and a reduced need for public support programs” and that for every dollar that the state invested in community college programs, \$6.80 was returned to the state.<sup>48</sup>

### *B. A History of New York’s Higher Education Services Corporation and its Modern Limitations*

In New York, the need for universally affordable higher education has been met with a robust system of investment in both the infrastructure of the state’s public postsecondary institutions,

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<sup>44</sup> Nancy L. Zimpher, Chancellor, State Univ. of N.Y., *supra* note 30.

<sup>45</sup> See Squadron, *supra* note 2, at 5 (suggesting that by making college more affordable for New Yorkers, helps the state as a whole).

<sup>46</sup> See Emily Rolen, *supra* note 29, at 7 (“The highest-paid occupations . . . are those that typically require postsecondary education for entry.”).

<sup>47</sup> *Education Pays*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm> [<https://perma.cc/DU4U-6H72>] (last updated Apr. 21, 2021) (suggesting that those who obtained a postsecondary degree are less likely to be unemployed than those who received less than a postsecondary degree).

<sup>48</sup> Squadron, *supra* note 2, at 5.

as well as the Higher Education Services Corporation (“HESC”).<sup>49</sup> However, the ambition of providing every student the opportunity to attend college without being saddled with large amounts of student debt has not been met.<sup>50</sup> While the Excelsior Scholarship builds upon the existing aid structure in the state, it fails to break down some of the key barriers that remain for low-income students. Conversely, for newly-qualifying students, the program restores barriers that were previously discarded and erects wholly new ones.<sup>51</sup> Critically, because non-tuition costs for SUNY and CUNY students who did not live at home were over \$14,000 per year when Excelsior was implemented, many students are struggling to afford college even if they qualified for lowered tuition costs.<sup>52</sup> Further, because the Excelsior Scholarship’s credit requirement effectively disqualifies the 207,987 students who attend New York public colleges part-time, its reach in providing aid to the neediest students, those who have obligations to their families or employers while still working towards a postsecondary education, is extremely limited.<sup>53</sup> Additionally, the Excelsior Scholarship restricts students’ access to postgraduation job markets outside of New York State—a step backward in the state’s

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<sup>49</sup> See *New York State Making Progress Happen FY 2021 Executive Budget*, 1, 27–28, <https://www.budget.ny.gov/pubs/archive/fy21/exec/book/briefingbook.pdf> [<https://perma.cc/482Q-ZSB4>] (creating a \$175 billion infrastructure plan, which included providing “\$14 billion to improve and maintain SUNY and CUNY buildings, State health care facilities, and other capital assets”); *New York State Invests in Higher Education*, N.Y. STATE HIGHER EDUC. SERVS. CORP., <https://www.hesc.ny.gov/partner-access/colleague-emails/850-new-york-state-invests-in-higher-education.html> [<https://perma.cc/GNY5-563Y>] (last visited Aug. 28, 2022).

<sup>50</sup> See Brian Backstrom & Nicholas Simons, *A Deeper Look at Student Loan Debt in New York State*, ROCKEFELLER INST. OF GOV’T (Nov. 30, 2018), <https://rockinst.org/blog/a-deeper-look-at-student-loan-debt-in-new-york-state/> [<https://perma.cc/N6EE-DEW6>] (stating that “a majority of students . . . graduate with debt”).

<sup>51</sup> See *infra* Sections I(B)(i)–(iii) (discussing barriers to education access under the Excelsior Scholarship Program).

<sup>52</sup> See Katie Lobosco, *Why New York’s ‘Tuition Free’ Colleges Will Still Cost \$14,000*, CNN MONEY (Jan. 30, 2017, 12:05 PM) <https://money.cnn.com/2017/01/30/pf/college/new-york-tuition-free/index.html> [<https://perma.cc/K6CT-JRA8>] (“At a SUNY, fees cost \$1,590 annually and room and board was \$12,590 this year—adding \$14,180 to the tuition. Books could run you another \$1,000. At a CUNY, fees cost an average of \$475. Most students commute, but if you’re living away from home, the school tells students to expect to pay \$10,386 for housing and \$3,283 for food—adding \$14,144. None of these costs would be covered.”).

<sup>53</sup> See *NY State Higher Education Enrollment (2017-2018)*, DATA.NYSED.GOV, <https://data.nysed.gov/highered-enrollment.php?year=2018&state=yes> (last visited Mar. 6, 2022).

effort to create a more equitable playing field for students across income levels.<sup>54</sup>

i. New York’s College Affordability Programs Before the Excelsior Scholarship

Before the enactment of the Excelsior Scholarship, New York primarily provided students need-based grants through the Tuition Assistance Program (“TAP”), which was enacted in 1974 as the state began shifting its resources from providing aid to “encourag[e] bright students to attend college” towards expanding need-based aid.<sup>55</sup> This shift in focus towards providing need-based aid was extraordinarily impactful, as it represented a 150 percent increase in the maximum award over TAP’s predecessor, the Scholar Incentive Program.<sup>56</sup> Additionally, this shift coincided with the creation of the HESC and the expansion of TAP eligibility to “certain business, trade and technical schools,” which together marked the beginning of New York’s commitment to “maximize access to higher education for all qualified students.”<sup>57</sup>

By the 2016-2017 school year, just before then-Governor Cuomo announced the Excelsior Scholarship, TAP was “among the largest need-based grant programs in the nation.”<sup>58</sup> At that time, “more than 336,000 New Yorkers attending college were awarded more than \$917 million in TAP funds to help pay their college tuition costs—with an average annual award of \$3,320 per recipient.”<sup>59</sup> Historically, the Legislature has made significant changes to TAP eligibility requirements and award amounts to “help compensate for rising tuition costs and inflation,” react to federal legislation

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<sup>54</sup> See *infra* Section I(B)(iii) (discussing the negative impacts of the postgraduate residency requirement of the Excelsior Scholarship).

<sup>55</sup> *Appendix E: New York’s Tuition Assistance Program - A History*, N.Y. STATE HIGHER EDUC. SERVS. CORP., <https://www.hesc.ny.gov/partner-access/financial-aid-professionals/programs-policies-and-procedures-guide-to-grants-and-scholarship-programs/appendix-e-new-york-s-tuition-assistance-program-a-history.html> (last visited Aug. 28, 2022); see N.Y. EDUC. LAW § 667(3)(a) (Consol.) (2021).

<sup>56</sup> See *Appendix E: New York’s Tuition Assistance Program - A History*, *supra* note 55.

<sup>57</sup> *Id.*

<sup>58</sup> *Empowering New York State Students for College Access and Success 2016-2017 Annual Report*, N.Y. STATE OF OPPORTUNITY HIGHER EDUC. SERVS. CORP. 2 (Jan. 9, 2018), <https://www.hesc.ny.gov/images/HESCCorporate/HESCAnnual2017011718.pdf>.

<sup>59</sup> *Id.*

and make the program more inclusive and responsive to the needs of low-income students.<sup>60</sup> Such changes include the enactment of the Supplemental Tuition Assistance Program, which provides funding for summer remedial education sessions;<sup>61</sup> the Part-time Tuition Assistance Program, which provides funding for students taking between six and twelve credits per semester;<sup>62</sup> and the New York State DREAM Act, which repealed the citizenship portion of the general eligibility requirements governing awards and loans.<sup>63</sup> Each of these changes aimed to make New York's higher education funding system more inclusive and meet the evolving needs of New York's low-income students. The Excelsior Scholarship, however, veered from this trajectory in its approach, imposing undue barriers upon students who became newly eligible for "tuition free" college and excluding the neediest students from its funds altogether.<sup>64</sup>

## ii. Limitations of The Excelsior Scholarship Program

The Excelsior Scholarship effectively raised the income cap of students who qualify for "tuition-free" college via need-based financial aid from \$80,000, the maximum to be eligible for TAP,<sup>65</sup> to \$100,000 in the 2017-2018 academic year.<sup>66</sup> Additionally,

<sup>60</sup> *Appendix E: New York's Tuition Assistance Program - A History*, *supra* note 55.

<sup>61</sup> See N.Y. EDUC. LAW § 667 (Consol.) (2022).

<sup>62</sup> See EDUC. § 667-C-1(1)–(2).

<sup>63</sup> See EDUC. § 609-A(2)(b) (establishing the DREAM Fund Commission) (repealed by L. 2019, c.56, pt. D, § 1, eff. Apr. 12, 2019).

<sup>64</sup> See *infra* Section I(B)(II)(a)–(c) (discussing the new burdens on students that were implanted in the Excelsior Scholarship Program).

<sup>65</sup> *Tuition Assistance Program (TAP)*, The City Coll. of N.Y., <https://www.cuny.edu/financialaid/new-york-state-tap-grant-0> [<https://perma.cc/SVF2-A7SY>] (last visited Mar. 9, 2022); EDUC. § 669-H(2)(b) (“[A]n award under this program shall be applied to tuition after the application of payments received under the tuition assistance program pursuant to section six hundred sixty-seven of this subpart, tuition credits pursuant to section six hundred eighty-nine-a of this article, federal Pell grant pursuant to section one thousand seventy of title twenty of the United States Code, et. seq., and any other program that covers the cost of attendance unless exclusively for non-tuition expenses, and the award under this program shall be reduced in the amount equal to such payments, provided that the combined benefits do not exceed five thousand five hundred dollars.”); see Zack Friedman, *Why New York's 'Tuition-Free' College Is Not Exactly Free*, FORBES (Feb. 6, 2017, 8:02 AM), <https://www.forbes.com/sites/zackfriedman/2017/02/06/college-free-no-student-loan/?sh=5e2dd16b5960> [<https://perma.cc/UHM3-S7ZC>].

<sup>66</sup> See EDUC. § 669-H(1)(d).

written into the legislation were subsequent increases of that income cap to \$110,000 in the 2018-2019 academic year and \$125,000 in 2019-2020.<sup>67</sup> While these increases to the maximum income for New Yorkers to be eligible for “tuition-free” college in New York meant many “middle-class families” could be eligible, the inclusion of restrictions severely limit some students’ access to the program.<sup>68</sup>

One of these restrictions is the Excelsior Scholarship’s designation as a “last dollar” program, which denies funds to students who have already received federal or state aid to pay for tuition.<sup>69</sup> This restriction prevents students from using Excelsior funds to cover non-tuition costs, a key concern for low-income students given that these costs are prohibitively high.<sup>70</sup> Another key restriction is the credit requirement to remain eligible for the Excelsior Scholarship; students must accumulate thirty credits each academic year to qualify to receive funds.<sup>71</sup> This places an onerous burden on the large number of SUNY and CUNY students who cannot or struggle to take a full course load each semester for familial, monetary, or other reasons. Further, the Excelsior Scholarship includes a residency requirement, which threatens to switch Excelsior funds from a grant to a loan if students do not remain in New York, for the equivalent number of years that they accepted the Excelsior Scholarship after they graduate.<sup>72</sup>

### *C. Barriers Beyond Tuition: Shortcomings of the Last Dollar Program*

Although the Excelsior Scholarship brought more low-income and middle-class families within the income eligibility limit, the program did little to make college more accessible for the neediest

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<sup>67</sup> See EDUC. § 669-h(1)(d)(ii)–(iii).

<sup>68</sup> Press Release, The Office of Governor Cuomo, *supra* note 4; see EDUC. § 669-(1), (3)–(4).

<sup>69</sup> See EDUC. § 669-h(2)(b); Friedman, *supra* note 65 (“While tuition would be provided through the Excelsior Scholarship and supplement existing state and federal loans and grants, students would be responsible for room, board and other fees.”).

<sup>70</sup> See Friedman, *supra* note 65.

<sup>71</sup> See EDUC. § 669-h(1)(b).

<sup>72</sup> See EDUC. § 669-h(1)(e).

students. During the rollout of the Excelsior Scholarship, then-Governor Cuomo often conflated “college access” and “tuition-free” college, as if making college “tuition-free” instantly gave everyone in New York State the opportunity to access higher education.<sup>73</sup> However, the Excelsior Scholarship’s designation as a “last dollar” program, meaning students are not eligible for funds if they receive enough assistance from other state and federal funding programs to fully cover the cost of tuition, denies funding to low-income and working-class students who cannot afford to attend even “tuition-free” college due to prohibitively high non-tuition costs of attending college, such as housing, transportation, textbooks, and meals.<sup>74</sup>

In fact, early critiques of the Excelsior Scholarship noted that because tuition at SUNY and CUNY colleges are near the lowest in the country, “what those students most need help with—living expenses, books, and fees—will not be covered by Excelsior.”<sup>75</sup> Notably, SUNY estimates that students living on campus pay \$17,990 per year and commuter students pay \$8,840 per year in non-tuition costs, which are higher than annual tuition costs.<sup>76</sup> The decision to make the Excelsior Scholarship a “last dollar program” expands the pool of students who can access “tuition free” college, but it does nothing to help students who cannot afford a postsecondary education despite already receiving full-tuition aid. Given that nearly all SUNY students are paying more in non-tuition costs than tuition costs, the Excelsior Scholarship’s purposeful exclusion of low-income students demonstrates the

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<sup>73</sup> See Press Release, The Office of Governor Cuomo, *supra* note 5 (“With this budget, New York has the nation’s first accessible college program.”); *Excelsior Scholarship Program — How Eligibility is Determined*, N.Y. STATE EXCELSIOR EVER UPWARD 1–2, <https://www.ny.gov/sites/default/files/atoms/files/ExcelsiorScholarshipEligibility.pdf> [<https://perma.cc/WWB9-8XA8>] (last visited Aug. 28, 2022) (listing the requirements related to residency, citizenship, secondary education, income, postsecondary education).

<sup>74</sup> See EDUC. § 669-h(2); Friedman, *supra* note 65 (“While tuition would be provided through the Excelsior Scholarship and supplement existing state and federal loans and grants, students would be responsible for room, board and other fees.”).

<sup>75</sup> David Chen, *New York’s Free-Tuition Program Will Help Traditional, but Not Typical, Students*, N.Y. TIMES (Apr. 11, 2017), <https://www.nytimes.com/2017/04/11/nyregion/new-yorks-free-tuition-program-will-help-traditional-but-not-typical-students.html> [<https://perma.cc/3KEC-QXYT>] (detailing the policy trade-off between increasing the availability of “tuition free” college for the middle-class students and increasing funding for low-income students’ non-tuition costs).

<sup>76</sup> See *Tuition and Fees*, THE STATE UNIV. OF N.Y., <https://www.suny.edu/smart-track/tuition-and-fees> [<https://perma.cc/X8RC-85BX>] (last visited Aug. 28, 2022).



lack of consideration given to such students in the creation of the Program.<sup>77</sup>

i. Barriers for Nontraditional Students: Exclusionary Effects of a Thirty Credit Requirement

In addition to students being denied Excelsior funds if they already qualify for free tuition under federal or state aid, they are also denied eligibility if they are unable to accumulate thirty credits each academic year.<sup>78</sup> While the state rightly recognized its duty to accommodate low-income and working-class students' unique needs when it expanded TAP to allow for part-time tuition assistance program awards, it ignored this duty while designing the Excelsior Scholarship.<sup>79</sup> Former Governor Cuomo defended this credit requirement, which effectively bars all part-time students and those who fall off their graduation track and are unable to rectify that within the calendar year, as "incentivizing on-time graduation."<sup>80</sup> While on-time graduation should be incentivized, it should not come at the cost of excluding an eighteen-year-old who has to work part-time to pay non-tuition costs or a single parent who is unable to keep up with a full-time course schedule because he or she needs to care for his or her child(ren), or a high school student who wants to pursue a more

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<sup>77</sup> See Chen, *supra* note 75 ("The Excelsior Scholarship . . . is expected to cut the cost of a degree from a four-year State University of New York college—now almost \$83,000 for tuition, fees and room and board—by about \$26,000 for an eligible family making \$100,000 a year. That is a substantial reduction, but still means paying about \$57,000 over four years. . . . The program . . . will primarily benefit traditional students, those who go to college straight from high school and earn their degrees on time. The state's college students, increasingly, are not like that. Many of them attend part time and take extra years to earn their degrees, so Excelsior will not help them.")

<sup>78</sup> See EDUC. § 669-h(1)(b).

<sup>79</sup> See EDUC. § 667-c(1); § 669-h(1)(c).

<sup>80</sup> Eric Neutuch, *The Ups and Downs of Excelsior Scholarship's Freshman Year and What Comes Next*, GOTHAM GAZETTE: OPINION (Oct. 30, 2018), <https://www.gothamgazette.com/opinion/8025-the-ups-and-downs-of-excelsior-scholarship-s-freshman-year-and-what-comes-next> [<https://perma.cc/6E3H-WLVG>] ("Don Kaplan, a spokesperson for Governor Cuomo, defended the [thirty credit] requirement as "incentivizing on-time graduation."); see Rick Seltzer, *N.Y.'s Tuition-Free Dream Meets Details*, INSIDE HIGHER ED (Apr. 17, 2017), <https://www.insidehighered.com/news/2017/04/17/new-yorks-tuition-free-college-program-sparks-debates-and-defenses> [<https://perma.cc/56LD-Q5NC>].

academically challenging degree program but may not because of fear they might not graduate on-time.<sup>81</sup>

Given New York's prior understanding of the needs of part-time students, as demonstrated by the TAP program's inclusion of such students, as well as the knowledge that this requirement would immediately disqualify large portions of SUNY and CUNY students who attend college part-time,<sup>82</sup> it is hard to imagine any sufficient reason to include a credit requirement other than saving costs. At SUNY schools, before the rollout of Excelsior, thirty percent of undergraduates attended part-time, a figure that jumps to forty-five percent when including community college students.<sup>83</sup> Simultaneously at CUNY schools, over thirty-five percent of all students are enrolled part-time, a figure that jumps to over thirty-eight percent when including community college students.<sup>84</sup> This cost-cutting tactic was effective to the detriment of many students the Excelsior Scholarship claimed to target, as demonstrated by the denial of 36,095 Excelsior applications because of insufficient credits, a figure that made up eighty-three percent of all denials.<sup>85</sup>

#### ii. Barriers Built Into Postgraduate Life: Residency Requirement

Failing to sufficiently broaden college access was not Excelsior's only flaw—it also unnecessarily erected new barriers to postsecondary education for students. A residency requirement was included as part of a last-minute revision to the Excelsior Scholarship.<sup>86</sup> This requirement demands that students remain in

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<sup>81</sup> See Neutuch, *supra* note 80; Seltzer, *supra* note 80.

<sup>82</sup> See Nancy L. Zimpher, Chancellor, State Univ. of N.Y., *supra* note 30 (“30 percent of our undergraduate students are attending part-time. When looking at community colleges alone, 45 percent of students attend part-time.”).

<sup>83</sup> See *id.*

<sup>84</sup> See *Institution Retention and Graduation Rates of Full-time First-time Freshmen in Baccalaureate Programs by Year of Entry: Total University*, The CITY UNIV. OF N.Y. OFFICE OF INSTITUTIONAL RESEARCH & ASSESSMENT (Apr. 23, 2020), [http://www.cuny.edu/irdatabook/rpts2\\_AY\\_current/RTGI\\_0007\\_FT\\_FTFR\\_BACC\\_TOT\\_UNIV.rpt.pdf](http://www.cuny.edu/irdatabook/rpts2_AY_current/RTGI_0007_FT_FTFR_BACC_TOT_UNIV.rpt.pdf) [<https://perma.cc/6HLS-5E9G>].

<sup>85</sup> See Hilliard, *supra* note 7.

<sup>86</sup> See Campanile, *supra* note 12 (“The amendment—which was not part of Cuomo's original offer of free college for middle-class students—was added at the insistence of Republicans in the state Senate.”).

New York after graduating for the equivalent number of years that they accepted the Excelsior Scholarship, under the threat of transitioning the Excelsior funds from a grant to a loan.<sup>87</sup> This effort to claw back part of the state's "investment" in the education of its constituents is not only onerous on students but a reversal of longstanding public policy in New York that "rewards" constituents for paying taxes to fund the state's public colleges by offering financial aid programs and reduced in-state tuition.<sup>88</sup>

To defend this requirement, former Governor Cuomo rhetorically asked, "[w]hy should New Yorkers pay for your college education and then you pick up and you move to California?"<sup>89</sup> However, this same argument could be used for students receiving TAP funds, or any program that distributes state funds, yet the inclusion of this requirement is novel to the Excelsior Scholarship.<sup>90</sup> While former Governor Cuomo touted the need to further recoup the state's investment in the secondary education of his constituents, it is unclear whether "this isn't a solution in search of a problem,"<sup>91</sup> as only about fifteen percent of undergraduate certificate holders, twelve percent of associate's degree holders, and nineteen percent of baccalaureate degree holders from SUNY schools leave New York State in the relevant timeframe.<sup>92</sup> Given the small fraction of students who leave, this requirement applies to and the easily-foreseeable geographic limitations it will place on students trying to find the best job possible upon graduating, this requirement does little more than provide lip service to those who believe that New York is not seeing an appropriate "return on its investment" in the secondary education of its citizens. Certainly, this requirement might scare off students worried about future debt if their Excelsior

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<sup>87</sup> See N.Y. EDUC. LAW § 669-h(4)(e) (Consol) (2022).

<sup>88</sup> See Seltzer, *supra* note 80 ("Traditionally, state colleges and universities have posted lower tuition for in-state students than for other students, under the idea that taxpayers had been helping to fund those institutions for years before their children enrolled.").

<sup>89</sup> *Id.*

<sup>90</sup> See EDUC. § 667(2)(c).

<sup>91</sup> David W. Chen, *Free Tuition? Tennessee Could Tutor New York*, N.Y. TIMES (May 14, 2017), <https://www.nytimes.com/2017/05/14/nyregion/for-cuomos-free-tuition-plan-lessons-from-tennessee.html> [<https://perma.cc/BU24-GUZ4>].

<sup>92</sup> See *SUNY Graduates Post-Completion Wages: Wages by Award Level*, THE STATE UNIV. OF N.Y. SYS. ADMIN. OFFICE OF INSTITUTIONAL RESEARCH & DATA ANALYTICS 7 (Sept. 10, 2019), <https://www.suny.edu/media/suny/content-assets/documents/institutional-research/DOL-report-Issue1.pdf> [<https://perma.cc/6NA7-VS9E>].

Scholarship could become a loan solely based on their decision to work outside of New York upon graduating.<sup>93</sup>

iii. Increasing State Revenue: Obvious, but  
Improbable

In practice, these types of barriers—restricting funds to only cover tuition costs, enforcing a credit minimum for eligibility, and requiring students to live in New York after graduation are little more than tools to limit the number of students eligible to receive funds from the state. When then-Governor Cuomo initially announced that a 163 million dollar program was going to give every student in New York “the opportunity that education provides,”<sup>94</sup> Democratic lawmakers’ rhetorical question of “[i]f it costs so little, why haven’t we done it before?” had a simple answer: making higher education accessible to every student in New York does not cost so little.<sup>95</sup> Access to postsecondary education in a state is not measured in headlines and publicity; it is measured by the ‘affordability gap,’ the average difference between the cost of attendance and what a low-income student receives in state and federal aid, as well as earnings from ten hours of minimum wage work per week.<sup>96</sup> New York has the lowest affordability gap, just eighty-three dollars, for students whose families make less than thirty thousand dollars per year.<sup>97</sup> While that gap is small, it grows exponentially in line with a familial income of over thirty-thousand dollars, a remarkably low qualifying income in New York.<sup>98</sup> For former Governor Cuomo’s rhetoric regarding every child being given the opportunity to access postsecondary education, to become a reality, the

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<sup>93</sup> See Chen, *supra* note 91 (“Recipients are also obligated to stay in New York for as many years as they received the awards, or risk having the grant be converted into a loan . . . having the fine print say that your grant could become a loan could erode trust.”).

<sup>94</sup> Press Release, The Office of Governor Cuomo, *supra* note 5.

<sup>95</sup> Campanile, *supra* note 12.

<sup>96</sup> See Andrew Howard Nichols et al., *How Affordable are Public Colleges in Your State*, THE EDUC. TR. (Dec. 17, 2019), <https://edtrust.org/resource/affordability-gap/> [<https://perma.cc/LG2H-8ADG>].

<sup>97</sup> See *id.* (citing an analysis of the Integrated Postsecondary Education Data System of the National Conference of State Legislatures).

<sup>98</sup> See *id.*

affordability gap in New York needs to be zero for all students who cannot pay tuition and the non-tuition costs of a postsecondary education out of pocket.

Former Governor Cuomo and the New York Legislature could have undoubtedly designed a program that does this; however, a dramatic increase in state revenue would be necessary to fund it.<sup>99</sup> Denying funding to students through implementing a last-dollar program, imposing an annual thirty-credit requirement, and requiring students to live in New York after graduating are antithetical to the goal of providing an accessible and equitable postsecondary education to all students regardless of familial income. However, these barriers are necessary to keep the state's budget in order without a dramatic increase in state revenue. Given the legitimate budgetary concerns and the questionable political viability of tactics that would raise revenue for the state, an influx of money from the federal government is necessary for New York to close its affordability gap for good.

## II. THE NEED FOR FEDERAL FUNDING

While access to “tuition-free” college is a necessary first step toward providing a college education for all, the real challenge for New York is to have the proper funding in place for SUNY and CUNY so that low-income and working-class New Yorkers can access “free college,” which would include funds for non-tuition costs. Driving New York's status as one of the most affordable states in the country for low-income students to attend college is a combination of low tuition prices and a commitment to higher education funding following the 2008 recession.<sup>100</sup> While former Governor Cuomo has received criticism for rejecting legislation that would expand postsecondary education access for students,

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<sup>99</sup> See Rick Seltzer, *Putting Money Where His Mouth Is?*, INSIDE HIGHER ED (Feb. 14, 2018), <https://www.insidehighered.com/news/2018/02/14/despite-big-rhetoric-all-sides-and-rew-cuomos-budget-priorities-bow-economic> [<https://perma.cc/U4QG-QV9H>].

<sup>100</sup> See Michael Mitchell et al., *A Lost Decade in Higher Education Funding State Cuts Have Driven Up Tuition and Reduced Quality*, CTR. ON BUDGET & POLICY PRIORITIES 5 (Aug. 23, 2017), [https://www.cbpp.org/sites/default/files/atoms/files/2017\\_higher\\_ed\\_8-22-17\\_final.pdf](https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf) [<https://perma.cc/KK4Z-28LC>] (citing analysis that found New York to have cut its higher education funding by just 2 percent between 2008-2017, the eighth lowest decrease in the country).

he has countered that “these bills would add hundreds of millions of dollars in increased and unbudgeted costs to the state’s financial plan, which will ultimately be shouldered by the state’s taxpayers.”<sup>101</sup> Cuomo also defended his “unwavering”<sup>102</sup> commitment to higher education funding by continuously pointing to New York’s budget, which in 2019,

reflected the state’s strong commitment to education equity through a \$1 billion annual increase in Education Aid—3.9 percent growth—to a record total of \$26.7 billion for the 2018-19 school year and a 36 percent increase since 2012.<sup>103</sup>

In a review of higher education funding and tuition prices in the years directly following the 2008 recession, New York was found to reduce per-student funding and increase public college tuition at a comparatively nominal rate.<sup>104</sup> Notably, New York has increased its higher education funding by more than twenty-five percent since 2008, while its overall education budget rose by just over seventeen percent.<sup>105</sup> Additionally, New York has seen the fourteenth lowest increase in tuition prices for in-state students across the country.<sup>106</sup> Despite these promising figures, many lawmakers, advocates, and low-income students continue to decry the state’s refusal to increase funding to the necessary level that would close the affordability gap for all low-income students and make postsecondary education accessible for all.<sup>107</sup>

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<sup>101</sup> Seltzer, *supra* note 99.

<sup>102</sup> *Id.*

<sup>103</sup> Press Release, State of New York Div. of the Budget, Governor Cuomo Announces Highlights of the FY 2019 State Budget (Mar. 30, 2018), <https://www.budget.ny.gov/pubs/press/2018/pr-enactfy19.html> [<https://perma.cc/RM35-W6H9>].

<sup>104</sup> See Mitchell et al., *supra* note 100, at 5 (citing statistical analysis which found that New York had cut its higher education funding by just 2 percent between 2008-2017, the third lowest percentage change in the country).

<sup>105</sup> STATE OF NEW YORK DIVISION OF THE BUDGET, BUDGET & ACTUALS, <https://openbudget.ny.gov/spendingForm.html> [<https://perma.cc/7LH7-NQZ9>] (demonstrating in FY 2022, New York spent \$41.22 billion on education, compared to \$30.60 billion in FY 2009, representing a 34.7 percent increase; and in FY 2022, New York spent \$12.28 billion on higher education, compared to \$8.49 billion in FY 2009, representing a 30.9 percent increase).

<sup>106</sup> See Mitchell et al., *supra* note 100, at 13.

<sup>107</sup> See Marina Villeneuve, *Lawmakers Question Governor’s Higher Ed Spending Plan*, ASSOCIATED PRESS (Feb. 4, 2020), <https://apnews.com/article/0fadd430404ad10a26eb3ca35a79b4ac> [<https://perma.cc/6HPS-8CEF>] (citing lawmakers and advocates criticizing former Governor Cuomo’s proposal to increase the income eligibility threshold for the Excelsior Scholarship rather than focusing funds on low-income students); Denis

New York's inability to provide the necessary funding for low-income students, despite its status as one of the most affordable states in the country for low-income students to receive public education<sup>108</sup> and as "one of three states with an economic output that exceeds \$1 trillion,"<sup>109</sup> shows the widespread issue that states face given the reality of budget constraints. Across the country, as "free college" becomes a popular mandate, such programs suffer from the realities of state budgets, as "[b]udget constraints often force lawmakers to scale back their free college plans."<sup>110</sup> For example, Oregon had to temporarily restrict entrance to its free-tuition programs in the years following the introduction of such programs due to a lack of state funds.<sup>111</sup> Similarly, in New York, budgetary concerns about state funding for SUNY, CUNY, and the state's scholarship programs are often cited for keeping the legislature and governor from closing the affordability gap for all low-income students.<sup>112</sup> Further, New York, like every state, is

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Slattery, *CUNY Students Urging Bernie Sanders to Call out Cuomo Over Free-Tuition Scholarship Program*, NEW YORK DAILY NEWS (Feb. 28, 2019, 7:50 PM), <https://www.nydailynews.com/news/politics/ny-pol-cuny-students-call-on-bernie-sander-cuomo-free-college-20190228-story.html> [https://perma.cc/SZ5F-XHFH] (describing students criticizing the Excelsior Scholarship's credit requirement as being "an unrealistic requirement for poor and working-class students who must balance studies with working full-time or part-time."); Harold Stolper, *Testimony to the Committee on Higher Education Of the Council of the City of New York*, COMMUNITY SERV. SOC'Y (June 16, 2016), <https://www.cssny.org/news/entry/testimony-to-the-committee-on-higher-education> [https://perma.cc/XW4F-2PGP] (citing public advocates' findings that the current lack of funding for low-income students leads to higher rates of these students attending 2-year colleges instead of 4-year colleges, potentially resulting in less long-term success).

<sup>108</sup> See Nichols et al., *supra* note 96, at 3, 5, 10 (finding that New York has the lowest affordability gap in the U.S. for students with familial income under \$30,000; Education Trust defines the affordability gap as the difference between the net price of an in-state student attending public college and the income earned from working ten hours a week).

<sup>109</sup> Samuel Stebbins & Grant Suneson, *Does Texas or Russia Have the Larger GDP? Here's How US States Compare to Other Countries*, USA TODAY (Apr. 17, 2019, 7:09 AM), <https://www.usatoday.com/story/money/2019/04/17/how-gdp-of-us-states-compares-to-countries-around-the-world/39295197/> [https://perma.cc/D93P-NMLM].

<sup>110</sup> Sophie Quinton, *Free College Is Increasingly Popular — and Complicated for States*, PEW CHARITABLE TRUSTS: STATELINE (Mar. 5, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/05/free-college-is-increasingly-popular-and-complicated-for-states> [https://perma.cc/NB36-ZNJL] (citing Sarah Pingel, senior policy analyst at Education Commission of the States, on the trend of "more and more narrowly tailored programs that aren't really billable as the 'universal free college'").

<sup>111</sup> KRI BURKANDER ET AL., RSCH. FOR ACTION, THE CASE OF OREGON PROMISE: AN EARLY ADOPTER FOCUSED ON BROADENING ACCESS 7–8 (2019) (describing how, after unexpectedly high demand for its Oregon Promise program created cost overruns, Oregon added an expected family contribution eligibility requirement which effectively restricted access to program funds).

<sup>112</sup> See Seltzer, *supra* note 80 ("[T]hese bills would add hundreds of millions of dollars in increased and unbudgeted costs to the state's financial plan, which will ultimately be shouldered by the state's taxpayers.").

susceptible to unexpected budget shortfalls that demand cuts if revenue is not increased. For example, during the COVID-19 pandemic, former Governor Cuomo repeatedly warned SUNY and CUNY students that Excelsior funding could be greatly reduced “unless the federal government delivers a rescue package.”<sup>113</sup>

These types of budget shortfalls, and the inability of any state to fully close the affordability gap for low-income students (making “free college” a reality), highlight the need for a new federal funding model.<sup>114</sup> Such a model could close the affordability gap, as well as make states’ higher education budgets more durable in the face of budget reductions, as many states are quick to cut higher education budgets to balance any losses in state revenue because “[s]tates don’t have a lot of control over what they can cut. . . . Where they cut ends up being a function of where they have less restrictions.”<sup>115</sup> Creating a federal program that matches state funding can quickly and effectively protect portions of state budgets, as state governments would be less willing to make cuts if making cuts would cause them to receive fewer federal education funds.<sup>116</sup>

This theory is best demonstrated by programs such as Medicaid, where states receive matching funds from the federal government based on how much the state itself has invested in and expanded the pool of Medicaid recipients.<sup>117</sup> Thus, in New York, like in many states, healthcare is the largest budgetary grouping and the one most consistent to receive funding increases on a year-over-year basis.<sup>118</sup> Also, in New York, like in many states, higher

<sup>113</sup> Carl Campanile, *Cuomo May Slash Excelsior Scholarship Program Amid COVID-19*, N.Y. POST (July 21, 2020, 5:51 PM), <https://nypost.com/2020/07/21/gov-cuomo-may-slash-excelsior-scholarship-program-amid-covid-19/> [<https://perma.cc/8Z3K-5JZW>].

<sup>114</sup> See Nichols et al., *supra* note 96, at 6, 8 (explaining how no state currently has a true free college program, and how increased federal aid is critical to meeting the financial needs of low-income students).

<sup>115</sup> Kery Murakami, *The Next Financial Blow*, INSIDE HIGHER ED (Apr. 13, 2020), <https://www.insidehighered.com/news/2020/04/13/public-colleges-face-looming-financial-blow-state-budget-cuts> [<https://perma.cc/QWA3-T89A>] (“K-12 funding in many states is protected by state constitutions. Programs like Medicaid receive matching funds from the federal government, so cutting there would mean losing federal dollars. The next biggest pot is higher education funding, and that’s the place states tend to go.”) (internal quotation marks omitted).

<sup>116</sup> See *id.* (providing that states currently tend to cut higher education funding because there is no additional loss of federal funds).

<sup>117</sup> See Social Security Act of 1935 § 1903, 42 U.S.C. 1396b.

<sup>118</sup> See *Budget & Actuals*, NEW YORK STATE OPEN BUDGET, <https://openbudget.ny.gov/spendingForm.html> [<https://perma.cc/4X9H-5AFZ>] (last visited Aug. 28, 2022).



education makes up the largest spending area that is not protected by a federal matching program or the state's constitution, which is why, along with the belief that budget cuts in higher education can be easily made up by increasing tuition, it is often the place that is first considered for cuts.<sup>119</sup>

### III. CUMULATIVE EFFECTS OF NEW YORK'S ATTEMPTS AT "FREE-TUITION" COLLEGE LEAVE IT UNPREPARED FOR IMPLEMENTATION OF FEDERAL FUNDING

When former Governor Cuomo, as he regularly admitted, came up with the Excelsior Scholarship in the wake of a federal "free tuition" plan that was part of the democratic platform in 2016, he and other New York leaders should have had the foresight to begin planning for how New York's existing scholarship programs, as well as any new programs like Excelsior, would fare if such a federal funding bill was enacted.<sup>120</sup> While then-Governor Cuomo should not be chastised for failing to foresee the specifics of President Joe Biden's higher education funding plan back in 2016, President Biden's plan is largely similar, albeit slightly less expansive, than what was being proposed by both Sanders and Clinton in 2016.<sup>121</sup>

President Biden pledged to "[m]ake public colleges and universities tuition-free for all families with incomes below

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<sup>119</sup> See Kery Murakami, *The Next Financial Blow*, INSIDE HIGHER ED (Apr. 13, 2020), <https://www.insidehighered.com/news/2020/04/13/public-colleges-face-looming-financial-blow-state-budget-cuts> [<https://perma.cc/37C2-63Y6>] (analyzing different states' reactions to looming budget cuts in higher education due to the Covid-19 pandemic and citing potential cuts to New York higher education funding.); N.Y. CONST. art. XI, § 2. ("The University of the State of New York . . . shall be governed [by] and its corporate powers, which may be increased, modified or diminished by the legislature . . .").

<sup>120</sup> Editorial Board, *Mr. Cuomo's Free\* College Plan*, N.Y. TIMES (Apr. 14, 2017), <https://www.nytimes.com/2017/04/14/opinion/mr-cuomos-free-college-plan.html> [<https://perma.cc/5BLP-YFGE>] ("Mr. Cuomo got the idea from both [Hillary Clinton and Bernie Sanders]. It's not as if free tuition for the middle class was a dream that has been burning in the governor's heart since he was growing up in middle-class Queens. It was . . . a bolt of insight from watching the presidential race.")

<sup>121</sup> See Thomas Kaplan & Katie Glueck, *Biden, Courting Liberals, Backs Tuition-Free College for Many Students*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/us/politics/biden-backs-free-college.html> [<https://perma.cc/S2RS-PPL6>] ("Mr. Biden's proposal is similar to one offered in the last presidential race by Hillary Clinton, who in the summer of 2016 proposed tuition-free college for many students after her primary battle with Mr. Sanders.")

\$125,000.”<sup>122</sup> Although he has yet to present his plan in depth, President Biden “adopted” Senator Bernie Sanders and Congresswoman Pramila Jayapal’s College for All Act of 2017,<sup>123</sup> which split the funding among the federal government and the individual states, respectively at sixty-seven percent and thirty-three percent.<sup>124</sup> Effectively, such a program would replace the need for both TAP and Excelsior funding in New York, as students eligible to receive aid under this federal plan would no longer be eligible for either program.<sup>125</sup> A recent estimate of how much this program would cost individual states found that New York would be responsible for \$12,862,000,000 over eleven years.<sup>126</sup> Notably, adjusting for inflation, New York has spent \$12,458,800,372 on the HESC over the last eleven years, just thirty-six million dollars per year short of breaking even had this federal funding program been in place.<sup>127</sup>

While thirty-six million dollars per year is a hefty budget shortfall, these estimates only reflect New York’s current public college tuition rates and do not take into account the direct funding that New York pours into SUNY and CUNY institutions to keep those tuition prices low.<sup>128</sup> One of the main criticisms of the federal funding structure that president-elect Biden has endorsed is that it “allocates federal funding to states based on the tuition prices of their public colleges and universities [which] could disproportionately reward states that have failed to invest adequately in their higher education systems.”<sup>129</sup> For example, as

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<sup>122</sup> See *The Biden Plan for Education Beyond High School*, *supra* note 20.

<sup>123</sup> See *id.* (“Biden has added to his education beyond high school agenda by adopting Senator Sanders’ proposal to make public colleges and universities tuition-free for all students whose family incomes are below \$125,000. This proposal, part of Senator Sanders and Congresswoman Pramila Jayapal’s College for All Act of 2017, will help roughly 8 out of every 10 families.”).

<sup>124</sup> See Carnevale et al., *supra* note 26; H.R. 1880, College for All Act of 2017, 115th Congress (2017-2018).

<sup>125</sup> See N.Y. EDUC. LAW § 667 (Consol.) (2020); § 669-h (detailing that students do not qualify for funds if the full cost of tuition is covered by federal aid).

<sup>126</sup> See Carnevale et al., *supra* note 26.

<sup>127</sup> See N.Y.S. OPEN BUDGET, <https://openbudget.ny.gov/spendingForm.html> [<https://perma.cc/D4UD-VUCQ>] (last visited Aug. 28, 2022).

<sup>128</sup> See Mitchell, *supra* note 100 (analysis calculated by solely factoring in tuition rates and college enrollment).

<sup>129</sup> See Carnevale et al., *supra* note 26 (“It might be more equitable for the federal government to provide each state a set amount of funding for each enrolled student rather than to base funding on the current tuition price, but the amount of funding provided would need to be adequate to cover all eligible students. Another option would be to tie funding to the income level within the states, with the federal government covering a larger share of

many states began to shift the burden of college affordability onto the individual and away from the state by increasing tuition and decreasing state funding for public universities after the 2008 recession, New York continued its longstanding history of minimizing such a shift and increasing investment in SUNY and CUNY.<sup>130</sup> However, because of how federal funds are proposed to be allocated in President Biden's plan, New York would receive comparatively less in federal funds than states who chose to increase public college tuition because its leaders chose not to increase tuition prices in the face of a recession.

Intuitively, there are two answers to this problem, both of which require New York's federal and state leadership to be more aligned in their messaging and political strategy to fund accessible postsecondary education. Crucially, while former Governor Cuomo brashly pushed the Excelsior Scholarship as making college accessible for all New Yorkers, eleven congressional representatives from New York were cosponsoring a bill that would deliver the results Cuomo touted but also deliver the state less federal funding than it is rightly entitled to.<sup>131</sup> Moving forward, New York's leaders at the state and federal levels need to better align their messaging to ensure that the state-level higher education funding does not actively work against the State when it comes time to implement the federal plan that New York's congressional leaders support.

The first solution would be for New York to impose a tuition price increase at the time the federal funding match program is enacted. However, this tactic would not be effective if other states acted in kind, which is likely why in more recent 'College for All' acts introduced to Congress, states are not permitted to increase tuition prices during the first year of implementation by more than

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the cost for states with lower incomes.”)

<sup>130</sup> See Michael Mitchell, *A Lost Decade in Higher Education Funding*, CTR. ON BUDGET AND POLICY PRIORITIES (Aug. 23, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-higher-education-funding> [<https://perma.cc/H4TT-QL5C>]; N.Y.S. OPEN BUDGET, <https://openbudget.ny.gov/spendingForm.html> (last visited Jan. 22, 2021); Higher Education Services Corporation: *New York's Tuition Assistance Program - A History*, <https://www.hesc.ny.gov/partner-access/financial-aid-professionals/programs-policies-and-procedures-guide-to-grants-and-scholarship-programs/appendix-e-new-york-s-tuition-assistance-program-a-history.html> [<https://perma.cc/58KF-SAX2>] (last visited Jan. 22, 2021).

<sup>131</sup> ALL INFORMATION (EXCEPT TEXT) FOR H.R.2730 - COLLEGE FOR ALL ACT OF 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2730/all-info> [<https://perma.cc/QSL2-8J9F>] (last visited Aug. 28, 2022).

their highest tuition increase in the five years before implementation.<sup>132</sup> Given the unlikelihood of federal funding without such a provision limiting tuition increases, the funding structure of President Biden's proposal has seemingly put New York in a lose-lose situation, where to receive a level of per-student funding on par with other states, it would need to raise tuition for students before additional federal funding is available to the state. Thus, if New York's leaders determine that a federal 'College for All' program like President Biden's proposal is feasible in the coming years, they would need to increase tuition at SUNY and CUNY schools. Because raising tuition prices for SUNY and CUNY students would make college less accessible for the many New Yorkers who do not qualify for free-tuition college, the increase would need to be done artificially, as described in Part IV, to not threaten the political viability of such a plan and keep higher education in New York as accessible as possible.

The second solution is to advocate for a change to the legislation proposed in Congress and by President Biden and to demand the use of a different calculation for dispersing federal funds to the states. Indeed, "it might be more equitable for the federal government to provide each state a set amount of funding for each enrolled student rather than to base funding on the current tuition price," while "[a]nother option would be to tie funding to the income level within the states, with the federal government covering a larger share of the cost for states with lower incomes."<sup>133</sup> This path would again require New York's leadership, including its Governor, state officials, and senators, to be better aligned in driving such legislative change and create a plan to make New York's postsecondary funding more equitable in the short term.

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<sup>132</sup> H.R.3472, College for All Act of 2019 116th Congress (2019-2020) § 902(3)(i).

<sup>133</sup> Carnevale et al., *supra* note 26.

#### IV. CREATING A PATH FORWARD FOR COLLEGE FOR ALL IN NEW YORK

Given that President Biden's plan, as well as every plan put forth in recent years by Congress, disfavors New York by tying federal spending to in-state tuition prices,<sup>134</sup> to maximize the amount of federal money that the state receives, it needs to lock in a tuition price increase before such an action is prohibited by statute. Contrary to the instincts of most constituents, raising the tuition prices of New York's public colleges does not necessarily mean that students would need to pay any additional funds to receive the same education. In fact, for students eligible to receive TAP funds since 2011, New York has required individual SUNY and CUNY schools to bridge the "TAP gap," which is the difference between the maximum financial award available to students and the price of tuition in New York's public colleges.<sup>135</sup> This is done through the use of tuition credits via state funding or, as done more recently, by funding the difference out of SUNY and CUNY schools' operating revenue.<sup>136</sup> By doing so, New York has been able to artificially decrease tuition for low-income students receiving TAP funds. The Excelsior Scholarship similarly forces SUNY and CUNY institutions to "bridge the gap" of funding, as the maximum Excelsior Scholarship is 5,500 dollars, well below most SUNY and CUNY tuition costs, and the difference comes from SUNY and CUNY's portion of the budget.<sup>137</sup> In this maneuvering, New York is artificially keeping tuition prices and financial aid amounts low by shifting funds to the portion of the state budget held by SUNY and CUNY and either increasing this portion of the budget or making cuts to other SUNY and CUNY functions.

Under a similar guise, New York could use simple budgetary tactics to artificially increase tuition rates for all students. This

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<sup>134</sup> See *infra* Section III (discussing need for effective change to position the state better for a federal plan).

<sup>135</sup> SUNY: AN ANALYSIS OF THE TUITION ASSISTANCE PROGRAM, <https://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/Attachment%20C1%20-%20Tap%20Report.pdf> [<https://perma.cc/5BJQ-G955>] (last visited Jan 22, 2021).

<sup>136</sup> See *id.*

<sup>137</sup> See N.Y. EDUC. LAW § 669-h (Consol.) (2020).

could be done by reducing the amount that the state invests in SUNY and CUNY and using that same amount of funds to increase the budget of the HESC. If these changes are implemented together at an even rate, nothing would change in terms of funding for SUNY and CUNY from the state; however, they would receive this funding as tuition payments instead of direct state aid. To ensure that the program does not increase tuition costs for any student, a key to the political viability of such a plan, the state could create a scholarship that is universal to all SUNY and CUNY students. The scholarship would be administered by the HESC in the same amount for all students and could be implemented without ever needing to involve students or their families; New York would simply be including this “scholarship” as a line item on every student’s tuition bill to have money that the state is already investing directly into SUNY and CUNY institutions show up as part of tuition. This would reverse the trend of New York keeping its tuition prices artificially low by artificially increasing tuition prices at no cost or burden to the individual SUNY or CUNY student.

For example, in 2021, 375,620 students<sup>138</sup> were enrolled in the SUNY system. The typical tuition of a SUNY school in 2021 was \$7,070, and the state had allocated \$9,077,642,000 to SUNY.<sup>139</sup> Thus, if tuition at SUNY schools was raised by \$100 per student, bringing the cost to \$7,170, SUNY would be bringing in an additional \$3,756,200. Theoretically, that is \$3,756,200 less than the state would need to allocate to SUNY, so by allocating that amount to HESC and directing the agency to create a universal scholarship of \$100 for each SUNY student, the state could effectively create an artificial tuition increase. In this example, if President Biden’s current plan is enacted, New York would receive an additional sixty-six dollars per enrolled student, totaling \$24,790,920 per year.

This influx could, on its own, nearly erase the estimated thirty-six million dollars per year gap in New York’s postsecondary

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<sup>138</sup> See Rachel Silberstein, *SUNY Enrollment Shrinks Again*, ALBANY TIMES UNION (last updated Sep. 29, 2021, 3:19 PM), <https://www.timesunion.com/news/article/SUNY-enrollment-shrinks-again-16496218.php> [<https://perma.cc/NNS8-V72U>].

<sup>139</sup> 2021-22 TYPICAL EXPENSES FOR UNDERGRADUATE STUDENTS AT A SUNY COLLEGE, <https://www.suny.edu/smarttrack/tuition-and-fees/> [<https://perma.cc/MV76-TZZG>] (last visited Aug. 28, 2022); N.Y.S. OPEN BUDGET, *supra* note 130.

funding that President Biden's plan creates. Further, this modest, artificial tuition increase would still only bring SUNY's tuition to \$7,170, much less than the national average public in-state tuition, which was \$9,037 in 2018.<sup>140</sup> More drastic tuition increases, coinciding with universal scholarships funded through reallocated funds, could present New York with the opportunity to capture significantly more federal dollars while keeping state taxpayers' contributions stagnant. Capturing the maximum amount of federal funding is key not only for SUNY and CUNY institutions and students who receive the brunt of the effects that cost-cutting maneuvers have on the state's postsecondary education system, but it is also significantly important to every taxpayer in the state, who will not see their tax dollars being put to use most effectively if and when a federal "free-tuition" or "free college" plan is brought to fruition.

### CONCLUSION

As New York moves on from the Cuomo administration, the next Governor must clearly articulate a plan to provide all students access to postsecondary education, which is unified with the messaging of New York's federal representatives. Former Governor Cuomo's instincts in the aftermath of the 2016 Democratic primary were correct when he "heard an outrageously ambitious idea, but an irrefutably smart idea . . . [that] we should make college affordable, college should be accessible, college should be free for middle-class families in this nation."<sup>141</sup> However, his execution was far off the mark. The failure of that execution is only compounded by the issue of New York's congressional leaders broadly supporting a bill that,<sup>142</sup> much like President Biden's plan, would punish New York for its commitment to keeping tuition prices low.<sup>143</sup> New York's next

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<sup>140</sup> DIGEST OF EDUCATION STATISTICS, [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_330.20.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_330.20.asp) [<https://perma.cc/ACB8-WHG3>] (last visited Aug. 28, 2022).

<sup>141</sup> Lord, *supra* note 14.

<sup>142</sup> *See supra* note 131.

<sup>143</sup> *See id.*; *The Biden Plan for Education Beyond High School*, *supra* note 20; *supra* Section III (discussing effects of a federal college for all plan).

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Governor needs to properly assess the complicated monetary relationship between the state and the federal government in making postsecondary education accessible for all students in New York. No matter what path forward is chosen, the messaging to New Yorkers must be clearer, more truthful, and more unified, to ensure that citizens of the state understand the challenging path forward in making postsecondary education accessible for all students.