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FOR JUSTICE

# Meaningful Ethics Reforms for the “New” Albany

*by Lawrence Norden, Kelly Williams, & John Travis*

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## ABBREVIATIONS:

CPI Commission on Public Integrity

LEC Legislative Ethics Commission

OCE Office of Congressional Ethics

PEERA Public Employees Ethics Reform Act of 2007

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## INTRODUCTION

Rocked by scandal, Albany is both in dire straits and at the precipice of potentially positive change. In the coming months, as the State makes hard choices that will greatly impact every New Yorker, our elected leaders need to regain their standing with the public by reforming a system that far too many see as corrupt and lacking legitimacy.

The Public Employees Ethics Reform Act (PEERA) of 2007 was the only comprehensive modification to lobbying and ethics laws in New York State in more than 20 years. The legislation was negotiated, drafted and adopted without public discussion or debate. While PEERA included a strict ban on honoraria, increased penalties, and reduced the allowable value of gifts, critical reforms were absent. In particular, calls for an independent, bipartisan commission with jurisdiction over all public officials, including the executive and legislative branches and lobbyists, were ignored, and New York was left with the bifurcated and confusing system of ethics oversight that has largely stood by, mute, through a series of scandals on the legislative side.

As this study details, PEERA has in many ways been a complete failure. Since its passage, the number of scandals in the legislature has only increased, and the influence of special interest money seems to have gained even greater currency, corrupting government officials and cheating the people of the State.

The purpose of this report is to emphasize the core reforms that we believe are vital to fundamentally change Albany. Ultimately, the success of reform legislation will reside in the details, so we urge lawmakers to invite all stakeholders in this process, including our existing ethics overseers, law enforcement officials, the academy, good government groups, but especially the public, to have an opportunity to review and comment on their bill.

## PROBLEM 1: THE CURRENT BIFURCATED STRUCTURE FOR ETHICS ENFORCEMENT IS BROKEN

### *The Legislative Ethics Commission has proven to be a failed experiment*

Ignoring calls for the creation of a single ethics overseer,<sup>1</sup> ethics reforms passed in 2007 retained the current bifurcated system of oversight and created the 13-member New York Commission on Public Integrity (CPI), with jurisdiction over executive branch officials and lobbyists, and the Legislative Ethics Commission (LEC), a nine-member body with sole jurisdiction over legislative branch officials.

The structure of the LEC, whose members consist of legislators and persons appointed by legislative leaders, has proven especially flawed.<sup>2</sup> The LEC has never been fully staffed, and currently operates without a ninth commissioner, who must be jointly appointed by legislative leaders, which skeptics might view as a sign that legislative leadership is not serious about its duty to provide effective ethics oversight and guidance.

Perhaps most tellingly, since its creation in 2007 – during a period of time in which Albany has been rocked by scandals, with no less than nine legislators indicted or convicted of bribery, fraud or other crimes committed while they were in office -- the LEC has not issued even a single finding against a sitting legislator and only a scant handful of official advice to help guide the officials and staff subject to its jurisdiction. The LEC's only substantive public action has been the issuance of a Notice of Reasonable Cause against Senator Hiram Monserrate, *after he had already been removed from office*.<sup>3</sup>

### *The bifurcated system has created the perception of special treatment for legislators*

Having separate ethics overseers is also confusing and leads to the public perception that there are separate standards of conduct for legislators and all other public officials. A recent example of this is the unfortunate incongruity between the two commissions' interpretations of the "widely attended events" exception to the recently enacted ban on accepting or offering gifts of more than nominal value. One prominent press report of the more lenient interpretation by the LEC verged on mockery.<sup>4</sup>

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<sup>1</sup>BRENNAN CTR. FOR JUSTICE AT N.Y.U. SCH. OF LAW ET AL., STRENGTHENING ETHICS IN NEW YORK: THE ETHICS IN GOVERNMENT ACT OF 2006 1 (2006), [http://www.brennancenter.org/page/-/d/download\\_file\\_8611.pdf](http://www.brennancenter.org/page/-/d/download_file_8611.pdf).

<sup>2</sup> So close are these commissioners to the legislators who appoint them that the *Times Union* reported that one commissioner, real estate developer John J. Nigro, sent invitations to a fundraiser for convicted former New York State Senate Leader Joseph Bruno's legal defense fund last January. See James M. Odato, *Ethics Panel Member Helps Bruno*, ALBANY TIMES UNION, Dec. 30, 2009, <http://www.timesunion.com/default/article/Ethics-panel-member-helps-Bruno-561261.php>.

<sup>3</sup> New York State Legislative Ethics Commission, Notice of Reasonable Cause, In the Matter of Hiram Monserrate Former State of New York Senator (2010) [http://www.legethics.com/Files/Public\\_Documents/FINAL%20NORC.pdf](http://www.legethics.com/Files/Public_Documents/FINAL%20NORC.pdf).

<sup>4</sup> Kenneth Lovett, *Albany Ethics Panel Says Legislators Can Eat, Drink with Lobbyists Despite 2007 Reform Law*, N.Y. DAILY NEWS, Apr. 3, 2010, [http://www.nydailynews.com/news/2010/04/03/2010-04-03\\_these\\_little\\_piggies\\_get\\_their\\_way\\_albany\\_panel\\_says\\_sure\\_pols\\_can\\_eat\\_drink\\_wit.html](http://www.nydailynews.com/news/2010/04/03/2010-04-03_these_little_piggies_get_their_way_albany_panel_says_sure_pols_can_eat_drink_wit.html)

## **SOLUTION: THE CREATION OF AN INDEPENDENT, UNIFIED ETHICS COMMISSION**

We urge immediate action to replace the current bifurcated system of ethics oversight in New York State with a unified, independent ethics commission with jurisdiction over executive and legislative branch officials as well as lobbyists.

### ***There are many good examples of unitary, independent ethics commissions***

Empirically, New York is one of only a small handful of states with a separate, self-policing legislative ethics overseer: the National Conference of State Legislatures reports that 33 of the 40 states that have ethics commissions give these commissions jurisdiction over both the executive and legislative branches.<sup>5</sup>

These other states also provide a number of real world examples of how the members of a unified commission would be appointed to address concerns about politics interfering with ethics oversight and ensure that the members are largely bi-partisan. In Connecticut, ethics enforcement for both the executive and legislative branches is overseen by a nine member board. Though legislative leaders appoint six of the nine members, two of the six are appointed after being nominated by “a citizen group having an interest in ethical government.” The Governor appoints three members, one of whom must also be a nominee of a citizen group.<sup>6</sup> The Massachusetts State Ethics Commission consists of five members, with no more than three from the same political party. The governor appoints three members, and the remaining two are appointed by the Secretary of State and Attorney General.<sup>7</sup>

The New York State Bar Association’s Task Force on Government Ethics recent report includes a workable and, for New York’s officials, familiar means of creating a bi-partisan commission.<sup>8</sup> The report recommends a commission of nine members, serving staggered five-year terms. The Governor would appoint two members, of different parties, and each of the legislative leaders, Attorney General and Comptroller would appoint a member. The chair would be appointed by the Governor with Senate confirmation.

### ***An independent commission need not infringe on the Legislature’s ability and power to police its own members***

Concerns that a unified commission might undertake politically motivated investigations, “witch hunts,” should be allayed by adoption of a well-thought out oversight structure that allows persons subject to an

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<sup>5</sup> Nat’l Conference of State Legislatures, State Ethics Commissions: Jurisdiction, (Nov. 2010), <http://www.ncsl.org/default.aspx?tabid=15361>.

<sup>6</sup> CONN. GEN. STAT. § 1-80(a) (2010).

<sup>7</sup> MASS. GEN. LAWS ch. 268B, § 2 (2010)

<sup>8</sup> N.Y. STATE BAR ASS’N, TASK FORCE ON GOVERNMENT ETHICS (Jan. 28, 2011),

<http://www.nysba.org/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=46069>.

investigation notice and an opportunity for response before the matter is made public and, contrary to some expectations, *does not eliminate the legislature's power to issue penalties related to core legislative activities of its own members and, if it so chooses, other violations of ethics laws.* However, we recommend that any ethics enforcement powers retained by the legislative ethics committees be made subject to additional rules designed to bring transparency and accountability to that process.

To illustrate this point, the Office of Congressional Ethics (OCE), which was created in 2008 in response to concerns that the House Ethics Committee was not diligent in investigating House members, can initiate an investigation after a written request by two OCE Board members, but must immediately inform the target of the inquiry and cannot make the fact of the inquiry public until several other procedural hurdles have been met. A vote of four members of the Board can terminate the inquiry during a secondary, but still non-public phase. Final determinations about members' ethics charges are made by the House Ethics Committee in a *public* process, the most publicized example of which was the censure in 2010 of Representative Charles Rangel.<sup>9</sup> More information is available at <http://oce.house.gov/process.html>. But if the House Ethics Committee refuses to act on the OCE Board's referral, after a period of time the referral is made public.

Similarly, New York's new unified ethics commission should be given jurisdiction over the executive and legislative branches to enforce the entirety of the ethics laws such as post-employment restrictions, gift and honoraria bans and financial disclosure requirements. But each legislative ethics committee should also be able to investigate and censure their members if it so chooses, and, in instances where the violation includes performance of a core legislative activity, the final determination should be made by the appropriate legislative ethics committee. And, like the House Ethics process, additional rules should be drafted to ensure that matters in the hands of legislative ethics committees are dealt with promptly or, after a reasonable period of time, made public. The technicalities of this process are an obvious concern to reformers and underscore the need for a period of public scrutiny of an ethics bill.

### ***The new commission should be charged with an expansive mission***

A new unified ethics commission should be charged with an expansive mission that would include not just oversight and enforcement but also providing useful guidance, training and outreach to all officials and their staff members. New York State's Commission on Public Integrity, which watches over executive branch employees and lobbyists, produces a timely annual report and holds regular meetings that are partly open to the public and even webcast. CPI's professional staff answers questions and issues advisory opinions and regular press releases on its accessible website. We urge that these good practices be continued by a new, unified commission.

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<sup>9</sup> *Times Topics: Charles Rangel*, N.Y. TIMES, [http://topics.nytimes.com/top/reference/timestopics/people/r/charles\\_b\\_rangel/index.html?scp=1&sq=charles%20rangel%20censure&st=cse](http://topics.nytimes.com/top/reference/timestopics/people/r/charles_b_rangel/index.html?scp=1&sq=charles%20rangel%20censure&st=cse) (last updated Dec. 2, 2010).

## PROBLEM 2: CORRUPTION SCANDALS IN THE STATE LEGISLATURE ARE FREQUENTLY RELATED TO LEGISLATORS' RECEIPT OR SOLICITATION OF OUTSIDE INCOME

Of the 14 former legislators who have been indicted, convicted or pled guilty to crimes in the last decade, an astonishing ten were crimes related to soliciting or receiving outside income from individuals doing or hoping to do business with the State.<sup>10</sup> After the arrest in 2008 of former Queens Assemblyman Anthony Seminerio, then US Attorney for the Southern District Michael J. Garcia criticized New York's lax disclosure laws: "The absence of genuine transparency in Albany provides cover for officials seeking to enrich themselves at the public expense."<sup>11</sup> Mr. Seminerio died in prison a few weeks ago while serving his sentence for corruption.<sup>12</sup>

*The Skilling decision means disclosure of outside income is even more important than it was last year*

Revisions to disclosure laws in New York State are even more urgent in light of the US Supreme Court's ruling in June 2010 in *Skilling v. United States*,<sup>13</sup> which undermined many parts of the federal honest services fraud statute. In New York State, federal prosecutors used these laws to bring successful corruption cases against former Senate Majority leader Joseph Bruno and the late Assemblyman Antonio Seminerio.

Members of the Senate Judiciary Committee have pledged to rewrite the law, but in the meantime, federal fraud laws now cover only outright bribery and kickback schemes; instances of quid pro quo and undisclosed financial interests and conflicts will go unpunished. As Lanny Breuer, Assistant Attorney General, testified in September 2010, "corrupt officials and those who corrupt them can be very ingenious, and, as we know, not all corruption takes the form of bribery."<sup>14</sup> He gave the example of a mayor who funnels city business to a company in which the mayor owns an undisclosed interest. The scheme is clearly corrupt but, Mr. Breuer warned, "it is no longer covered by the honest services fraud statute or any other federal statute."<sup>15</sup>

*But a well-written financial disclosure law might have revealed, and an independent and effective ethics overseer would have investigated and corrected, such a scheme.*

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<sup>10</sup> Those legislators are Pedro Espada Jr., Vincent Leibell, Joseph Bruno, Anthony Seminerio, Efrain Gonzalez Jr., Diane Gordon, Brian McLaughlin, Clarence Norman Jr., Guy Velella, and Gloria Davis. For more information see Table 1 at the end of this report.

<sup>11</sup> Ross Goldberg, *New York Lawmaker Is Indicted*, N.Y. SUN, Sept. 11, 2008, <http://www.nysun.com/new-york/new-york-lawmaker-is-indicted/85645/>.

<sup>12</sup> David M. Halbfinger & William K. Rashbaum, *Former Assemblyman Seminerio Dies in Prison*, N.Y. TIMES, Jan. 6, 2011, <http://cityroom.blogs.nytimes.com/2011/01/06/former-assemblyman-seminerio-dies-in-prison/?scp=2&sq=anthony%20s%20seminerio&st=cse>.

<sup>13</sup> 18 USC Section 1346

<sup>14</sup> *Honest Services Fraud: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 6 (2010) (statement of Lanny A. Breuer, Assistant Att'y Gen., Criminal Div., U.S. Dep't of Justice), available at <http://judiciary.senate.gov/pdf/9-28-10%20Breuer%20Testimony.pdf>.

<sup>15</sup> *Id.*

## SOLUTION: THE ESTABLISHMENT OF MEANINGFUL FINANCIAL DISCLOSURE OF ALL OUTSIDE INCOME FOR PUBLIC OFFICIALS

Comprehensive disclosure of private financial interests would set a new tone in Albany, and be a declaration by lawmakers that their first priority is to the public. We urge passage of a law that would require public officials to disclose all sources of income that might serve to influence their decision-making including commercial tenants, sources of brokerage fees and commissions and other third-party payments and business clients of law firms and other professional practices.

### *Laws calling for less than complete client disclosure will not serve the public interest*

Policymakers should avoid any temptation to adopt a half measure. Our argument for comprehensive disclosure for New York officials stems from concerns about the extreme levels of corruption related to outside income (*see* table 1 at the end of this study). Only comprehensive client disclosure will reveal - and ideally prevent - the subtle yet corrupt influence-peddling that so shocked New Yorkers during the last round of federal indictments and convictions. If, for example, officials are required only to report income from clients doing business with the state, then legislators will likely be able to avoid disclosure of fees from private clients seeking introductions or advice about doing business with an organization heavily dependent upon the legislature's goodwill, such as public employee unions, banks, insurance companies and real estate developers. A comprehensive client list would allow reporters and other outsiders to evaluate whether a relationship between an official and a client is truly a professional business relationship unrelated to the official's position in government.

An indictment filed in federal court in 2010 against former New Jersey State Senator Wayne Bryant highlights the need for strict financial disclosure requirements for legislators with part time employment such as in a law practice. As reported in the *Philadelphia Inquirer*, the indictment alleges that the former senator received \$192,000 in retainer fees from a Bergen County Law firm, which were actually bribes in exchange for support of the development projects for clients of the firm. New Jersey's ethics laws require financial-disclosure statements of legislators, spouses, and minor children, in which they must disclose "personal loans, business interests, addresses and description of property owned, as well as the names of all paid or unpaid offices and board positions held."<sup>16</sup> As in New York, however, New Jersey legislators who work as attorneys do not have to disclose their clients.

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<sup>16</sup> Adrienne Lu, *Bryant indictment highlights loophole in N.J. ethics law*, PHILADELPHIA ENQUIRER, Sept. 29, 2010, [http://articles.philly.com/2010-09-29/news/24980628\\_1\\_ethics-law-disclosure-legislative-code](http://articles.philly.com/2010-09-29/news/24980628_1_ethics-law-disclosure-legislative-code).



***Client confidence can be protected if a well thought out plan is put in place***

We also conclude that there is no basis for the claims by some legislators that information about the part-time law practices many maintain alongside their official duties, such as the identity of their clients, is privileged and confidential. In highly publicized and widely-read reports, both the New York State Bar Association and the New York City Bar have endorsed the idea of disclosure of client identity for public officials with part-time law practices.<sup>17</sup> As stated in the 2010 New York City Bar Report:

*“There is no basis for excluding lawyers from the public scrutiny to which legislators should be held. Requiring lawyer-legislators to make these disclosures will not violate the rules governing attorney conduct and will go a long way toward restoring public confidence in New York State’s governing process and the independence of legislators.”*<sup>18</sup>

And,

*“With regard to lawyers, disclosure should specify whether the fee arrangements are based on hours worked or contingency, whether a referral fee is involved, and whether any premium or other add-ons are involved.”*<sup>19</sup>

***Client disclosure in other states***

Several other states, including California, Washington, Wisconsin and Alaska, require extensive client disclosure and have instituted measures that protect client privacy in the few cases where it is warranted when balanced against the public interest.

In ***Wisconsin***, public officers are required to disclose commercial customers, clients and tenants who are not individuals:

“For each unincorporated business, subchapter S corporation, service corporation (SC), limited liability company (LLC), partnership, or income-producing real estate (in which the officer or his family owns 10% or more), list businesses, organizations, and lobbyists that paid the enterprise \$1000 or more in [the calendar year]. Furthermore, please place a checkmark in the appropriate column if an organization listed in Item 3 authorized you to represent it in its dealings with others as an attorney-at-law, agent, spokesperson, or representative.

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<sup>17</sup> N.Y. STATE BAR ASS’N, *supra* note 8, at 21 n.24; COMM. ON STATE AFFAIRS ET AL., ASS’N OF THE BAR OF THE CITY OF N.Y., REFORMING NEW YORK STATE’S FINANCIAL DISCLOSURE REQUIREMENTS FOR ATTORNEY-LEGISLATORS (2010), <http://www.abcnyc.org/pdf/report/uploads/20071850-ReformingNYSFinancialDisclosureRequirements.pdf>.

<sup>18</sup> COMM. ON STATE AFFAIRS ET AL., *supra* note 16, at 2.

<sup>19</sup> *Id.* at 4.

List: both a third-party payer as well as the customer, client or tenant if the business received income from a third-party payer (such as a fee, commission, or insurance payment received by a realtor, travel agent, or medical practice).

Do not list: an individual (unless the individual was a lobbyist or acting on behalf of a business or organization); a decedent's estate."<sup>20</sup>

Further, Item 7 of the Wisconsin form requires disclosure of entities that appoint officials as agent, representative or spokespersons to third parties:

"List organizations that authorized you or a family member to represent it in its dealings with others as an attorney-at-law, agent, spokesperson, or representative...

List: each business, labor union, association, cooperative, partnership, or other organization for which you or a family member was an authorized representative or legal agent.

In the case of a lawyer, [list] business clients for which you or a family member was authorized to provide representation in dealing with other parties or before a tribunal."<sup>21</sup>

In *California*, public officials must disclose "commission income," defined as "gross payments of \$500 or more received ...as a broker, agent, or sales person, including insurance brokers or agents, real estate brokers or agents, travel agents or salespersons, stockbrokers, and retail or wholesale salespersons...The "source" of commission income generally includes all parties to a transaction, and each is attributed the full value of the commission."

Officials must disclose "the name of each reportable single source of income of \$10,000 or more." This includes clients, and, as interpreted by California's Fair Political Practices Commission: "A person's name is not ordinarily protected from disclosure by the law of privilege in California. Under current law, for example, a name is protected by the attorney client privilege only when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability."<sup>22</sup> Regulations set out a procedure that must be followed in order to omit a source of income on the basis of privilege.<sup>23</sup>

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<sup>20</sup> WIS. GOV'T ACCOUNTABILITY BD., GAB-9012011 STATEMENT OF ECONOMIC INTERESTS, *available at* <http://gab.wi.gov/node/205>.

<sup>21</sup> *Id.*

<sup>22</sup> CAL. CODE REGS. tit. 2, § 18740 (2011).

<sup>23</sup> *Id.*

In *Washington State*, officials must disclose “the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union or other business or commercial entity from which such entity has received compensation in any form in the amount of \$10,000 or more during the preceding twelve months.”<sup>24</sup>

Washington’s Commission can allow modification of client reporting when a “literal application...works a manifestly unreasonable hardship” and such suspension “will not frustrate the purposes of the chapter.” In PDC Interpretation 02-03, the Commission states: “The Commission shall suspend or modify the reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing evidence.”

A footnote to this PDC Interpretation provides:

Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a “strong probability” that the disclosure would convey the substance of a confidential communication between client and attorney. Splash Design, Inc. v. Lee, 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to Dietz v. Doe, 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, Washington Practice, Vol. 5A, § 501.15 (1999); United States v. Hunton & Williams, 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); C.K.

In *Alaska*, officials must disclose each source of income over \$1,000 from their sole proprietorships, partnerships, limited liability companies, and professional corporations. The instructions to the APOC Financial Disclosure Statement note that:

“Source of income is the origin of the payment, requiring disclosure of: the client or customer ... If the origin of payment is not the same as the client for whom the service is performed, both are considered the source of income, and both must be reported. Example: A realtor must report the real estate company that pays him/her and the clients the agent represented. ... the financial disclosure law requires a detailed description of services rendered”<sup>25</sup>

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<sup>24</sup> WASH. PUBLIC DISCLOSURE COMM’N, PERSONAL FINANCIAL AFFAIRS STATEMENT F-1 SUPPLEMENT, *available at* <http://www.pdc.wa.gov>.

<sup>25</sup> PUBLIC OFFICES COMM’N, ALASKA DEP’T OF ADMIN., FINANCIAL DISCLOSURE STATEMENT, *available at* [http://doa.alaska.gov/apoc/forms\\_all.html](http://doa.alaska.gov/apoc/forms_all.html). The instructions to Alaska’s form also require: “a description sufficient to make clear to a person of ordinary understanding the nature of each service performed.” Do NOT give one-word answers or vague phrases. One-word answers such as “consultant” or “researcher” are NOT acceptable. Provide a clear, detailed description of the work.”

### PROBLEM 3: UNREGULATED SPECIAL INTEREST MONEY CONTINUES TO FOSTER AN ENVIRONMENT OF CORRUPTION, WHICH COSTS STATE TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS

A number of studies show that New York has among the weakest campaign finance laws in the country.<sup>26</sup> Contribution limits in New York State are sky high. This year, the State became the first in the nation to allow individual contributions that exceed \$100,000.<sup>27</sup> Campaign finance laws lack any meaningful disclosure requirements, and too often, the limited penalties for violations that do exist are not enforced at all.<sup>28</sup> The result is that unregulated special interest money has swamped state government.

Weak campaign finance laws have greatly benefited those special interests. A recent national study shows that business contributions have a direct effect on tax policy, finding that “the economic value of a \$1 business campaign contribution is approximately \$6.65 in terms of lower state corporate taxes.”<sup>29</sup>

The link between money and costly giveaways appears particularly strong in New York. State media and good government groups, including the Brennan Center, have documented billions of dollars of giveaways from New York State government to high-contributing special interests. Among the stories reported in just the last few years:

- The Buffalo News reported that after Verizon doled out \$1.2 million in campaign contributions in New York State over the past five years, and the \$9.3 million it spent lobbying state and local governments from 2006 to 2009, the company is poised to receive \$614 million in subsidies for building a data center in Somerset, NY.<sup>30</sup>

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<sup>26</sup> See, e.g., Ciara Torres-Spelliscy & Ari Weisbard, *What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action*, ALBANY GOV'T L.R. 194 (2008); BLAIR HORNER ET AL., CAPITAL INVESTMENTS 2010, N.Y. PUBLIC INTEREST RESEARCH GROUP ET AL. (Jan. 2011),

[http://www.nypirg.org/goodgov/2011.01.03\\_CapitalInvestments2010.pdf](http://www.nypirg.org/goodgov/2011.01.03_CapitalInvestments2010.pdf); Press Release, New York Public Interest Research Group et al., Civic Groups Find Once Again Scores of Apparent Violations of the \$5,000 Limit on Corporate Campaign Contributions for 2008 (Nov. 5, 2009),

[http://www.nypirg.org/goodgov/campaign\\_finance/CFviolations\\_110509.pdf](http://www.nypirg.org/goodgov/campaign_finance/CFviolations_110509.pdf).

<sup>27</sup> Celeste Katz, *NYPIRG: New York on Track To Be First State with Contribution Limit Over \$100k*, N.Y. DAILY NEWS, Jan. 21, 2010, <http://www.nydailynews.com/blogs/dailypolitics/2011/01/nypirg-new-york-on-track-to-be-first-state-with-contribution-limit-over-100000>.

<sup>28</sup> Torres-Spelliscy & Weisbard, *supra* note 25, at 224.

<sup>29</sup> Robert S. Chirinko & Daniel J. Wilson, *Can Lower Tax Rates Be Bought?: Business Rent-Seeking and Tax Competition Among U.S. States* 3 (CESIFO, Working Paper No. 3121, July 2010), available at [http://www.ifo.de/portal/page/portal/DocBase\\_Content/WP/WP-CESifo\\_Working\\_Papers/wp-cesifo-2010/wp-cesifo-2010-07/cesifo1\\_wp3121.pdf](http://www.ifo.de/portal/page/portal/DocBase_Content/WP/WP-CESifo_Working_Papers/wp-cesifo-2010/wp-cesifo-2010-07/cesifo1_wp3121.pdf).

<sup>30</sup> James Heaney, *Deep Pockets Help Verizon Promote Its Interests*, BUFFALO NEWS, Nov. 14, 2010, <http://www.buffalonews.com/business/article252227.ece>.

- In March of 2010, both the Senate and the Assembly rejected Governor Patterson’s proposal for a tax on sugary drinks. The *New York Times* editorialized at the time “Both houses appear to be cowering before the rich and powerful liquor lobby.”<sup>31</sup> The Times estimated that the tax could eventually have brought in revenue of \$1 billion a year.<sup>32</sup>
- According to a report by NYPIRG, the Metropolitan Transit Authority/Philip Morris “lease back” agreement, where the MTA leased a facility to Philip Morris, and later leased it back, gave Philip Morris multimillion dollar tax benefits over the course of the 22 year lease. The deal was completed as “hundreds of thousands of dollars were donated to important state and federally-based Republican campaign committees.”<sup>33</sup>
- In 1997, after learning it was on the verge of losing a \$100 million contract to repair the Queens-Midtown tunnel, the Silverite Construction Company, a top donor of Gov. Pataki and the New York State Republican Committee, was able to persuade state officials to allow them to revamp their bid. On the days before and after they were awarded, the New York State Republican Committee received sudden donations from individuals linked to Silverite’s owner.<sup>34</sup>
- The Vanderbilt Group won a \$27.9 million contract to build SUNY dormitories. The deal was completed after the group had “funneled hundreds of thousands of dollars in campaign contributions to important Republican political committees.”<sup>35</sup>
- The Brennan Center’s 2004 Report *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, discusses the Health Care Workforce Recruitment and Retention Act of 2002 which provided \$1.8 billion in raises for health care workers in SEIU Local 1199. The law was passed after closed-door negotiations among the Governor, Speaker, and Majority Leader. Speaker Sheldon Silver’s campaign committee received \$281,200 from SEIU Local 1199 and its affiliated hospital association. Majority Leader Bruno’s campaign committee received \$230,350.

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<sup>31</sup> Editorial, *A Budget for New York’s Future*, N.Y. TIMES, Mar. 26, 2010, <http://www.nytimes.com/2010/03/27/opinion/27sat2.html>.

<sup>32</sup> *Id.*

<sup>33</sup> BLAIR HORNER & ALEX FREUNDLICH, N.Y. PUBLIC INTEREST RESEARCH GROUP, ETHICS REFORM ACT OF 2009 6-7 (2009), [http://www.nypirg.org/goodgov/2009ethics\\_report.pdf](http://www.nypirg.org/goodgov/2009ethics_report.pdf).

<sup>34</sup> Clifford J. Levy, Donor Won New York Contract as His Gifts Soared, N.Y. Times, Mar. 25, 2008, <http://www.nytimes.com/1998/03/25/nyregion/gop-donor-won-new-york-contract-as-his-gifts-soared.html>.

<sup>35</sup> Brian Donovan et al., *Partners with clout; For Long Island businessmen, bad debts and good connections*, NEWSDAY, Aug. 31, 2000; Brian Donovan et al., *State Halts Dorm Construction; Contractors pulled over work documents*, NEWSDAY, Dec. 8, 2000;

- In 2001, the Pyramid Companies warned legislators that without special tax breaks it would not be able to complete its transformation of a mall into a \$1.7 billion resort in Syracuse. That “transformation” never happened, but as of 2006, Pyramid continued to receive nearly \$7 million a year in tax breaks.<sup>36</sup>

Unregulated special interest money has also led to outright corruption, or the appearance of corruption, over the last decade. Most recently, the report of a 2010 investigation by the State of New York Office of the Inspector General into the selection of Aqueduct Entertainment Group to install and operate video slot machines at Aqueduct Racetrack admonishes several lawmakers for accepting campaign contributions from bidders in the middle of the bidding process over which they had considerable influence.<sup>37</sup>

## SOLUTION: ESTABLISH A PUBLIC FUNDING SYSTEM WITH VOLUNTARY LIMITS AND MATCHING FUNDS FOR STATE ELECTIONS

New York State’s campaign finance system has been called ‘disgraceful’ by independent analysts and the public at large. Indefensibly high contribution “limits,” coupled with utterly inadequate disclosure requirements and nonexistent enforcement, have created a system that cries out for change, starting with the need for establishing a voluntary system of public financing.

*The New York Times* recently summarized Albany’s ills:

“New York also has one of the most unfair campaign finance systems in the country. Contribution limits barely limit anybody from giving exorbitant amounts to their favorite compliant politician. And there are no limits at all on contributions of so-called housekeeping funds for political parties. Disclosure is poor, and enforcement is lax — all an invitation for Albany politicians to do their worst.”

Most importantly, New York needs to move from an electoral system dominated by special interests to one that is “voter owned.” These are three of the changes most urgently needed:

- **Lower sky-high campaign contribution limits.** Individuals in New York are allowed to contribute up to \$102,300 annually to political parties; a total of \$60,700 to cover the primary and general election campaigns of statewide candidates; a total of \$16,800 to state senate candidates and \$8,200 to assembly

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<sup>36</sup> Mike McAndrew, *Without Building a Thing, Pyramid Gets Tax Breaks*, SYRACUSE POST-STANDARD, Oct. 1, 2006, <http://www.syracuse.com/specialreports/poststandard/index.ssf?/specialreports/stories/empirezone4.html>.

<sup>37</sup> OFFICE OF THE INSPECTOR GENERAL, STATE OF N.Y., INVESTIGATION REGARDING THE SELECTION OF AQUEDUCT ENTERTAINMENT GROUP TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT AQUEDUCT RACETRACK 295 (Oct. 2010), <http://www.ig.state.ny.us/pdfs/Investigation%20Regarding%20the%20Selection%20of%20AEG%20to%20Operate%20a%20VLT%20at%20Aqueduct%20Racetrack.pdf>.

candidates. By contrast, contributions to candidates for President of the United States are limited to \$5,000 for both the primary and general election.<sup>38</sup>

- **Institute a voluntary system of public funding of election campaigns.** A voluntary system of public funding of campaigns is the best way to reduce the possibility and the perception of corruption associated with large contributions and unlimited campaign spending. With a “voter owned” system, elections aren’t focused on how much money candidates can raise, but on their abilities and their positions on the issues. Public funding reduces the public’s cynicism about elected officials. The public needs to know that their elected officials are accountable only to the voters and the public at large, not to “special interest” donors, party leaders and lobbyists. Reforms of the current privately funded system are necessary, but those reforms alone will not solve the problem.
- **Significantly increase resources for enforcement of the current campaign finance law and increase penalties for violations.** The New York State Board of Elections is under-funded and limited by law and structure, in its ability punish election law scofflaws. Without real enforcement all other reforms are not worth the paper they are written on.

The costly and corrupt influence of special interest money in New York’s elections means that ethics reform will not be complete until the rules for financing elections are changed, starting, most importantly with a voluntary system of public financing, which will give ownership of elections to the voters.

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<sup>38</sup> Celeste Katz, *NYPIRG: New York on Track to be First State with Contribution Limit Over \$100k*, N.Y. Daily News, Jan. 21, 2010, <http://www.nydailynews.com/blogs/dailypolitics/2011/01/nypirg-new-york-on-track-to-be-first-state-with-contribution-limit-over-100000>.





**TABLE 1: FORMER LEGISLATORS INDICTED, CONVICTED OR PLED GUILTY TO CRIMES IN THE LAST DECADE**

House	Legislator	Charges	Date of Indictment, Conviction or Guilty Plea
Senate	Pedro Espada Jr.	Embezzlement for siphoning federal money into his health care clinics and using funds for personal expenses <sup>i</sup>	Indicted in December of 2010
Senate	Vincent Leibell	Tax evasion for failure to report kickbacks and obstruction of justice <sup>ii</sup>	Pleaded guilty in December of 2010
Senate	Joseph Bruno	Mail fraud for concealing funds from companies seeking influence in the legislature <sup>iii</sup>	Convicted in December of 2009
Senate	Hiram Monserrate	Misdemeanor assault against companion <sup>iv</sup>	Convicted in October of 2009
Assembly	Anthony Seminerio	Honest services fraud for using his position as a legislator to advance interest of companies who hired his consulting firm <sup>v</sup>	Pleaded guilty in June of 2009
Senate	Efrain Gonzalez, Jr.	Mail fraud; accused of routing member items to a non-profit organization he founded and then using those funds for personal expenses <sup>vi</sup>	Pleaded guilty in May of 2009
Assembly	Dianne Gordon	Offering to help a developer acquire city land in exchange for an offer to build the assembly member a free house <sup>vii</sup>	Convicted in April of 2008

Assembly	Brian McLaughlin	Racketeering by embezzlement, fraud, and bribes, taking money from taxpayers, contractors, unions, and a little league baseball team <sup>viii</sup>	Pleaded guilty in March of 2008
Senate	John Sabini	Driving while ability impaired <sup>ix</sup>	Pleaded guilty February of 2008
Assembly	Clarence Norman Jr.	Coercion, grand larceny by extortion and attempted grand larceny by extortion <sup>x</sup>	Convicted in February of 2007
Senate	Ada Smith	Harassment for throwing a cup of coffee at a member of her staff <sup>xi</sup>	Convicted in August of 2006
Assembly	Guy Vellella	Bribery and conspiracy for steering clients towards his father's law firm <sup>xii</sup>	Pleaded guilty in May of 2004
Assembly	Roger L. Green	Falsely billing the state for travel expenses <sup>xiii</sup>	Pleaded guilty in February of 2004
Assembly	Gloria Davis	Bribery charges for accepting \$24,000 from a contractor in exchange for securing a \$880,000 deal. <sup>xiv</sup>	Pleaded guilty in January 2003

<sup>i</sup> Nicholas Confessore and Colin Moynihan, *Espada and Son Plead Not Guilty to Embezzling From Health Network*, N.Y. TIMES, Dec. 15, 2010, <http://www.nytimes.com/2010/12/16/nyregion/16espada.html>.

<sup>ii</sup> Justin Tinker and Helen Kennedy *Vincent Leibell, ex-GOP state senator, says he quit to plead guilty to felony corruption charges*, N.Y. DAILY NEWS, Dec. 6, 2010, [http://www.nydailynews.com/ny\\_local/2010/12/06/2010-12-06\\_vincent\\_leibell\\_republican\\_state\\_senator\\_says\\_he\\_quit\\_to\\_plead\\_guilty\\_to\\_felony\\_.html#ixzz1DUNT3eKb](http://www.nydailynews.com/ny_local/2010/12/06/2010-12-06_vincent_leibell_republican_state_senator_says_he_quit_to_plead_guilty_to_felony_.html#ixzz1DUNT3eKb).

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- <sup>iii</sup> Nicholas Confessore and Danny Hakim, *Bruno, Former State Leader, Guilty of Corruption*, N.Y. TIMES, Dec. 7, 2009, <http://www.nytimes.com/2009/12/08/nyregion/08bruno.html>.
- <sup>iv</sup> Ralph Blumenthal, *Monserate Is Cleared of Felonies*, N.Y. TIMES, Oct. 15, 2009, [http://www.nytimes.com/2009/10/16/nyregion/16monserrate.html?\\_r=1](http://www.nytimes.com/2009/10/16/nyregion/16monserrate.html?_r=1).
- <sup>v</sup> Colin Moynihan, *Democratic Assemblyman Pleads Guilty to Soliciting Payments*, N.Y. TIMES, June 24, 2009, <http://www.nytimes.com/2009/06/25/nyregion/25fraud.html>.
- <sup>vi</sup> Nicholas Confessore, *Ex-State Senator Pleads Guilty to Fraud Charges*, N.Y. TIMES, May 8, 2009, <http://www.nytimes.com/2009/05/09/nyregion/09gonzalez.html>.
- <sup>vii</sup> Kareem Fahim, *Seeking Free Home, Ex-Legislator Will Get a Prison Cell Instead* N.Y. TIMES, June 13, 2008, <http://www.nytimes.com/2008/06/13/nyregion/13gordon.html>.
- <sup>viii</sup> Anemona Hartocollis, *Ex-Labor Leader, Guilty of Racketeering, Recites a 45-Minute Catalog of Crimes*, N.Y. TIMES, Mar. 8, 2008, <http://www.nytimes.com/2008/03/08/nyregion/08plea.html?ref=brianmmclaughlin>; Benjamin Weiser, *Ex-Labor Leader Is Sentenced to 10 Years for Racketeering*, N.Y. TIMES, May 20, 2009, <http://www.nytimes.com/2009/05/21/nyregion/21sentence.html>.
- <sup>ix</sup> Donald Bertrand, *State Sen. John Sabini's DWI Guilty Plea revs up call for ouster*, N.Y. DAILY NEWS, Feb. 18, 2008, available at [http://www.nydailynews.com/ny\\_local/queens/2008/02/19/2008-02-19\\_state\\_sen\\_john\\_sabini\\_dwi\\_guilty\\_plea\\_r.html](http://www.nydailynews.com/ny_local/queens/2008/02/19/2008-02-19_state_sen_john_sabini_dwi_guilty_plea_r.html).
- <sup>x</sup> Anemona Hartocollis, *Former Democratic Leader in Brooklyn Is Convicted* N.Y. TIMES, Feb. 24, 2007, <http://www.nytimes.com/2007/02/24/nyregion/24norman.html?ref=clarencejrnorman>.
- <sup>xi</sup> Michael Cooper, *Lawmaker Found Guilty in Coffee Tossing Case*, N.Y. TIMES, Aug. 26, 2006, <http://query.nytimes.com/gst/fullpage.html?res=9505E3DD1730F935A1575BC0A9609C8B63&scp=10&sq=ada%20smith%20coffee&st=cse>.
- <sup>xii</sup> Dennis Hevesi, *Guy J. Velella, State Senator From Bronx, Dies at 66*, N.Y. TIMES, Jan. 27, 2011, <http://www.nytimes.com/2011/01/28/nyregion/28velella.html?ref=guyjvelella>.
- <sup>xiii</sup> Michael Cooper, *Brooklyn Assemblyman Quits After Admitting False Billing*, N.Y. TIMES, June 2, 2004, <http://www.nytimes.com/2004/06/02/nyregion/brooklyn-assemblyman-quits-after-admitting-false-billing.html?ref=rogerlgreen>.
- <sup>xiv</sup> Susan Saulny, *Ex-Legislator Gets 90 Days In Bribery Case*, N.Y. TIMES, Mar. 19, 2003, available at <http://www.nytimes.com/2003/03/19/nyregion/ex-legislator-gets-90-days-in-bribery-case.html?ref=gloriadavis>.

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