

BRENNAN
CENTER
FOR JUSTICE

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Dear Governor Cuomo:

The corruption scandals of the last few years have profoundly shaken the faith of New Yorkers in their state government. Last November, the people of this state made clear that they want you to reform the way New York State does business. We therefore applaud you for taking seriously the need to reform New York's ethics rules and structures.

We write to share with you recent findings from the Brennan Center that point to the need for specific changes in New York law. As we more fully detail in the attached study, recent corruption scandals in New York, and the existing system of ethics governance and oversight cry out for serious and effective reform now. For example,

- **New York's bifurcated structure for ethics oversight has resulted in lax, confused and inconsistent application and enforcement of our ethics laws. In short, the Legislative Ethics Commission has proven to be a failed experiment.**
 - Since the creation of the Legislative Ethics Commission ("LEC") in 2007 -- the body appointed by the Legislature to police its own behavior -- 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. In that time, the LEC has not issued even a single finding against a sitting legislator.
 - Having separate ethics oversight commissions for the legislative branch on the one hand, and the executive branch and lobbyists on the other, has resulted in unacceptably confusing and separate standards of conduct for legislators and for all other public officials and employees.
 - New York is currently 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.

- **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, 10 were related to illegally soliciting or receiving outside income from individuals doing or hoping to do business with the State.

- The US Supreme Court's ruling in June 2010 in *Skilling v. United States* undermined many parts of the federal honest services fraud statute. In this unsettled period before the statute is rewritten to address the Court's concerns, there is an even greater need for good laws that mandate meaningful disclosure of outside income and proper oversight. .
 - Several other states, including California, Washington, Wisconsin and Alaska, require comprehensive disclosure of outside income and clients, and have instituted effective measures that protect client privacy in the few cases where it is warranted when balanced against the public interest
- **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. To make matters worse, enforcement of those laws is virtually non-existent. The result is that unregulated special interest money has swamped state government.
 - A recent national study finds that “the economic value of a \$1 business campaign contribution is approximately \$6.65 terms of lower state corporate taxes.”
 - Unsurprisingly, special interests, who play an outsized role in New York's elections get sweetheart deals that are not necessarily in the best interest of all New Yorkers. The press 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.

These findings demonstrate the need for at least three critical changes to New York's current laws. If the State is serious about truly cleaning up Albany, it will make the following three changes to New York law:

- **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.
 - Following the lead of other states, the commission should be bipartisan and as apolitical as possible.
 - The 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.
- **Establish meaningful financial disclosure of all outside income for public officials.**
 - Officials should disclose all sources of income that could be perceived by members of the public 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.

- A new financial disclosure law should take into account the recent decision *Skilling v. United States*, which undermined many parts of the federal honest services fraud statute. The new financial disclosure laws should be designed to uncover schemes more complicated than outright bribery and kickbacks.
 - Policymakers must resist the temptation to craft narrow disclosure requirements that merely respond to the latest scandal. After decades of persistent abuses, the only defensible reforms are those that constitute the very best practices in service in other parts of our nation.
- **Establish a public funding system with voluntary limits and matching funds for state elections.**
 - The State should create a small donor based, public funding system with voluntary limits and matching funds.
 - Any new system must dramatically lower current contribution limits and close loopholes in order to effectively prevent corruption and the appearance of corruption.
 - New York should also ensure that voters are able to learn the information about contributions and expenditures.
 - New York should back up its regulatory system with mechanisms designed to promote compliance.

In the coming months the Governor and legislature will work together to tackle many important issues that will directly impact nearly every New Yorker: the budget, tax policy, education reform, economic development, Medicaid reform, and more. We share your belief that those changes will have far greater legitimacy if concurrent steps are taken to re-establish the people's trust in state government. Accordingly, we urge you and members of the legislature to read the attached report, and carefully consider its recommendations. We look forward to the opportunity to work with you and the legislature to craft the best possible solutions.

Sincerely,



Lawrence Norden
Senior Counsel, Democracy Program

cc: Senate Majority Leader Dean Skelos
Assembly Speaker Sheldon Silver
Senate Minority Leader John Sampson
Assembly Minority Leader Brian Kolb