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Testimony of Kelly Williams
Brennan Center for Justice at NYU School of Law
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Public Forum of Ethics Reform Proposals Before the New York State Senate
Investigations and Government Operations Committee
Regarding:

- Establishing an independent commission on governmental ethics ([S31/Squadron](#));
- Increasing financial and client disclosure requirements ([S382/Rivera](#));
- Stripping pensions of public officials convicted of misusing their office ([S2333/Krueger](#));
- Restricting the personal use of campaign funds ([S3053/Krueger](#)); and
- Eliminating Pay-to-Play ([S1565/Addabbo](#)).

Good Afternoon. I am Kelly Williams, an attorney at the Brennan Center for Justice at New York University School of Law, part of the team that works on issues touching on New York State's government.

The Brennan Center is a non-partisan law and policy institute, and as such we look forward to working with officials from all parties for positive ethics law reforms. We are delighted to be a part of the first ever interactive forum on this topic here in Albany. The anticipated ethics reform bills are going to be complicated measures with multiple moving parts; as much sunlight as possible will be required to ensure everything works as intended. My testimony will point out some of the unintended consequences of past reforms that were adopted without serious scrutiny or debate.

In the past five years, more than a dozen New York State legislators have faced criminal charges, and, as the state budget deficit has grown and revenue sources have become less certain, many in the public have become resigned to the idea that special interests will always have outsized influence in Albany. But legislative leaders and a new Governor now have the opportunity to pass core reforms that could fundamentally change Albany.

Everyone here will likely agree that the package of ethics reforms passed in 2007 is mostly a dismal failure. At that time, policymakers ignored calls for a powerful, unified commission to oversee all of New York's ethics laws, and instead, without a hearing or a debate, passed a hasty measure that institutionalized the confusing bifurcated system of oversight we have today: the Commission on Public Integrity, which oversees executive branch officials and lobbyists, and the separate Legislative Ethics Commission, whose nine members consist solely of legislators and persons appointed by legislative leadership.

It is the Legislative Ethics Commission that has proven to be especially calcified, ineffective and, yes, dysfunctional. The LEC has never been fully staffed: it currently operates without its ninth member, an outsider who must be jointly appointed by legislative leaders. Perhaps overcome with enthusiasm to pass a bill, supporters of the 2007 reforms did not realize that their important goal of having a majority of outsiders as LEC commissioners could be thwarted in this way, though a default mechanism for this appointment could easily have been included.

The LEC's meetings are not public, there are no minutes or other public records of its activities, and, perhaps most telling, since its creation in 2007, the LEC has not issued even a single finding against a sitting legislator. This, during a period in which no less than eleven legislators were indicted or convicted of bribery, fraud or other crimes.¹ Sadly, honest legislators and their staff seeking meaningful guidance know they must look elsewhere – there is almost no public, official advice from the LEC.² Since 2007, 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.³

We urge immediate action to reform the current system so that a single, unified commission has jurisdiction over all public officials, executive and legislative, as well as lobbyists. The new commission should be given jurisdiction over post-employment compliance, gift and honoraria restrictions, and financial disclosure requirements. The new commission should also be empowered to investigate all public officials in a thorough and even-handed way, including the power to issue subpoenas, and make referrals to appropriate authorities. Before findings are issued or made public, targets should be given an opportunity to address the Commission.

¹ See Table One in LAWRENCE NORDEN ET AL., MEANINGFUL ETHICS REFORMS FOR THE "NEW" ALBANY, BRENNAN CTR. FOR JUSTICE AT NYU SCH. OF LAW (2011), http://www.brennancenter.org/content/resource/meaningful_ethics_reform_for_the_new_albany/; Colin Moynihan, *State Senator and 7 Others Plead Not Guilty to Corruption*, N.Y. TIMES, Apr. 12, 2011, <http://www.nytimes.com/2011/04/13/nyregion/13kruger.html?scp=2&sq=carl%20kruger%20indictment&st=cse>.

² NEW YORK STATE LEGISLATIVE ETHICS COMMISSION, www.legethics.com.

³ 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.

If any portion of ethics oversight enforcement is retained by the legislature, such as determinations and punishment for violations of conflicts of interest rules, then that process must be made much more open to public scrutiny and accountability, with provisions for open meetings and disclosure of the results of votes. If referrals or complaints are not acted upon within a certain period of time, they should be made public.

Finally on this topic, we urge that a unified ethics commission be charged with an expansive mission that includes not just oversight and enforcement but also providing useful guidance, training and outreach to all officials and their staff members. The 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.⁴ CPI's professional staff answers questions and issues advisory opinions and regular press releases on its accessible website. It is not perfect, but these good practices should be continued and built upon by a new Commission. Ideally, we would have a Commission that is tasked not just with oversight and enforcement, but also the equally important goal of helping everyone conform to high standards of ethical behavior.

My colleagues and I also urge establishment of meaningful financial disclosure of all outside income for public officials. As we pointed out in our study of the need for ethics reform earlier this year, corruption scandals in the State Legislature mostly relate to legislators' receipt or solicitation of undisclosed outside income,⁵ and it is disturbing that the ethics laws allow legislators to be partners with persons with lucrative state-related business. Comprehensive disclosure of all private financial interests would set a new tone in Albany, and be a declaration by lawmakers that their first priority is to the public. Public officials should disclose all sources of income that might serve to influence their decision-making, including their commercial tenants, sources of brokerage fees and commissions and other third-party payments and business clients of law firms and other professional practices. A comprehensive list would allow reporters, election challengers and constituents to evaluate whether a relationship between an official and a client is truly a professional business relationship unrelated to the official's position.

In December 2009, my colleague Larry Norden and I wrote a piece published in the Daily News⁶ challenging some legislators' assertions that they could not disclose more information about their law practices because their clients' identity is protected by the attorney-client privilege. Since then, both the New York City Bar⁷ and the New York

⁴ NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY, www.nyintegrity.org.

⁵ See LAWRENCE NORDEN ET AL., MEANINGFUL ETHICS REFORMS FOR THE "NEW" ALBANY, BRENNAN CTR. FOR JUSTICE AT NYU SCH. OF LAW (2011), http://www.brennancenter.org/content/resource/meaningful_ethics_reform_for_the_new_albany/.

⁶ Lawrence Norden & Kelly Williams, *N.Y. pols must all come clean -- even the lawyers*, N.Y. DAILY NEWS, Dec. 23, 2009, http://www.nydailynews.com/opinions/2009/12/23/2009-12-23_ny_pols_must_all_come_clean_even_the_lawyers.html.

⁷ 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.abcny.org/pdf/report/uploads/20071850-ReformingNYSEFinancialDisclosureRequirements.pdf>.

State Bar Association⁸ have called for disclosure of client identity for public officials with part-time law practices, citing practices in other states that include protection of sensitive client issues. We urge the legislature to fully embrace this concept and avoid the temptation to adopt a half-measure, such as disclosure of only clients with business before the state. Recent scandals involving subtle influence-peddling have shown that more information, not less, is needed.

In conclusion, I must emphasize one additional very important point: as critical as the ethics reforms we are discussing today are, the Brennan Center believes -- based on our study of ethical lapses in New York government, as well as successful efforts to transform corrupt governing elsewhere in the nation -- that a package of campaign finance reforms is essential to restoring public integrity in New York. 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. More information about these issues and our proposals for reform can be found in our report, "*Meaningful Ethics Reforms for the "New" Albany*," February 2011.⁹

Thank you for the opportunity to speak with you today, we look forward to the next stages of this important process.

⁸ 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>.

⁹ LAWRENCE NORDEN ET AL., MEANINGFUL ETHICS REFORMS FOR THE "NEW" ALBANY, BRENNAN CTR. FOR JUSTICE AT NYU SCH. OF LAW (2011), http://www.brennancenter.org/content/resource/meaningful_ethics_reform_for_the_new_albany/.