

BRENNAN CENTER FOR JUSTICE AT THE NYU SCHOOL OF LAW
CITIZENS UNION
COMMON CAUSE/NY
LEAGUE OF WOMEN VOTERS/N.Y.S.
NEW YORK PUBLIC INTEREST RESEARCH GROUP

January 2, 2007

Governor Eliot Spitzer Executive Chamber Capitol Building Albany, NY 12224	Senate Majority Leader Joseph Bruno State Senate Legislative Office Building Albany, NY 12247	Speaker Sheldon Silver State Assembly Legislative Office Building Albany, NY 12248
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Senate Minority Leader Malcolm Smith State Senate Legislative Office Building Albany, NY 12247	Assembly Minority Leader James Tedisco State Assembly Legislative Office Building Albany, NY 12248
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Re: Recommendation to Support Ethics Reform Legislation.

Dear Messrs. Spitzer, Bruno, Silver, Smith and Tedisco:

We write to urge you to embrace ethics reform as a top legislative priority for the 2007 session. As you know, the last few years in Albany have been marked by a series of ethical lowlights. Three members of the Assembly, one Senator and one cabinet-level agency head have been convicted of political crimes. Two Assemblymembers and two Senators are currently under investigation. And the state Comptroller has been forced to resign.

Lawmakers would normally respond to such controversies by holding hearings, drafting legislation and advancing reforms. Yet in Albany, little significant change has occurred.

Obviously, passage of reforms cannot guarantee that government will be scandal-free. There will always be those who seek to enrich themselves at the public's expense. But a well-enforced, strict ethics code will make people more likely to behave. Right now, New York has neither.

2007 is the 20th anniversary of New York's ethics law. Given the recent controversies and scandals, it is clear that the law needs to be strengthened. We urge you to enact the following reforms, which we also recommended last year:

Recommendation #1: Create an Independent Ethics Commission.

It is important that legislation be enacted that creates an independent state ethics commission with jurisdiction over statewide elected officials, state officers and employees, state legislators, and legislative employees.

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New York's state ethics law is presently enforced by two agencies. The State Ethics Commission monitors the executive branch and the Legislative Ethics Committees monitors the legislative. The State Ethics Commission's membership is dominated by gubernatorial appointees and the legislative branch is monitored by the Legislative Ethics Committee, which consists of eight members, appointed by the leaders. In both cases, therefore, elected officials essentially police their own behavior and that of their employees. We believe that this system is unacceptable.

As of January 2006, 39 states provided external oversight of their state government officials through an independent ethics commission that had statutory authority and staffing that were independent of the rest of state government.¹ Ethics commissions in only six states including New York do not have jurisdiction over state legislators.² Such unified authority residing in a truly independent body not only ensures that the laws are interpreted in the same manner regardless of which type of public official is being considered, but also that the regulating officials do not look the other way to protect their colleagues at the expense of the public's interests.

We urge you to abandon New York's bifurcated system of ethics enforcement and create an independent ethics commission with jurisdiction to monitor and enforce New York's ethics laws in both the executive and legislative branches. We propose that this new state ethics commission consist of 17 individuals with two persons appointed by each of the following officials: the comptroller, the attorney general, speaker and minority leader of the assembly and the temporary president and minority leader of the senate, and five persons appointed by the governor. The executive director should be appointed by the commission, without regard to political affiliation. No member of this commission should be allowed to hold public or political party offices or be employed as a lobbyist.

Recommendation #2: End "Pay to Play."

We urge you to implement pay-to-play restrictions. The infusion of large sums of money by businesses and unions with public contracts and lobbyists into the campaign coffers of elected representatives has generated a widespread public belief that contributors are "paying" those officials for the opportunity to "play" with the government. The common Albany practice of holding political fundraisers that are attended by professional lobbyists exacerbates the public perception that lobbyists are "buying" access to elected officials. In a typical session, lawmakers are scheduled to be in Albany for 60 days, including 40 nights. During that time, as many as 200 Albany-based fundraisers can occur.³ Albany's top lobbying firm, Wilson, Elser, spent \$253,525 on contributions to candidates in the 2004 election.⁴ Unlike many states, moreover, New York does not limit state or local contractors from making campaign large contributions to the very

¹ THE STATE OF STATE LEGISLATIVE ETHICS 11 (nat'l conference of state legislatures 2002).

² Those states are Illinois, Indiana, Michigan, North Carolina, and Ohio. *Id* at 13.

³ Arbetman, L. & HornerB., et al., PAC-ING IT IN: POLITICAL ACTION COMMITTEE CONTRIBUTIONS IN NEW YORK STATE 2004 (2005), <http://www.nypirg.org/goodgov/pacing%20it%20in%20final.pdf>.

⁴ *Id*.

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officials who must determine to whom a contract should be awarded. The tales of “pay to play” abuses have become commonplace.

Without rules prohibiting “pay to play” arrangements, the risk of actual or apparent corruption in the process of choosing contractors are obvious. Assemblyman William Parment, a Democratic Assemblyman from Jamestown has concluded publicly that “[t]he procurement process is entirely too open to manipulation.”⁵

Similarly, lobbyists in Albany curry favor with public officials not only with gifts, but also with large campaign contributions to their campaign committees and to the legislative leadership committees known as “housekeeping” accounts. Through such contributions, lobbyists create an uneven playing field that allows them or their clients to have greater access to officials than members of the public.

New York should join a growing number of states and localities with “pay to play” restrictions on lobbyists and public contractors, including Connecticut, South Carolina, New Jersey, Ohio, Kentucky, and West Virginia. Reform in this area should:

- Set reasonable limits on contributions to candidates and party housekeeping accounts from lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, and political committees controlled by any of these entities or persons;⁶
- Require lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, and political committees controlled by any of these entities or persons, to report contributions to candidates and party housekeeping accounts made close to an election no later than 48 hours after the contribution is made;
- Prohibit lobbyists and public contractors, and owners and senior managers of such lobbyists and contractors and their immediate family members, from serving as officers of political committees that work with candidates; and
- Prohibit the government from entering into contracts with entities that have made political contributions that exceed the limits discussed above.

Recommendation #3: Strengthen New York’s gift ban.

Gifts to elected officials, state officers or employees, and candidates for those offices, with limited exceptions for *de minimis* items, should be banned.

⁵ Humbert, M., *NY Government Operates Like a Criminal Enterprise*, ASSOCIATED PRESS, Jun. 6, 2004.

⁶ Such limits on contributions should apply during the two years prior to a contractor’s bid or proposal to the relevant agency or contracting authority and either two years after completion of the applicable contract, or upon completion of the applicable candidate’s term in office, whichever is longer.

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It is widely agreed – at least behind closed doors – that allowing lobbyists to offer gifts to lawmakers both corrupts the legislative process and provides unequal public access to government decision-makers. In a democratic society, public policy decisions should not be influenced by the number of baseball game tickets or dinners an official receives from an individual or business with a particular interest. Even without actual corruption, allowing officials to accept gifts of any significant value erodes the public’s confidence in the integrity of our government. The state’s Lobbying Commission has recognized this problem and taken action by drastically limiting gifts from lobbyists.

As of January 2006, three states – Massachusetts, South Carolina, and Wisconsin –had “zero-tolerance” bans on gifts from lobbyists to legislators.⁷ As of that time, eight other states – Alaska, Iowa, Kentucky, Louisiana, Minnesota, New Jersey, Tennessee, and Washington -- also banned gifts, but make exceptions for food and drinks in limited circumstances.⁸

It’s important for a new ethics law to be approved that bans all gifts to all legislative and executive officials, except for certain enumerated *de minimis* items, including food or beverages served at an event where a public official gives a speech or answers questions.

Recommendation #4: Ban honoraria.

We urge you to ban honoraria paid to public officials, except those paid for private professional services at the rate generally charged by specialists in the relevant field. Current New York law does not prohibit honoraria in any form for state legislators, and it only requires that such payments be disclosed if their value exceeds \$1000.⁹ As of January 2006, at least 23 states prohibited honoraria in some manner if offered in connection with a legislator’s official duties.¹⁰

Giving speeches and participating in public policy discussions are important parts of a public official’s job. To allow groups to offer state lawmakers honoraria for performing these duties, however, creates a real or apparent conflict of interest for public officials. At the same time, public officials have the right to be compensated for their services in the private sector that are unrelated to their official duties. Our recommendation would strike an appropriate balance between those two interests.

Recommendation 5: Restrict the personal use of campaign contributions.

Restrictions on the personal use of campaign funds must be strengthened and enforced. In recent years, reports of politicians using their campaign funds to cover arguably personal expenses have exposed a serious inadequacy of current legal restrictions on such behavior.

⁷ THE STATE OF STATE LEGISLATIVE ETHICS at 52.

⁸*Id.* at 56-58.

⁹ N.Y. Public Officers Law § 73-a.

¹⁰THE STATE OF STATE LEGISLATIVE ETHICS at 47.

While current New York law forbids contributions for strictly personal use, the statute's language is too vague to provide any meaningful restraint.¹¹ Contributions "may be expended for any lawful purpose" and cannot be used for "a personal use that is unrelated to a political campaign or the holding of a public office or party position."¹² Candidates thus may interpret, and have interpreted, this vague regulation to allow their use of campaign monies for a variety of purchases, including country club memberships, leased cars, and other purchases that are not directly related to campaigning or governing.

The use of campaign contributions should be limited expressly to pay for costs directly related to promoting the nomination or election of the candidate. Legislation should set forth clear definitions of "personal use" and specifically prohibit the use of funds on expenditures ranging from tuition payments, mortgage, rent, utility payments, and attorney's fees for defense against charges of violating state or federal law, to dues and fees at a country club. Effective legislation can draw from existing statutes concerning personal use in Connecticut, Idaho, Minnesota, Missouri, Ohio, Rhode Island, and Texas.

Recommendation #6: Strengthen the "revolving door" ban.

We encourage you to strengthen the state's "revolving door" ban by extending it to political party officials and lengthening the period of prohibition for lobbying by legislative employees. Bans on "revolving door" lobbying seek to restrain former state government and party officials from using their government connections to benefit themselves, their clients or their business interests after they leave office.

New York already has a "revolving door" ban for certain public officials. New York is one of six states that impose a two-year ban on legislators and state agency officers and employees.

New York's ban does not apply, however, to political party officials and imposes a ban on lobbying by legislative employees that lasts only until the end of the legislative session during which the individual was employed. Accordingly, a legislative employee could leave at the end of a session and begin lobbying immediately thereafter.

Apply a two-year lobbying ban to political party chairpersons and ban former legislative employees from lobbying during the term of office of the legislature in which he or she was so employed or within one year after ending legislative employment, whichever is longer.

Recommendation #7. Create more stringent requirements for financial disclosure for public officers.

Financial disclosure requirements for state employees must be strengthened. Requiring disclosure helps to ensure the transparency and accountability of our state government and to

¹¹ New York Election Law § 14-130.

¹² New York Election Law § 14-130.

avoid possible conflicts of interest. It's important that any ethics reform include ways to enhance

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the requirements for disclosure of financial information by state employees in various ways. For example, as of January 2006, half of the states required that lawmakers disclose the names those who are clients. At a minimum, such names should be reported to the new ethics commission in order to ensure that potential conflicts are adequately monitored.

Recommendation #8. Require ethics training for lobbyists and for the governor, legislators, legislative employees, state agency officers, and state agency employees.

Once good laws are on the books, the good way to prevent ethics violations is through education. As of January 2006, nine states had continuing education requirements for ethics and conflict of interest laws for various categories of state officials.¹³ A reform package should expressly require ethics training for all state officials, including the governor, and legislators, as well as continuing education in these areas provided by the state ethics commission.

While it is essential for lobbyists to understand the ethics laws that regulate their practice, and especially the new “pay-to-play” restrictions that this bill would enact, currently New York does not require any training of lobbyists. Instead, New York provides training for lobbyists only upon request. Instead the New York Temporary State Commission on Lobbying should be responsible for online ethics training of lobbyists at least semiannually, and all registered lobbyists should be required to complete such training.

Recommendation #9: Strengthen accountability of “member items” and other lump sum appropriations.

We urge you to require greater accountability in “member item” spending. Some of the most recent scandals have resulted from misuse of “member item” spending. Any ethics reform package should address such abuses. Member items are appropriated without clear standards established by law or even agency rule. And the state spends a lot on member items and other lump sum appropriations. The State Comptroller’s Office identified more than \$1 billion in the fiscal year 2005-06 budget that was appropriated subject to Memoranda of Understanding (MOUs) among the Budget Director and the two houses.

What can be done about these appropriations? At the very least, the choices made about how to spend this money should be made public, so New Yorkers can examine who is benefiting and weigh the costs and advantages for themselves. The Comptroller has proposed that the intended recipients of lump sum appropriations be identified at the time of enactment and that quarterly reports be issued on lump-sum allocations. If a member item system is to be continued, then a fairer allocation system coupled with better oversight must be established.

¹³THE STATE OF STATE LEGISLATIVE ETHICS at 27. These states are California, Florida, Hawaii, Kentucky, Massachusetts, Minnesota, New Hampshire, North Carolina, and North Dakota.

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Recommendation #10. Strengthen ethical standards for public officials.

We recommend that a new ethics law prohibits business relationships between public officials and lobbyists and those with receive government contracts. Moreover, a new law must make it clear that public officials cannot use public employees in order to provide personal services.

Our organizations stand ready to work with you to develop a package of ethics reforms that overhauls current law. But such reforms are long overdue and must be tackled early this session.

Sincerely,

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