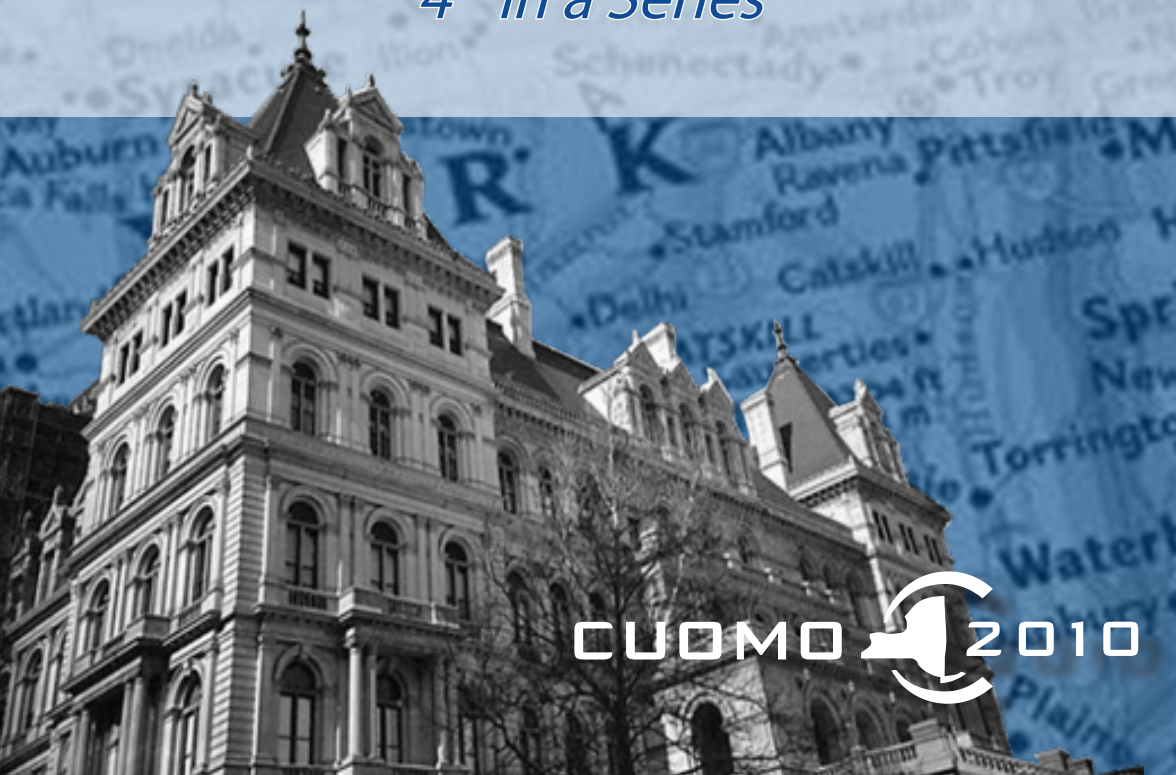


# Clean Up Albany

*Make it Work*

The New NY Agenda  
Andrew Cuomo  
*4<sup>th</sup> in a Series*



CUOMO  2010

# THE NEW NY AGENDA

**T**he people of New York deserve a government that works, for a change — not a government paralyzed by partisan politics and plagued by ethical scandals.

We love New York and are willing to fight for the fundamental reforms necessary to restore competence and integrity in government and regain the

public's confidence.

We are Democrats, Republicans and Independents. But we are New Yorkers first, foremost and always.

Today, I join with my fellow New Yorkers to actively support Andrew Cuomo's New NY Agenda. I pledge to vote in the upcoming elections, to urge my local elected officials to support this

1. **Clean Up Albany.** We must restore honor and integrity to government, with tough new ethics standards, expanded disclosure requirements, independent investigators to root out and punish corruption, and an overhaul of campaign finance laws. We must remove legislative redistricting from partisan elected politicians and place it in the hands of an independent commission that works only for the people. And we must hold a constitutional convention – A People's Convention – to rewrite the Constitution and make these changes immediately because we cannot wait any longer for the state legislature to act.
2. **Get Our Fiscal House in Order.** We must get our State's fiscal house in order by immediately imposing a cap on state spending and freezing salaries of state public employees as part of a one-year emergency financial plan, committing to no increase in personal or corporate income taxes or sales taxes and imposing a local property tax cap. We must also eliminate mandates that make it impossible for school districts and localities to contain costs.
3. **Rightsizing Government.** Government in New York is too big, ineffective and expensive. We must enlist the best private sector minds to help overhaul our more than 1,000 state agencies, authorities and commissions and reduce their number by 20 percent. We must make it easier to consolidate or share services among our more than 10,000 local governments.
4. **NY Works.** We must make New York the jobs capital of the nation and get unemployed New Yorkers back to work. We will give businesses a tax credit of up to \$3,000 for each unemployed New Yorker hired for a new job. We must also replace New York's ineffective economic development efforts with a new strategy organized around regional industry clusters; reduce the high costs of doing business in the state; and support small businesses by increasing access to capital and streamlining regulatory barriers.
5. **NY Leads.** New York has been a national leader in protecting and advancing individual rights and safeguarding the future of its citizens. To remain so, we must protect a woman's right to choose, achieve marriage equality, enact tough anti-discrimination laws, truly regulate Wall Street, attract the best and the brightest to government, leave our children a cleaner and greener world, and continue to oppose the death

Sign the pledge today at [www.AndrewCuomo.com](http://www.AndrewCuomo.com)

**The New NY Agenda**

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**Clean Up Albany**



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# 1

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## **Clean Up Albany: Executive Summary** *Taking Back Our Government, Together*

**I**n *The New NY Agenda*, Andrew Cuomo identified cleaning up Albany as job number one and laid out a comprehensive plan for how to fix the State government to make it work for all New Yorkers. Currently, State government is plagued by dysfunction, scandal and gridlock. In many cases the dysfunction has metastasized into corruption that would make Boss Tweed blush. The result has been the failure of our government to get our fiscal house in order, reduce taxes, and get people back to work.

From Buffalo to Montauk, we hear it over and over again—the people of this State don’t trust their State government anymore. If the people don’t believe in government and if they don’t trust their government, then government’s effectiveness is

significantly impaired and diminished. We need a government as good as its people.

As Attorney General, Andrew Cuomo has been steadfast in his determination to restore the public trust by investigating corruption and bringing accountability to our government. He has taken on the tough fights and brought public corruption cases against both Democrats and Republicans, local officials and state officials.

As Attorney General, Andrew Cuomo expanded the Attorney General Office's Public Integrity Bureau into a stronger and more potent force against public wrongdoing and Albany corruption, initiating investigations and prosecutions at the highest levels of State government.

Andrew Cuomo has fought corruption across the Empire State, aggressively pursuing cases that have:

- Led to indictments and guilty pleas of a former official of the State Comptroller's office and others who used their positions for personal gain at the expense of the State's retirement fund,

and the recovery of public funds from such crimes;<sup>1</sup>

- Revealed improper use of the State Police by Former Governor Spitzer's administration to discredit the former Senate Majority Leader;
- Ran a record-breaking Medicaid Fraud Unit (ranked #1 in the nation), which obtained 148 criminal convictions and recovered \$283 million of taxpayer funds in 2009 and \$660 million of taxpayer funds over three years;<sup>2</sup>
- Brought charges against Senate Majority Leader Pedro Espada, Jr. for violating labor laws<sup>3</sup> and for illegally looting his own not-for-profit;<sup>4</sup>
- Cracked down on the abuse of Legislative "member items"—the allotments of funds distributed to individual legislators for projects or organizations in their districts—by establishing a review procedure to police abuses of those payments and stop corruption;
- Recovered millions of taxpayers' dollars lost when school district employees "double-dipped" by collecting pensions and salaries simultaneously;

- Created “Project Sunlight,” an innovative website designed to promote New Yorkers’ right to know by allowing citizens to track their elected representatives’ campaign contributions and decision-making;
- Obtained an agreement with Long Island Railroad for reforms including the appointment of an independent examiner to end disability benefits abuses;<sup>5</sup>
- Led to a guilty plea of a State Department of Health employee who illegally used tens of thousands of dollars of taxpayers’ funds for personal gain;<sup>6</sup>
- Cracked down on the illegal collection of employment benefits by 30 State employees;<sup>7</sup>
- Secured a guilty plea from a former State tax department employee for using his position to steal taxpayer identities;<sup>8</sup>
- Arrested a town judge for grand larceny and official misconduct for using tens of thousands of dollars in fees and bail money for personal use;<sup>9</sup>

- Obtained a guilty plea for felony bribery charges from the former New York City Department of Sanitation Deputy Chief;<sup>10</sup>
- Launched an investigation into patronage, cronyism and waste of taxpayer money at the New York State Fair;<sup>11</sup>
- Obtained the convictions of the former Binghamton city water superintendent and a filtration plant employee for the illegal dumping of sludge into the Susquehanna River;<sup>12</sup> and,
- Arrested two Port Chester contractors for stealing millions of taxpayer dollars in workers' wages for local government contracts to build schools and other public buildings.<sup>13</sup>

As Governor, Andrew Cuomo will continue to fight to restore trust and accountability to government. The following is an expansion of Andrew Cuomo's *Clean Up Albany* plan. The Plan is guided by the following principles:

***Increase Citizen Participation and Restore Trust in Government by Reforming New York's Campaign Finance Laws***

Current election law amplifies the voices of wealthy individuals and special interests. Furthermore, the system has become one where incumbents do not fear the ballot box because of the ways our current legislative lines are drawn.

We must fundamentally reform our system to give voices to all New Yorkers, not just the special interests. To accomplish this, we must enact a voluntary system of public financing, make sure legislative lines are drawn independently from the self-interested legislators and enact other campaign finance laws to give New Yorkers a real voice in their government.

***Eliminate the "Pay to Play" Culture & Restore Integrity in Government by Reforming Our State and Local Ethics Laws***

As is plainly evident by the many scandals in government, self-policing is rarely effective. The



result of self-policing has been “pay to play” both at the State and local level, where we too often see individuals that do business with the State use contributions to leverage private gain.

By placing strict “pay to play” restrictions on money managers who make political contributions and banning the use of placement agents in the investment of the State’s pension fund, Andrew Cuomo has tried to put an end to the selling of access at the expense of New York taxpayers. He has also worked to ensure transparency and prevent improper dealing in new industries. Working with private sector leaders in the clean tech wind energy sector, the Attorney General created the “Wind Industry Ethics Code” which provides for oversight of the industry.

We need to strengthen our State and local government ethics laws to create *independent* monitoring and enforcement. Only independent enforcement will restore integrity and public trust.

***Fight Public Corruption to Prevent and Prosecute Wrongdoing and Protect Tax Dollars***

Moreover, significant changes need to be made to the way New York defines, enforces and punishes the crimes of defrauding the government and official misconduct. New York's Penal Law lacks a sufficient crime or even serious penalties for defrauding the government.

In order to take the next necessary steps to clean up Albany, New York needs to provide additional tools so public corruption can be taken on in a more meaningful way—one that equals or rivals that of the federal government. These necessary tools include real statutes that clearly define broad frauds and other crimes against the government by public officials and those acting in concert with them and tougher punishments, including felony convictions, for violating them. Prosecutors consider official misconduct one of the hardest crimes to prosecute in New York—and it is only a misdemeanor offense.

One way to take on official misconduct is to

prevent the opportunities for corruption before it happens. If ever the phrase “an ounce of prevention is worth a pound of cure” had meaning, it is here and now. Andrew Cuomo has made fighting public corruption a central component of his work as Attorney General and will continue to root out corruption as Governor.

***Sunlight is the Best Disinfectant and Will Bring Transparency and Accountability to Government***

We must use technology to bring more sunlight to the operation of government. As Attorney General, Andrew Cuomo used technology to provide unprecedented transparency and accountability by creating “Project Sunlight”, an online website that connects and provides comprehensive information about State contracts, legislative “member items”, legislative information and campaign contributions.

The principles behind Project Sunlight must be expanded by using technology to provide greater access to information. Such access and transparency is also an important tool to help government perform

more efficiently and effectively. As Governor, Andrew Cuomo will create “Open NY” to make the State government the most transparent and accountable in history.

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Taken together, these initiatives will help to restore the public trust and clean up Albany. The following chapters set forth in detail the *Clean Up Albany* agenda.

# 2

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## **Giving People a Voice at the Ballot Box** *Reform New York State's Campaign Finance Laws*

**I**n order to restore trust and accountability in government, we must reform the very foundation of democracy — the ballot box. As the *The New NY Agenda: A Plan for Action* said, currently New York law amplifies the voices of wealthy individuals and special interests and entrenches incumbents at the public's expense.

This must change.

As Governor, Andrew Cuomo will work to fundamentally reform our system of financing elections. Such a system must include public funding of elections. Coupled with redistricting reform (discussed below) this will truly yield meaningful improvement of our system.

However, until such fundamental reforms are fully implemented, the alternative is to lower contribution limits, close loopholes in the campaign finance law and ensure greater enforcement of New York's campaign finance law.

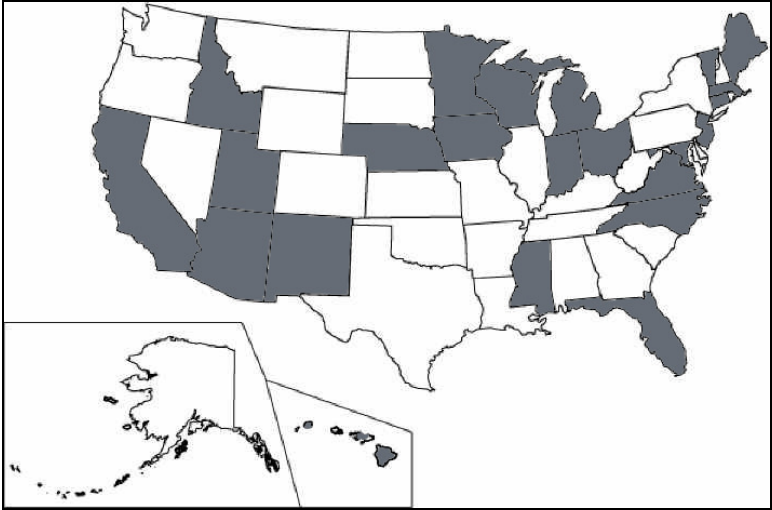
### **Institute a Voluntary System of Public Funding of Election Campaigns**

Fundamental campaign finance reform must include a system of public funding of elections.<sup>14</sup> New York City was one of the first to implement a system that publicly finances campaigns through the New York City Campaign Finance Program ("CFP").<sup>15</sup>

The CFP, administered by the Campaign Finance Board, provides public matching funds for candidates, based upon the amount of contributions raised from New York City residents.<sup>16</sup> Like New York City, New York State needs a system of public campaign financing to set limits on campaign spending and to increase participation by qualified candidates who lack the means or connections to raise significant campaign funds.<sup>17</sup> In order to receive

public financing, candidates should also be required to agree to participate in debates.

**Table 1. States with Some Form of Public Financing<sup>18</sup>**



**Reform Redistricting**

New York has had some of the worst gerrymandering in America. For decades, the two major parties collaborated in drawing district lines in such a way that almost every election result is foreordained. Since 1970, in fact, only 40 incumbent State legislators have lost their seats in an election out of more than 4,000 races.<sup>19</sup> Studies show that the

longer legislators stay in office, the less their policy choices conform to public opinion in their districts.<sup>20</sup>

Unlike in many other states, in New York it is the elected representatives themselves who decide what the districts should look like. New York law creates a legislative “task force” responsible for



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preparing data and submitting draft redistricting plans for the Legislature’s approval. The task force is a creature of legislators—or

those picked by legislators—comprised of four members of the Legislature, from both the majority and minority, and two citizens handpicked by the Legislature’s leaders.<sup>21</sup> The plans approved by the Legislature have usually been developed with input from individual legislators, often drawing their own districts to exclude challengers. As a result, the line-drawing process is antithetical to fair and accountable representation.



### ***An Independent Redistricting Commission***

As Governor, Andrew Cuomo will fight for the creation of an independent redistricting commission. The commission, rather than the Legislature, would produce the new district maps for New York State after each Census. Because the members of the commission would not be motivated by reelection concerns, they would be free to focus on the values that should drive redistricting, including population equality, contiguity, compactness, preservation of communities of interest, preservation of pre-existing administrative boundaries, minority representation, and competitiveness. New York would finally have districts drawn by neutral umpires, not biased insiders.

Moreover, the commission would work transparently. It would hold numerous public hearings throughout New York, soliciting comments from interested individuals and organizations all over the State. Its proposed district maps would be subject to extensive comment and revision before being

finalized. All of its votes would take place at public meetings, and transcripts of its meetings and hearings would be publicly disseminated. Like New York itself, the membership of the commission must also be diverse in every sense of that word.

Legislation introduced by Assemblyman Michael Gianaris—and sponsored in the Senate by Senator David Valesky—would create an independent redistricting commission.<sup>22</sup> This legislation, coupled with the recent effort by citizens groups—led by former Mayor Ed Koch—illustrates that the time is ripe for action.

### ***Reform Process or Veto the Plan***

Talk of reform on this critical issue is not enough. As Governor, Andrew Cuomo will veto any redistricting plan in 2012 that reflects partisan gerrymandering and ensure that the State has set itself on a path to reforming the process itself.

## **Enact Other Campaign Finance Reforms**

Until a voluntary public financing system is in place, we must work to reform the existing system. Currently, individuals can contribute up to \$55,900 to candidates for statewide office (for a chart of current contribution levels, see Appendix).<sup>23</sup> Corporations that are barred from donating one penny to federal candidates may donate directly to state candidates and use subsidiaries and LLCs to avoid New York's limits. Unlike federal law, New York allows unlimited "soft money" contributions to party "housekeeping" accounts by individuals and corporations as well as unrestricted transfers between PACs and parties and candidates. In addition, unlike New York City's campaign public financing system that has expanded the diversity of candidates and enhanced the voices of small donors, New York fails to provide voluntary public financing of any kind. Moreover, elected officials can use campaign funds for personal expenses unrelated to their campaign costs.

In short, the State's campaign finance laws fail to prevent the dominance of wealthy contributors and special interests in our government and force our representatives to be more concerned with how their contributors will react to a particular policy than with whether that policy is the right thing to do.

### ***Limit Soft Money***

We must take necessary steps to achieve transparency by limiting soft money donations. Unlike federal law, New York State allows donations of an unlimited amount to party "housekeeping" accounts. The housekeeping loophole allows individuals and corporations to contribute unlimited funds to a political party.<sup>24</sup> Political parties' housekeeping accounts should no longer be exempted from contribution limits and, as discussed below, those limits should be significantly lowered.

### ***Reduce Sky-High Campaign Contribution Limits***

Individuals in New York are permitted to contribute up to \$94,200 annually to political parties and a total of \$55,900 to the primary and general election campaigns of statewide candidates, \$15,500 to state senate candidates, and \$7,600 to assembly candidates. New York must limit the amount that candidates can raise in primary and general elections. Together, with a system of public financing, these reforms will dramatically expand the talent pool for our elected offices, increase competition, and reduce the impact of particular donors on an elected representative's policy agenda.

### ***Close Corporate Subsidiary and LLC Loopholes***

We must close loopholes that make meaningful campaign finance reform difficult. To that end, donations from corporate subsidiaries and related limited liability companies should be counted as donations from the affiliated parent company so that

the limit for corporations of \$5,000 per year is meaningful.

### ***Tighten Inadequate Reporting Requirements***

Contributors in New York should be required to reveal their occupations and the names of their employers, like they are required to do under federal law.

### ***Restrict Fundraisers during Legislative Session and Prohibit Personal Use of Campaign Funds***

Albany-area fundraisers and lobbyist campaign contributions should be restricted during the legislative session and timely disclosure of contributions made during session required.<sup>25</sup>

Moreover, campaign contributions should not be used for personal expenditures. New York's vague prohibition on the use of campaign funds for personal expenditures has resulted in their use for such non-campaign related expenses as country club memberships, purchases of television sets and

personal wardrobe items. Permissible and non-permissible uses of campaign funds must be clarified, and non-campaign related, personal uses of any kind prohibited and enforced.

### **Improve Enforcement of Campaign Finance laws**

The New York State Board of Elections (the “Board”) is limited by law in its ability to investigate and punish election law scofflaws. The Board’s Campaign Finance Unit is a bottleneck for all potential civil or criminal enforcement proceedings because it must review and refer a potential violation to the Board’s Enforcement Counsel Unit or to the district attorney’s office prior to any action being taken. In turn, the three-person Enforcement Counsel Unit can bring a court proceeding, but it has neither sufficient resources nor any requirement that it do so even in cases where a violation has been shown. Moreover, the civil penalties for violations of campaign finance laws are minimal or, in many cases, non-existent.<sup>26</sup>

Accordingly, reforms must include:

- Granting the Attorney General full concurrent jurisdiction to investigate and prosecute civil and criminal violations of the laws;
- Authorizing the Enforcement Counsel Unit to act without referral from the Campaign Finance Unit and prohibiting the Board itself from overruling the Enforcement Counsel Unit's decision whether to investigate an alleged violation;
- Requiring the Board of Elections to publish the names and entities found to have violated campaign finance laws, as the New York City Campaign Finance Board is required to do; and
- Significantly increasing the penalties for violations of campaign finance laws across the board.



# 3

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## ***Eliminate the “Pay to Play” Culture Reforming New York’s Ethics Laws***

In the past decade, New York State’s elected officials were more likely to resign while under investigation or due to criminal conviction than to lose in a general election.<sup>27</sup> In fact, in the last few



***In the past decade, New York State’s elected officials were more likely to resign while under investigation or due to criminal conviction than to lose in a general election.***

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years alone, several lawmakers and public officials have faced charges or been convicted of felonies related to abuses of their office. Yet aside from action by prosecutors, the

Legislature has been the only body responsible for policing the actions of its members.

Likewise, we must strengthen our laws governing municipal ethics. Although it is a small

minority of municipal officials who are intentionally unscrupulous, those who are can cost the State dearly, both in dollars and public trust.

We must reform not only the substantive rules of conduct, but also the enforcement of those rules. Andrew Cuomo will work to enact comprehensive ethics reform to restore public trust in our State government.

### **Independent Monitoring and Enforcement of Ethics Laws**

Self-policing is rarely effective. Currently, our State government's ethics laws are policed by several separate entities, each without the independence necessary to ensure that violations are fully and fairly investigated and prosecuted. In particular, the Legislature essentially polices itself rather than making its members subject to investigation by an independent body. To restore public confidence and address this potential and actual conflict of interest, Andrew Cuomo will fight to eliminate the existing oversight bodies and establish an independent State

ethics commission with robust enforcement powers to investigate and punish violations of law by members of both the executive and legislative branches.<sup>28</sup>

### **Disclosure of Outside Income Sources and Clients**

Voters cannot have complete faith in their elected representatives if they cannot assess where else those representatives are earning money. While New York's part-time Legislature allows professionals from diverse industries and backgrounds to serve the public as members, without adequate disclosure rules it also allows members to earn outside income that is all but immune from public scrutiny. We must require greater disclosure of these activities. Accordingly, we must require our elected representatives to disclose the sources and clients that produce any significant outside income they receive.

## **Outlaw “Pay to Play”**

We must also address the inappropriate influence that companies and individuals that do business with the State have over our elected representatives. All too often we see campaign contributors “pay” officials for the opportunity to “play” with the government. Accordingly, New York must severely limit campaign contributions from public contractors and lobbyists and prohibit the award of state contracts to contributors who have exceeded limits in order to end the “pay to play” practices of Albany. Specifically, the following measures must be enacted:

### ***Enact Low Contribution Limits for Public Contractors and Lobbyists***

Set low limits on contributions to candidates (for all state and local offices) and party “housekeeping” accounts from lobbyists and public contractors, owners and senior managers of such lobbyists, and contractors and their immediate family members, as well as political committees controlled

by any of these entities or persons.<sup>29</sup> Numerous other states have these kinds of pay to play limitations on government contractors.<sup>30</sup>

### ***Immediate Disclosure of Contributions***

Lobbyists and public contractors and their immediate family members, and political committees controlled by them, should be required to report contributions to candidates and party housekeeping accounts made within 36 days of an election no later than 48 hours after the contribution is made.

### ***Prohibit Public Contracts with Contributors that Have Exceeded Statutory Limits***

Prohibit the State, its counties, and municipalities from entering into contracts with individuals and entities that have made political contributions exceeding the limits discussed above.<sup>31</sup>

It is only through such aggressive reform of the “pay to play” practices in Albany that we can remove the excessive influence that certain companies and

individuals have over our elected representatives through campaign contributions and other payments.

### **Enact a Comprehensive Municipal Ethics Plan**

Millions of New Yorkers go to work each day in service of their neighbors and communities. These New Yorkers may act as municipal trustees, zoning board members and local council members, and while some receive a salary, many volunteer for the sake of their community. The vast majority of these officials are honest citizens who want to do right for their communities and expect and receive little attention for their public service.

Yet municipal service also comes in tandem with power, including, for example, the power to decide how to spend the municipal budget through the awarding of grants or which property owners deserve zoning variances. And because there are minimal regulations in existing law to monitor their behavior, the power that these municipal officers and employees yield can occasionally lead to corruption and betrayal of the public trust. In addition,

municipal officers and employees are not sufficiently trained regarding ethical pitfalls and how to avoid overbearing friends, employers and neighbors “who want a little favor or a little help on a bid or application.” <sup>32</sup>

Although it is a small minority of municipal officials who are intentionally unscrupulous, those who are can cost the municipality dearly, both in dollars and public trust. New Yorkers have a right to be angry when municipal officials seem to get preferential treatment. Especially in this time of economic crisis, we must ensure that taxpayer dollars go to the contractor who can most benefit the community as opposed to the one with the most political connections.



***Although it is a small minority of municipal officials who are intentionally unscrupulous, those who are can cost the state dearly, both in dollars and public trust.***

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With all of the obvious potential for conflicts of interest and significant sums of taxpayer money at stake, the current laws regarding municipal ethics are both weak and frequently unenforceable. General Municipal Law (“GML”) Article 18, which regulates conflicts of interest in municipal government,<sup>33</sup> can alternate between vagueness and complexity. Its complexity results in lengthy financial disclosure requirements that often do not relate to true conflicts of interest<sup>34</sup>, yet its insufficiency leads to a myriad of areas left unregulated where corruption can brew. The lack of any meaningful enforcement mechanism leaves Article 18 toothless and insufficient.<sup>35</sup>

GML Article 18, originally enacted in 1964, created statewide rules for municipalities residing outside of New York City. It established minimum



standards for municipal employees on issues relating to interests in contracts, the acceptance of gifts, financial disclosure and the disclosure and use of confidential information. However, these standards offer a bare minimum of ethical protection and guidance. Article 18 is devoid of a prohibition of misuse of office for private gain, nepotism, the use of public funds or other resources for personal use, revolving door policies or a procedure to recuse oneself when a conflict of interest is apparent.<sup>36</sup> GML Article 18 encourages municipalities to adopt more stringent codes of ethics, but does not provide them with guidance on how to do so, leaving many to rely on the bare minimum mandated by Article 18.

Additionally, there is no requirement to provide training on ethics for municipal employees. Current law permits, but does not mandate, the creation of Board of Ethics by municipalities that could take an active role in providing ethical guidance, oversight and training for municipal employees. A recent review of 31 New York municipalities by the New York State Office of the

Comptroller (“OSC”) found that 20 of the 31 local governments reviewed had established Boards of Ethics (“BOE”). However five of these boards had not convened for periods ranging from 2-11 years with one never convening at all.<sup>37</sup> Additionally, more than 80 percent of the 31 municipalities provided no ethics training to their officers and employees, and 52 percent had not distributed an ethics code to all of their employees and officers.<sup>38</sup>

The lack of enforcement and oversight of municipal ethics further hinders already weak ethics codes. Financial disclosure forms, which are required in municipalities of over 50,000 people, provide an important example. Although the OSC’s review found that 20 of the 31 municipalities assessed had procedures to require financial disclosure forms, enforcement of disclosure was inconsistent. Twelve of the 20 municipalities did not collect all of the forms, nine of the municipalities collected them but did not ensure their completion and 14 municipalities did not review them to identify conflicts of interest.<sup>39</sup>

Municipalities are not doing more to review and oversee compliance with ethical codes, as there is no corresponding enforcement mechanism to make review worthwhile. Allowing a municipality to collect civil fines for violations could provide an incentive to increase review, and is one of the many legislative changes needed to ensure that New York's municipalities are operating effectively and ethically. Additionally, the following legislative changes must be made to GML Article 18:

***Strengthen the Municipal Code of Ethics***

GML Article 18 must be rewritten to provide a comprehensive and understandable minimum code of municipal ethics applicable to every officer and employee of every municipality in the State, with the exception of New York City.<sup>40</sup> The GML and its ethics code must address a far broader range of ethical conflicts and issues than existing law.

### ***Eliminate Conflicts of Interest***

A municipal employee or official must be prohibited from taking any action that would benefit the official, a relative, an outside employer or business, a customer or client or a major campaign contributor.<sup>41</sup> Current law fails to include brothers, sisters, parents and emancipated children in conflict of interest prohibitions. For example, current law would permit the chair of a town planning board to vote in favor of granting approval to his son or daughter for the creation of a shopping mall, potentially worth hundreds of thousands of dollars.<sup>42</sup>

### ***Disclosure and Recusal are Viable Options When Conflicts of Interest Arise***

Under current law, if a contractual conflict of interest is apparent, the only option is to stop or void the exchange, despite any potential benefit to the community. For example, if a recently elected town councilmember's spouse has been providing the town's garbage removal services for years, the town

would be unable to renew his contract, despite the fact that he has the only garbage removal company in the geographical area.<sup>43</sup> Recusal however must mean more than just simply abstention from voting, but rather that the recused individual has no involvement in the matter.<sup>44</sup> The public must be made aware of the conflict of interest and subsequent recusal, either through an announcement at a public meeting, on the municipalities' Board of Ethics' website or in a local publication.

***Financial Disclosure Forms Should be Less Onerous but Should Address Conflicts of Interest More Directly***

Unnecessarily lengthy forms that go unread may deter the service of highly competent volunteers.<sup>45</sup> GML Article 18 should clearly delineate the requirements for disclosure so that disclosure forms produce relevant information on any potential conflict of interest without asking for unnecessary and redundant information.<sup>46</sup> The Board of Ethics of the municipality must strictly review all disclosure

forms to ensure completeness and deter conflicts of interest, and filings should be made available to the public via the Internet.

***The Misuse of Office, Nepotism and the Political Solicitation of Subordinates and Those Who Do Business with the Municipality Should be Prohibited***

The current law is filled with gaping holes and does not prevent acts such as a village mayor hiring her spouse or other family members as village employees, nor does it prohibit her from asking someone who does business with the municipality to buy a ticket to her official fundraiser.

***The Revolving Door from Local Government Must be Closed***

Post employment provisions must be enacted so that a planning board member who resigns one day cannot appear on behalf of a developer before the same planning board on the next day.<sup>47</sup> GML Article 18 should clearly state that for one year after leaving

municipal service, a former municipal employee may not appear before any agency of the municipality or be paid for working on any matter that is before that municipality.<sup>48</sup>

***The Acceptance of Gifts or Other Gratuities  
for Conducting Municipal Work Must be  
Barred***

The New York State Lobbying Act currently prohibits a registered lobbyist from offering a gift of more than a nominal value to any local or State elected official.<sup>49</sup> However this law applies solely to the person who offers the gift and does not cover the act of acceptance of the gift by the official. Instead current law prohibits officials from soliciting or accepting any gifts having a value of \$75 or more but only “under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his duties or was intended as a reward for any official action on his part.”<sup>50</sup> This language is vague and leaves far too

much room for officials to accept gifts by asserting that there was no intention to influence. A bright line rule, similar to the language in the lobbying law regarding giving of gifts (which would prohibit the acceptance of all gifts above a nominal value) should be added to GML Article 18.

### **Create Local Boards of Ethics to Oversee Compliance with Local Ethics Codes**

Moreover, Andrew Cuomo will call on all municipalities, with the exception of the City of New York, to create local Boards of Ethics (“BOE”) to oversee compliance with GML Article 18 and any additional code of ethics they may choose to adopt, with full enforcement power in all counties and in all cities, towns, and villages. Municipalities with relatively small populations would also be required to have a BOE, but could participate in cooperative BOEs with neighboring towns and villages.<sup>51</sup>



### ***Boards of Ethics will be Independent***

In order to maintain complete independence and autonomy, no municipal employee or officer may sit on the BOE. Members of the BOE shall be chosen for their independence, integrity, civic commitment and high ethical standards.<sup>52</sup> Article 18 must legislate strict term limits of office for all board members. Promptly after their appointment, all members of the BOE should receive substantial training on issues relevant to municipal ethics and GML Article 18, New York State lobbying law as well as on the adoption and implementation of procedures and rules for running a local ethics board.<sup>53</sup> Before service, BOE members should attest that they understand their responsibilities and that they have a fiduciary duty to the public. BOE members must be prohibited from sharing confidential information with others, especially those who appointed them. BOE members should also be prohibited from holding any political party office and lobbying or conducting business with the municipality on behalf of a non-municipal party.<sup>54</sup>

***The BOE will Provide Ethics Training and Prompt Answers to Ethical Questions by Municipal Employees and Officials***

Ethics training should include material on any relevant municipal code of ethics, GML Article 18, as well as on the New York State Lobbying Law Act. Ethics training for municipal employees and officials must be consistent throughout New York State.

**Create Strong Enforcement Mechanisms to Enforce Municipal Ethics**

A strong enforcement mechanism must be added to GML Article 18 to ensure compliance. Current law does not authorize civil actions against those who commit municipal ethics violations, nor does it require the return of any benefits that the employees may have received as a result of their unethical conduct.<sup>55</sup> This lack of enforcement mechanism leaves Article 18 a weak and insufficient tool in the battle against municipal corruption. GML Article 18 should therefore be amended to:

- **Recover Damages.** Allow the municipality to recover damages caused by ethical violations of their employees or officers.<sup>56</sup> The municipality must also be given the authority to seek recovery of the funds and enjoinder of the violation through a civil action.
- **Grant the New York State Attorney General the authority to act to address ethical violations when the municipality fails to do so.** In such cases, the State Attorney General should have express authority to recover damages, whether damages are caused to the municipality or any other person harmed by the violation.<sup>57</sup>
- **Increase criminal penalties for violations of Article 18 of the GML.** The current penal law sets a misdemeanor penalty whenever a municipal officer willfully and knowingly violates provisions in Article 18. Certain violations of Article 18, particularly those in Sections 801 and 803 and 805-A, should have the potential to be charged as a felony with corresponding removal from office.
- **Certain ethical restrictions, including a prohibition against causing a municipal officer or employee to violate Sections 800-804 of the GML relating to conflicts of interest, should be placed on private citizens.** Currently, GML Article 18 currently

regulates the behavior of public officials and the New York State Lobbying Act regulates the behavior of registered lobbyists, but nothing in current law prevents private citizens or companies from inducing a municipal official to violate the ethics law, unless it rises to the level of outright bribery. For example, in the hopes of keeping a village's business, a bank might give a personal loan to the village treasurer at a below market rate. Although the public official could lose his or her job, unless it reaches the level of outright bribery, under current law the bank would not be exposed to any civil or criminal penalties.

### **Codify and Expand AG Reforms of Legislative "Member Items"**

Last year's State budget included approximately \$200 million in member items.<sup>58</sup> Member items — known as "earmarks" in Congress — are public funds given to legislators to distribute to organizations in their districts. In many cases, member items fund valuable local organizations or projects that might not otherwise be funded. But the process by which such funds are distributed and used needs dramatic reform. There have been numerous

examples where member items have been abused in Albany, facilitating corruption or outright theft.<sup>59</sup>

In Andrew Cuomo's first Executive Budget, he will reform the member item process, by imposing tough standards and procedures that mandate transparency and fairness, and ban the kinds of conflicts of interest that have resulted in so much abuse. If the Legislature ignores the process, those member items will be vetoed.

As Attorney General, Andrew Cuomo established for the first time a review and certification process to help curb abuses in the award and spending of member item funds. That process should be codified into permanent law and expanded in several ways.

Specifically, the following procedures to clean up the member item process should be implemented:

***Forbid Conflict of Interests in Granting Member Items.***

On too many occasions, it has been revealed that legislators have funneled member items to

organizations with which they have a personal involvement and, in certain instances, a financial relationship. Neither the legislative sponsor of the member item, nor his/her family or staff should be employed or receive any money from the organization receiving the funds, nor be involved in the decision-making or operations of the organization.

***Increase Transparency before Award is Made***

The amount of the member item, and the names of the recipient and the sponsoring legislator, should be made public in advance of budget approval to allow for public comment, and member items should be fully itemized in the budget. Once approved, the details of the member item should be posted on the *Internet* for public review.

***Ensure Recipients of Grants are Legitimate***

Any organization that expects to receive a member item should be pre-certified by the Attorney

General to verify the legitimacy of the organization's tax status and other aspects of its activities. In addition, all organizations that receive member items should be required to certify that they have properly used their funds, and to detail how the funds were spent.

***Require State Agencies to Oversee the Spending of the Allocated Funds***

The applicable state agency that has substantive jurisdiction over the area in which the recipient of a member item operates should be authorized and required to oversee the spending of the allocated member item funds.

***Crack Down on Member Item Abuse***

Both the Attorney General and the newly proposed independent ethics commission should be granted the authority and mandate to investigate alleged violations of these new rules. In addition, the State Comptroller should be required to conduct

random periodic audits of recipients of member items  
to uncover any improper expenditure.



# 4

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## **Strengthen and Expand Public Corruption Laws *Protecting Taxpayer Dollars***

New York deserves a government that conducts itself with honor and integrity—a government we can be proud of. As discussed in the in other chapters, Andrew Cuomo’s *Clean Up Albany Plan* seeks to achieve this goal by enacting strict new ethics laws, requiring full disclosure of all legislators’ outside income, and establishing an independent state ethics commission with robust enforcement powers. An important piece of this effort is ensuring that the laws are in place to enable prosecutors to do their jobs and investigate and punish public corruption and violations of public trust. Part of any effort towards combating corruption in our State’s government is ensuring that sufficient penalties are in place for punishing it.

Changes need to be made to the way New York defines, enforces and punishes the crimes of

defrauding the government and official misconduct. New York's Penal Law lacks a sufficient crime or even penalties for defrauding the government—making enforcement difficult. New York also needs to clearly define the duty of a public servant. To continue the fight against corruption, prosecutors in New York need better tools to enable them to bring corrupt officials to justice.

Vested in the office of the Governor are significant powers to root-out and combat public corruption, and a Cuomo Administration would exercise them to the fullest. For example, under the Moreland Act<sup>60</sup>, the Governor has explicit statutory power to probe the administration of the various departments and institutions of the State and may subpoena witnesses to testify and produce documents for review. As Governor, Andrew Cuomo will not hesitate to establish "Moreland Commissions" to investigate allegations of systemic corruption and wrongdoing in governmental entities, and recommend necessary changes.

## **Reform Administration of the State Pension Fund**

As Attorney General, Andrew Cuomo commenced an investigation into allegations of fraud, abuse and misconduct relating to State pension funds. The investigation focused on a range of issues including self-dealing, “pay to play” and conflicts of interest in the State pension system. Several criminal convictions resulted from the investigation and over \$100 million have been recovered from investment firms.<sup>61</sup>

Currently, the State pension fund, known as the Common Retirement Fund, is a single trust consisting of the assets of the New York State and Local Employees’ Retirement System and the New York State Local Police and Fire Retirement System.<sup>62</sup> Currently, all of the assets and income of State’s pension fund are held by the Comptroller as sole trustee. The Fund, valued at about \$129 billion, is one of the largest pools of investment capital in the world.

New York is one of only three states that entrust the management of a state public retirement pension fund to a single person.<sup>63</sup> The vast majority of such funds are governed by boards of trustees, as opposed to a single trustee. Moreover, other New York public pension funds are successfully managed by boards of trustees, including the New York State Teachers Retirement System and the New York City Employees' Retirement System. Similarly, several other states' pension funds are governed by boards of trustees whose members are appointed by elected officials and elected by beneficiaries.<sup>64</sup>



***New York is one of only three states that entrust the management of a state public retirement pension fund—a \$129 billion fund—to a single person.***

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***Create a Board of Trustees to Manage the Pension Fund***

We must continue working to restore the public trust over the State's largest public pension

fund. As Governor, Andrew Cuomo will work to pass legislation to create a board of trustees of financial and management experts to manage the State's pension fund. A board of trustees will increase checks and balances by increasing the number of people who set policy and review investment decisions; reduce the potentially corrupting influence of politics and political contributions to the Comptroller and other elected officials by sharing decision-making with trustees who are not directly subject to political campaign pressures; and provide representatives of the members and beneficiaries of the pension fund — the people who are most directly affected by the fund's performance — with direct input and oversight of investment operations.

### ***End "Pay to Play" in the Pension Fund***

In addition to creating a board of trustees to manage the State's pension fund, the Cuomo Administration will work to enact tough laws to prevent conflicts of interest in the pension fund. These measures would:

- Prohibit investment firms that directly or indirectly make campaign contributions, charitable contributions or gifts to the Comptroller or the trustees of the fund.
- Eliminate “pay to play” and other apparent and actual conflicts of interests, including banning placement agents.
- Increase overall transparency in the investment decision-making process, and require that investment firms doing business with the fund make rigorous, ongoing disclosure of information relating to campaign contributions, the identities, responsibilities and qualifications of investment fund personnel responsible for communicating with the pension fund and any payments by investment firms to third-parties in connection with State pension fund matters.
- Impose a higher standard of conduct for investment firms doing business with the pension fund that avoids even the appearance of impropriety and prohibits improper relationships

between retirement system officials/employees and an investment firm's personnel or agent; "revolving door" employment by investment firms of former pension fund officials and employees; and improper gifts by investment firms to employees and officials of the pension fund.

- Institute comprehensive and tough enforcement provisions. Self-policing is an ineffective means to safeguard State pension funds. It is imperative that an effective enforcement scheme and deterrent exist. Therefore, we must create tough new civil, criminal and disciplinary penalties and sanctions.

### **Expand the Crimes of Defrauding the Government and Official Misconduct**

In New York, the crime of defrauding the government is not broad enough to permit effective prosecution—it is too limited in scope to effectively punish misconduct.

The New York Penal Law limits the crime of defrauding the government to violations by public

servants or party officers.<sup>65</sup> However, anyone who defrauds the government should be prosecuted for it. The Penal Law needs to be expanded to make it clear that it applies both to public servants and, just as importantly, anyone who act or attempts to act in concert with a public servant in such a fraud.

The statute also requires that property be obtained from the government through the crime. However, the harm to the government should be measured by the benefit to the perpetrator due to the fraud, which is not necessarily property obtained from the government. A person who defrauds the government but indirectly benefits through fees or other profits by other means should also be violating the statute. In addition, an employee's salary should constitute property obtained as a result of fraud if it is shown that the employee was engaging in fraud in the course of his or her public employment.<sup>66</sup>

In light of recent judicial decisions that have found the federal law imposing a duty of honest services overly vague,<sup>67</sup> New York needs to define clear duties and standards of conduct for public



servants, including fiduciary and other duties. This legislation would provide clear civil causes of action and, after certain thresholds are met, criminal causes of action, thereby enabling prosecutors to punish violations of these duties. These express statutory provisions will go beyond the common law duties of honest service, to provide a clearly defined duty of public servants to their office and to the people of New York. Violations of those duties will be actionable in civil and criminal causes of action, including but not limited to official misconduct and defrauding the government.

### **Enhance the Punishment for Betrayals of Public Trust**

Punishments for defrauding the government tend to be limited, and only rarely do public corruption crimes have mandatory jail time. Defrauding the government is currently only a Class E felony. However, more serious frauds should be more serious felonies, based on the amount of benefit to the perpetrator. Similar to the different degrees in a

larceny prosecution, fraud against the government should carry significant penalties for significant financial benefits and betrayals of public trust.

Official misconduct, which is currently a misdemeanor, is another crime that should be punished more severely in many cases. In addition to a clearer definition of official misconduct, it should be expanded to provide for more serious punishments for more serious violations.

Part of any effort to clean up our State's government is ensuring that the punishment fits the crime. Without commensurate penalties for violations of public trust, there is no way for prosecutors to accomplish that. Penalties should be tailored based on the degree of seriousness of the crime. In addition, the statute should allow for forfeiture of salary paid during the period of time that a public servant or government employee engaged in criminal conduct relating to his or her job.

## **Reform the Public Officers Law and Expand the Tolling of the Statute of Limitations**

In connection with the proposed changes to offenses by public officers, corresponding changes must be made to criminal procedure law. Under the existing law, the statute of limitations can be tolled up to five years after an official leaves office for offenses committed by such official.<sup>68</sup> This is important because often officials are able to conceal their crimes while they are in office. The tolling of the statute of limitations gives prosecutors time to investigate and prosecute those offenses.

However, public officials are also able to conceal the crimes of their accessories while these officials are in office. As the law stands now, the law extending the statute of limitations does not apply to someone who is not a public servant but who commits a crime in concert with a public servant. In order to properly pursue these crimes, the statute of limitations for anyone acting in concert with a public official to defraud the government should also be

tolled. This is an important component to enhancing prosecutors' abilities to fight public corruption.

### **Change the Penal Law to Reform Criminal Bribery Statutes so that Acts of Bribery can be More Easily Prosecuted**

The New York State Court of Appeals has ruled that the current bribery statutes require a mutual agreement between the parties of a bribe or that the person giving the bribe believes the public official will be influenced.<sup>69</sup> This makes it easier for the person offering the bribe to avoid a conviction by asserting that they did not believe they would be successful in influencing the public official's action.

Bribery statutes must be amended to require only that the bribe giver intended to "influence such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant,"<sup>70</sup> or that that the public official intended to be influenced in accepting the bribe.

## **Strip Pensions for Public Officials Convicted of a Felony in Relation to their Office**

Currently in New York State, elected officials can still receive their State pensions even after having been convicted of a felony for a crime directly related to the official activities of his or her office. It is the State's duty to protect public and taxpayers' dollars from being further abused by elected officials who have misused their office and violated the law.

There are at least twenty-two other states in the country, including the District of Columbia, that have passed laws requiring pension forfeiture for legislators convicted of a felony related to their official duties.<sup>71</sup> Many states even have laws that enforce pension forfeiture in the case of crimes committed by elected officials that go beyond those related to official activities.<sup>72</sup> Such legislation has even been passed by the federal government and applies to federal legislators and employees who commit certain crimes such as perjury, or abuse their office and commit related felonies.<sup>73</sup>

However, there are constitutional issues that must be addressed. Article V, Section 7 of the New York State Constitution clearly states that “membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.”<sup>74</sup> Therefore, whatever the remedy, it would only be prospective and apply to any new pension plan.

It is essential that New York State follow the lead taken by dozens of other states as well as the federal government and take the necessary steps to protect and secure taxpayers’ dollars. As Governor, Andrew Cuomo will fight for legislation that would strip pensions from elected officials or government employees convicted of a felony related to her or his duties and official responsibilities.

### **Take a Fresh Look the Current System of Inspectors General**

We must ensure that we have an effective system against government corruption. The current

Inspectors General oversight system was constructed, not as a unified and coherent approach to preventing and identifying corruption, but as a series of “add-ons”, each responding to the crisis of the moment. For example, there are various Inspectors General in New York including the State Inspector General<sup>75</sup>, the MTA Inspector General<sup>76</sup>, the Port Authority of the State of New York/New Jersey Inspector General<sup>77</sup>, Welfare Inspector General<sup>78</sup>, Medicaid Fraud Inspector General<sup>79</sup>, Division of Military and Naval Affairs Inspector General<sup>80</sup>, among others.

As a result, there is significant overlap in the subject matter that each office addresses. A contractor overcharging on a construction project with the Port Authority may be doing the same thing with the Dormitory Authority. A scheme to rack up overtime in one agency may be a warning signal of opportunities for fraud that should be closed in all agencies. The victims of corruption identified by one Inspector General may be part of a larger group that other Inspectors General have contact with. Therefore, we should take a fresh look and identify

opportunities to improve the current system and maximize effective oversight among the various agencies and authorities.

### **Make it a Felony to Make a False Statement to State Investigators to Ensure Integrity of Investigations**

A watchdog needs teeth. One of the critical tools that federal investigators and prosecutors have that their local counterparts lack is the ability to promise—with credibility—that who lies to them will be punished. Under federal law, it is a felony to make a materially false statement in any matter under the jurisdiction of the executive, legislative or judicial branches of government. The provision is a bulwark in rooting out corruption, preserving the integrity of investigations, court proceedings, legislative hearings and other key mechanisms. While nothing can completely eliminate the possibility that a subject or target will lie, this provision makes individuals think twice about lying with impunity to a federal investigator, committee or judge. No such guarantee



currently exists for the State. In order to make the offices like the Inspector General's power meaningful, a false statement statute modeled on the federal statute should be enacted.



# 5

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## **Open NY** ***More Sunlight in Albany***

Technology has provided powerful new tools to make New York State government more open, innovative and cost effective. “Open NY” is an action plan for putting tools to work.<sup>81</sup>

As Attorney General, Andrew Cuomo’s Project Sunlight used technology to provide greater transparency and accountability in State government.<sup>82</sup> As Governor, Andrew Cuomo will expand that effort by creating Open NY—a technology-based system that will further increase transparency and improve government performance by putting State spending, contracts, budgets and meetings online.

The State has staggering amounts of valuable information that is hard to find and use. This is a

waste of tax money and a waste of knowledge.<sup>83</sup> Open NY will use the Internet to make New York State government more transparent and accountable than it has ever been before.

Open NY will help to not only increase transparency, but also government performance. Our State government isn't working. It costs too much, delivers too little, and is confusing, complex and secretive. This dysfunctional, unaccountable State government is not going to help solve our big problems. Open NY is a tool to help fix and rebuild the State government, and enlist the collective genius of the citizens of our State to make government better.

Open NY will use the power of digital information to bring about the beginnings of a new era of public participation in everyday governance. In this era, the collective energy of the citizenry and civil service are harnessed to help our State government deliver better, more cost effective services, and increase government accountability.

Inaccessible government information is a problem for everyone. Some important State

information is deeply buried or snarled in red tape. The Internet allows us to skip the laborious public request process and simply put important data on websites.

Information isn't worth much if you can't find it and use it. Open NY's data websites will organize information, include powerful internal search features, and ensure all state data is searchable from the web via search engines. We also want to make government decision makers accountable for their spending so that taxpayers get more bang for their buck.

Specifically, Open NY will follow these core principles:

### ***Open Information***

Open NY will make government information available via a central website, which will serve as an information catalog and clearinghouse in an easily accessible format. Additionally, we will strive to create a network of Open NY websites for each State agency and authority controlled by the Executive.

These websites will contain a downloadable catalog of the agency's data, and include a powerful search feature. These Open NY "agency" websites will have a simple, uniform design, and focus solely on the open information and transparency initiatives in Open NY. They will augment, not replace, current agency sites.

### ***Open Government for Performance***

Open NY will use the power of the *Internet* to promote a new era in transparency and openness in the New York State government. We will open up the State budget and show how State agencies are spending their tax dollars.

We want the public to know how, and how well, the State is spending taxpayer dollars. For example, online contracts with State vendors will be placed on Open NY.<sup>84</sup> Once Open NY gets contracts<sup>85</sup> with vendors online, information will steadily be added including agreements for all grants, tax credits and other forms of subsidy and spending.

Part of the goal is to post a spending report card, often called a spending “dashboard” in Internet language, which will make it clear what taxpayer funded projects are working and which are failing.<sup>86</sup> New Yorkers deserve a clear explanation of how the State taxes and spends within the State budget.

### ***Open Collaboration***

Open NY will use the Internet and social media to promote participation and collaboration, which spurs innovation and fosters public opportunities to improve government—a new kind of public participation. It is an invitation to the people of New York State to use the powerful information tools we use every day to open up our government and make it work better. Open NY will be used to reconnect people to government.

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Through Open NY, and the powerful communication and participation tools it will create, we will transform the very nature of government in

New York. Together, we can use Open NY to make our government easier to understand, more accountable, more innovative and more cost effective.

New and revamped websites will show the public how much the State is spending, how and where we are spending it, and what results that spending is achieving. New Yorkers will be able to look online and see what policies the State is promoting, and what public agencies are doing. Open NY will use the Internet as a simple but powerful tool to transform the culture of our state government from secrecy to public openness.



# 6

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## **A Process for Reform** ***Amending Our State Constitution***

In order to achieve lasting reform in many areas, we need to amend our State's Constitution. Specifically, a Cuomo Administration work to enact into law important reforms at a constitutional convention including an overhaul of our redistricting process, ethics enforcement, and succession rules, among others.

Past constitutional conventions have resulted in transformative change in times of crisis. For example, the 1777 Convention, convened in the midst of the Revolutionary War, yielded New York State's first Constitution, a document that predates the United States Constitution by a decade. Similarly, the 1938 Convention, held in the wake of the Great Depression, produced amendments protecting the rights of working men and women and recognizing that aid for the needy is a constitutional right. A new

constitutional convention could be the vehicle for critical reforms to our State government.

At the same time, prior to the constitutional convention, it is widely agreed that the delegate selection process must be reformed to prevent such a convention from simply mirroring the existing political party power structure rather than the diversity of people of New York State. Many also fear that a constitutional convention would allow damaging changes to be made to existing protections in the Constitution for civil rights, the environment, and educational rights. Before we convene a convention, these concerns must be addressed fully to ensure that the desire for reform in certain areas does not lead to the loss of past reforms in other areas.

As Governor, Andrew Cuomo will address the many necessary reforms to our Constitution in the following ways:

First, we must reform the delegate selection process and then immediately convene a constitutional convention. Through relaxed ballot

access requirements, public campaign financing, limitations on legislators, lobbyists, and party officials from serving as delegates, and other reforms, the convention delegate selection process must be improved. Once that has occurred, we should convene a constitutional convention to address the many areas of reform that cannot be addressed by statutes alone.

Second, prior to the constitutional convention, we should create a constitutional commission to help define the constitutional convention and issues that need to be addressed, including recommending amendments for passage. That blueprint will then provide the starting point for both the constitutional convention and any amendments made via voter approval at the ballot box. While less well-known than constitutional conventions, these commissions have been key tools used to amend our Constitution. In the words of New York State Constitution scholar Peter Galie, “the constitutional commission has a long and vital history as a means of proposing meaningful and necessary reform within the state. Some of the

most significant constitutional revision in New York has been the product of such commissions....”<sup>87</sup>

Created by an executive order or with the Legislature by statute, this commission will include the best and the brightest of reformers, legal experts, and statespersons and will be independent from those who created the commission.

Together, they will secure public input to develop and draft the reforms addressed in this book to create a precise blueprint for constitutional reform.

# Clean Up Albany

## Summary of Proposals

### Chapter 2: Giving People a Voice at the Ballot Box

- **Institute a Voluntary System of Public Funding of Election Campaigns.** New York State needs a system of public campaign financing to set limits on campaign spending and to increase participation by qualified candidates who lack the means or connections to raise significant campaign funds.
  - **Debate participation.** Candidates should also be required to agree to participate in debates in order to receive public financing.
- **Reform Redistricting**
  - **An Independent Redistricting Commission.** As Governor, Andrew Cuomo will fight for the creation of an independent redistricting commission.
  - **Reform Process or Veto the Plan.** As Governor, Andrew Cuomo will veto any redistricting plan in 2012 that reflects partisan gerrymandering and will ensure that the State has set itself on a path to reforming the process itself.

- **Enact Other Campaign Finance Reforms**
  - **Limit Soft Money.** We must take necessary steps to achieve transparency by limiting soft money donations. Political parties' housekeeping accounts should no longer be exempt from contribution limits.
  - **Reduce Sky-High Campaign Contribution Limits.** New York must limit the amount that candidates can raise in primary and general elections.
  - **Close Corporate Subsidiary and LLC Loopholes.** Donations from corporate subsidiaries and related limited liability companies should be counted as donations from the affiliated parent company so that the limit for corporations of \$5,000 per year is meaningful.
  - **Tighten Inadequate Reporting Requirements.** Contributors in New York should be required to reveal their occupations and the names of their

employers, like they are required to do under federal law.

- **Restrict Fundraisers During Legislative Session and Prohibit Personal Use of Campaign Funds.**

Albany-area fundraisers and lobbyist campaign contributions should be restricted during the legislative session and timely disclosure of contributions made during session required.

- **Campaign contributions should not be used for personal expenditures.**

Permissible and non-permissible uses of campaign funds must be clarified, and non-campaign related, personal uses of any kind prohibited and enforced.

- **Improve Enforcement of Campaign Finance Laws**

- **Grant the Attorney General full concurrent jurisdiction to investigate and prosecute civil and criminal violations of the laws.**

- **Authorize the Enforcement Counsel Unit to act without referral from the Campaign Finance Unit.** In addition, prohibit the Board itself from overruling the Enforcement Counsel Unit's decision whether to investigate an alleged violation.
- **Require the Board of Elections to publish the names and entities found to have violated campaign finance laws.**
- **Increase the penalties for violations of campaign finance laws across the board.**

### **Chapter 3: Eliminate the “Pay to Play” Culture**

- **Independent Monitoring and Enforcement of Ethics Laws.** Andrew Cuomo will fight to eliminate the existing oversight bodies and establish an independent state ethics commission with robust enforcement powers to investigate and punish violations of law by members of both the executive and legislative branches.



- **Disclosure of Outside Income Sources and Clients.** We must require our elected representatives in Albany to disclose the sources and clients that produce any significant outside income they receive.
- **Outlaw “Pay to Play.”** New York must severely limit campaign contributions from public contractors and lobbyists and prohibit the award of state contracts to contributors who have exceeded limits in order to end the “pay to play” practices of Albany.
  - **Enact Low Contribution Limits for Public Contractors and Lobbyists.** Set low limits on contributions to candidates and party “housekeeping” accounts.
  - **Immediate Disclosure of Contributions.** Lobbyists and public contractors and their immediate family members, and political committees controlled by them, should be required to report contributions to candidates and party housekeeping accounts made within 36 days of an election no later than 48 hours after the contribution is made.

- **Prohibit Public Contracts with Contributors that Have Exceeded Statutory Limits.** Prohibit the State, its counties, and municipalities from entering into contracts with individuals and entities that have made political contributions exceeding limits.
- **Enact a Comprehensive Municipal Ethics Plan**
  - **Strengthen the Municipal Code of Ethics.** GML Article 18 must be rewritten to provide a comprehensive and understandable model minimum code of municipal ethics applicable to every officer and employee of every municipality in the state, with the exception of New York City.
    - **Eliminate Conflicts of Interest.** A municipal employee or official must be prohibited from taking any action that would benefit the official, a relative, an outside employer or business, a customer or client or a major campaign contributor.

- **Disclosure and Recusal are Viable Options when Conflicts of Interest Arise.** The public must be made aware of conflict of interest and subsequent recusal, either through an announcement at a public meeting, on the municipalities' Board of Ethics' website or in a local publication.
  
- **Financial Disclosure Forms Should be Less Onerous but Should Address Conflicts of Interest More Directly.** The Board of Ethics of the municipality must strictly review all disclosure forms to ensure completeness and deter conflicts of interest, and filings should be made available to the public via the *Internet*.
  
- **The Misuse of Office, Nepotism and the Political Solicitation of Subordinates and Those Who Do Business With the Municipality Should be Prohibited.**

- **The Revolving Door from Local Government Will be Closed.** GML Article 18 should clearly state that for a duration of one year after leaving municipal service, a former municipal employee may not appear before any agency of the municipality or be paid for working on any matter that is before that municipality.
  
- **The Acceptance of Gifts or Other Gratuities for Conducting Municipal Work Must be Barred.** A bright line rule, similar to the language in the lobbying law regarding giving of gifts, which would prohibit the acceptance of all gifts above a nominal value, should be added to GML Article 18.
  
- **Create Local Boards of Ethics to Oversee Compliance With Local Code of Ethics.** Andrew Cuomo will call on all municipalities to create local Boards of Ethics to oversee GML Article 18 and any additional code of ethics they may choose to adopt, with full enforcement power in all counties, in all cities, towns and villages.

- **Board of Ethics will be Independent.** Members of the BOE shall be chosen for their independence, integrity, civic commitment and high ethical standards.
- **The BOE Will Provide Ethics Training and Prompt Answers to Ethical Questions by Municipal Employees and Officials.** Ethics training should include material on any relevant municipal code of ethics, GML Article 18, as well as on the New York State Lobbying Law Act.
- **Create Strong Enforcement Mechanisms to Enforce Municipal Ethics.** GML Article 18 should be amended to recover damages, grant the New York State Attorney General the authority to act to address ethical violations when the municipality fails to do so, increase criminal penalties for violations of Article 18, change the penal law to reform criminal bribery statutes so that acts of bribery can be more easily prosecuted, place certain ethical restrictions relating to conflicts of interest on private citizens.

- **Codify and Expand AG Reforms of Legislative “Member Items”**
  - **Forbid Conflict of Interests in Granting Member Items.** Neither the legislative sponsor of the member item, nor his/her family or staff should be employed or receive any money from the organization receiving the funds, nor should they be involved in the decision-making or operations of the organization.
  - **Increase Transparency Before Award is Made.** The amount of the member item, and the names of the recipient and the sponsoring legislator, should be made public in advance of budget approval to allow for public comment, and member items should be fully itemized in the budget.
  - **Ensure Recipients of Grants are Legitimate.** Any organization that expects to receive a member item should be pre-certified by the Attorney General to verify the legitimacy of the organization’s tax status and other aspects of its activities.

- **Require State Agencies to Oversee the Spending of the Allocated Funds.**  
The applicable state agency that has substantive jurisdiction over the area in which the recipient of a member item operates should be authorized and required to oversee the spending of the allocated member item funds.
- **Crack Down on Member Item Abuse.**  
Both the Attorney General and the newly proposed independent ethics commission should be granted the authority and mandate to investigate alleged violations of these new rules.

#### **Chapter 4: Strengthen and Expand Public Corruption Laws**

- **Reform Administration of the State Pension Fund**
  - **Create a Board of Trustees to Manage the Pension Fund.** As Governor, Andrew Cuomo will work to pass legislation to create a board of trustees of financial and management experts to manage the State's pension fund.

- **End “Pay to Play” in the Pension Fund.** The Cuomo Administration will work to enact tough laws to prevent conflicts of interest in the pension fund.
  
- **Expand the Crimes of Defrauding the Government and Official Misconduct.** Violations of clearly defined duties of service will be actionable in civil and criminal causes of action, including but not limited to official misconduct and defrauding the government.
  
- **Enhance the Punishment for Betrayals of Public Trust.** Penalties should be tailored based on the degree of seriousness of the crime. In addition, the statute should allow for forfeiture of salary paid during period of time that a public servant or government employee engaged in criminal conduct relating to his or her job.
  
- **Reform the Public Officers Law and Expand the Tolling of the Statute of Limitations.** The law should be amended to make corresponding changes to criminal procedure law. The statute of limitations for anyone acting in concert with a public official to defraud the government should also be tolled.



- **Change the Penal Law to Reform Criminal Bribery Statutes so that Acts of Bribery Can be More Easily Prosecuted.** Bribery statutes must be amended to require only that the bribe giver intended to “influence such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant,” or that that the public official intended to be influenced in accepting the bribe.
- **Strip Pensions for Public Officials Who are Convicted of a Felony in Relations to Their Office.** As Governor, Andrew Cuomo will fight for legislation that would strip pensions from elected officials or government employees convicted of a felony related to his/her duties and official responsibilities.

- **Take a Fresh Look the Current System of Inspectors General.** We must ensure that we have an effective system against government corruption. Some stakeholders have suggested that the current Inspectors General oversight system was constructed, not as unified and coherent approach to preventing and identifying corruption, but as a series of “add-ons” each responding to the crisis of the moment. Therefore, we should take a fresh look at how to improve the current system to establish links to other effective local oversight authorities.
- **Make it a Felony to Make a False Statement to State Investigators to Ensure Integrity of Investigations.** In order to make the Inspector General power meaningful, a false statement statute, modeled on the federal statute should be enacted.

## Chapter 5: Open NY

- **Create “Open NY.”** Building on Project Sunlight, as Governor, Andrew Cuomo will expand that effort by creating Open NY—a technology-based system that will further increase transparency and improve government performance by putting State

spending, contracts, budgets and meetings online.

## **Chapter 6: A Process for Reform**

- **Amend our State Constitution.** A Cuomo Administration work to enact into law important reforms at a constitutional convention including an overhaul of our redistricting process, ethics enforcement, and succession rules, among others.
- **Reform the delegate selection process and then immediately convene a constitutional convention.** Once the convention delegate selection process improvement has occurred, we should convene a constitutional convention to address the many areas of reform that cannot be addressed by statutes alone.
- **Create a constitutional commission to help define the constitutional convention and issues that need to be addressed, including recommending amendments for passage.** That blueprint will then provide the starting point for both the constitutional convention and any amendments made via voter approval at the ballot box.



## Appendix

### *New York State Contribution Limits*

Limits	To Candidates for House	Candidates for Senate	To Candidate s for Governor	To PAC - To Political Parties	To Party Housing- keeping Account
From Individuals	\$3,800 (Primary) \$3,800 (General) \$7,600 (Total)	\$6,000 (Primary) \$9,500 (General) \$15,500 (Total)	\$18,100 (Primary) \$37,800 (General) \$55,900 (Total)	\$150,000 (Year) - \$94,200 (Year)	Unlimited
From Unions	\$3,800 (Primary) \$3,800 (General) \$7,600 (Total)	\$6,000 (Primary) \$9,500 (General) \$15,500 (Total)	\$18,100 (Primary) \$37,800 (General) \$55,900 (Total)	\$150,000 (Year) - \$94,200 (Year)	Unlimited
From PACs	\$3,800 (Primary) \$3,800 (General) \$7,600 (Total)	\$6,000 (Primary) \$9,500 (General) \$15,500 (Total)	\$18,100 (Primary) \$37,800 (General) \$55,900 (Total)	\$150,000 (Year) - \$94,200 (Year)	Unlimited
From Corporations	\$5,000 Aggregate (Year) \$3,800 (per election)	\$5,000 Aggregate (Year)	\$5,000 Aggregate (Year)	\$5,000 Aggregate (Year) - \$5,000 Aggregate (Year)	Unlimited
From Political Parties	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited



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## NOTES

<sup>1</sup> See Attorney General Andrew Cuomo, Media Center, “NYS Comptroller’s Former Chief Investment Officer Pleads Guilty in Ongoing Pension Investigation” (March 10, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/mar/mar10a\\_10.html](http://www.ag.ny.gov/media_center/2010/mar/mar10a_10.html).

<sup>2</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Medicaid Fraud Unit Sets Record With 148 Criminal Convictions in 2009” (April 12, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/apr/apr12a\\_10.html](http://www.ag.ny.gov/media_center/2010/apr/apr12a_10.html).

<sup>3</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Sues Pedro Espada, Jr. and Pedro G. Espada for Fraudulent and Abusive Labor Practices” (April 28, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/apr/apr28a\\_10.html](http://www.ag.ny.gov/media_center/2010/apr/apr28a_10.html).

<sup>4</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Charges Pedro Espada Jr. and 19 Executives with Looting His Bronx Not-For-Profit” (April 20, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/apr/apr20a\\_10.html](http://www.ag.ny.gov/media_center/2010/apr/apr20a_10.html).

<sup>5</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Obtains Agreement

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with Long Island Rail Road for an Independent Examiner and Other Reforms to End Disability Benefits Abuses” (March 22, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/mar/mar22a\\_10.html](http://www.ag.ny.gov/media_center/2010/mar/mar22a_10.html)

<sup>6</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Former State Employee Admits to Using Taxpayer Money to Finance His Ebay Business” (June 28, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/june/june28b\\_10.html](http://www.ag.ny.gov/media_center/2010/june/june28b_10.html).

<sup>7</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Arrests of 30 New York State Employees for Illegally Collecting Unemployment Benefits” (June 15, 2009), available at [http://www.ag.ny.gov/media\\_center/2009/june/june15a\\_09.html](http://www.ag.ny.gov/media_center/2009/june/june15a_09.html).

<sup>8</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Secures Guilty Plea from Former State Tax Department Employee for Using Position to Steal Taxpayer Identities” (June 24, 2009), available at [http://www.ag.ny.gov/media\\_center/2009/june/june24a\\_09.html](http://www.ag.ny.gov/media_center/2009/june/june24a_09.html).

<sup>9</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Arrest



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of Former Town Judge for Charges Including Grand Larceny and Official Misconduct” (August 4, 2009), available at [http://www.ag.ny.gov/media\\_center/2009/aug/aug4b\\_09.html](http://www.ag.ny.gov/media_center/2009/aug/aug4b_09.html).

<sup>10</sup> See Attorney General Andrew Cuomo, Media Center, “Cuomo Announces New York City Department of Sanitation Deputy Chief Pleads Guilty to Felony Bribery Charges” (April 13, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/apr/apr13a\\_10.html](http://www.ag.ny.gov/media_center/2010/apr/apr13a_10.html).

<sup>11</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Launches Wide-Ranging Investigation into Patronage, Cronyism and Waste of Taxpayer Money at the New York State Fair” (August 31, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/aug/aug31a\\_10.html](http://www.ag.ny.gov/media_center/2010/aug/aug31a_10.html).

<sup>12</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Convictions of Former City Water Superintendent and Filtration Plant Employee for Dumping Sludge into the Susquehanna River” (May 24, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/may/may24a\\_10.html](http://www.ag.ny.gov/media_center/2010/may/may24a_10.html).

<sup>13</sup> See Attorney General Andrew Cuomo, Media Center, “Attorney General Cuomo Announces Arrest

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of Two Port Chester Contractors for Stealing More than \$2 million in Wages on Local Government Contracts” (May 13, 2010), available at [http://www.ag.ny.gov/media\\_center/2010/may/may13a\\_10.html](http://www.ag.ny.gov/media_center/2010/may/may13a_10.html).

<sup>14</sup> Recent academic study by Professor Michael J. Malbin, Professor of Political Science at SUNY Albany, and others, shows that enhancing the value of citizen participation is accomplished most effectively by combining a program of matching small private donations with public funds and ensuring that meaningful contribution limits are in place. *See, e.g.,* Michael J. Malbin and Peter W. Bruscoe, “Campaign Finance Policy in the State and City of New York” (draft of chapter to appear in Gerald Benjamin, *ed., Handbook of New York State Politics*: New York: Oxford University Press).

<sup>15</sup> *See* NYC Campaign Finance Act of 1988.

<sup>16</sup> In order to qualify for the CFP, candidates must meet certain threshold requirements, including: 1) compliance with all CFP requirements; 2) placement and an opponent on the ballot; 3) meet a two-part threshold with minimum dollar amounts raised and a minimum number of contributors; 4) evidence of submission of a personal financial disclosure statement; and 5) repayment any debt owed to CFB from previous election. Once these threshold requirements are met, the candidates are eligible to receive matching campaign funds, up to 55

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percent of the spending limit, but may be eligible for up to two-thirds of the spending limit when running against a high-spending, non-participating opponent. Through CFP, candidates are encouraged to seek small contributions from many constituents and are eligible for funds that can be matched at \$6 for every \$1 contributed by a New York City resident up to \$1,050 per contributor. CFP has been very successful in New York City, with approximately 73 percent of the candidates on the ballot participating in the program and over \$24 million of public funds doled out in 2005.

<sup>17</sup> New York City was one of the first to enact a public financing system in the 1980s. See the New York City Campaign Finance Board website *available at* [http://www.nyccfb.info/act-program/program-act.aspx?sm=candidates\\_40](http://www.nyccfb.info/act-program/program-act.aspx?sm=candidates_40). In addition, some form of public financing has been instituted in several other states and localities including Arizona, Connecticut, Maine, Massachusetts, New Jersey, New Mexico, North Carolina, Vermont, Albuquerque and Portland. See Citizen Action of New York's, *New Yorkers Pay When Big Money Plays: The Case for Public Financing of Elections* (May 26, 2009) at 20 *available at* <http://citizenactionny.org/2009/05/new-yorkers-pay-when-big-money-plays-the-case-for-public-financing-of-elections/739>.

New York State's candidates are among the nation's lowest in percentage of funds received from small donors, rating fourth lowest among states studied for these purposes See, *e.g.*, Michael J. Malbin

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and Peter W. Bruscoe, “Campaign Finance Policy in the State and City of New York” (draft of chapter to appear in Gerald Benjamin, *ed.*, *Handbook of New York State Politics*: New York: Oxford University Press).

<sup>18</sup> See *Common Cause* “Public Financing in the States” at <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773825>. According to Common Cause, Fourteen states provide direct public financing to candidates. An additional ten states provide minimal public financing to candidates and/or political parties, generally funded through taxpayer contributions to political parties through their tax returns.

**Who is eligible for public financing?**

Gubernatorial candidates:	Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Michigan, Nebraska, New Jersey, Vermont
Statewide office candidates:	Arizona, Connecticut, Florida, Nebraska, Rhode Island
Statewide & legislative candidates:	Arizona, Hawaii, Maine, Minnesota, Nebraska, Wisconsin
Political party designated by taxpayer:	Alabama, Arizona, Idaho, Iowa, Maine, New Mexico, North Carolina, Rhode Island, Utah, Virginia

Political party (according to distribution formula):	California, Indiana, Ohio
Judicial candidates:	North Carolina
State utility oversight commissions:	New Mexico

### **What is the source of the public funds?**

Tax check-off:	Arizona, Hawaii, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Ohio, Rhode Island, Utah, Wisconsin
Tax add-on :	Alabama, Arizona, California, Florida, Maine, Maryland, Nebraska, North Carolina, Vermont, Virginia
Appropriations:	Florida, Hawaii, Minnesota, Nebraska, New Jersey, Rhode Island
Other Sources:	Arizona, Connecticut, Florida, Hawaii, Indiana, Vermont , New Mexico

<sup>19</sup>See Jill Terreri, "N.Y. Senate promises change, but will upstate be left in the dust?", *Rochester*

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*Democrat and Chronicle* (July 12, 2009).

<http://www.rochesterbusinessalliance.com/core/contentmanager/uploads/PDFs/Newspercent20articles/0712percent20Senatepercent20DANDC.pdf>. Since 1970, a total of 4,013 legislative seats have been up for re-election. In that time, only 40 incumbents have lost their seats in an election.

<sup>20</sup> Joseph P. Kalt and Mark A. Zupan, "The Apparent Ideological Behavior of Legislators: Testing for Principal Agent Slack in Political Institutions," *Journal of Law and Economics* 33 (1990): 118-20, 126; see also Steven D. Levitt, "How Do Senators Vote?," *American Economics Review* 86 (1996): 436 (first-term senators are more than twice as responsive to voter preferences than later-term senators).

<sup>21</sup> See the New York State Legislative Task Force on Demographic Research and Reapportionment *available at* <http://www.latfor.state.ny.us/>.

<sup>22</sup> See N.Y. A.B. 5279-A /S.B. 1614 of 2009-10. The bill has over 30 co-sponsors in the Assembly and over 10 co-sponsors in the Senate.

<sup>23</sup> New York State law is completely antithetical to generating participation in elections by individuals of average or modest means. For example, among the states that have campaign contribution limits, New York State has the highest limits of any

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state. In addition, New York State allows unlimited contributions to ill-defined party “housekeeping” accounts. It also permits corporations and their affiliates and subsidiaries to make direct campaign contributions and to do so independently of one another, thus effectively eviscerating even those contribution limits that do exist for corporations in New York State.

<sup>24</sup>A 2006 study by Common Cause showed that over \$53.2 million was contributed to housekeeping accounts in the eight-year period ending in 2006. *See* Common Cause, *The Life of the Party: Hard Facts on Soft Money in New York State* (August 2006) available at [http://www.commoncause.org/atf/cf/percent7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665percent7D/SOFT\\_MONEY\\_REPORT.PDF](http://www.commoncause.org/atf/cf/percent7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665percent7D/SOFT_MONEY_REPORT.PDF).

<sup>25</sup>Twenty-nine states impose certain restrictions on campaign fundraising during the legislative session. *See* the National Conference of State Legislatures’ website available at <http://www.ncsl.org/default.aspx?tabid=16544>.

<sup>26</sup> *See* Suzanne Novak and Seema Shah, *Paper Thin: The Flimsy Façade of Campaign Finance Laws in New York State*, Brennan Center for Justice at the NYU School of Law, available at [http://brennan.3cdn.net/20b4bbcf6a61b5bc\\_kfm6b512q.pdf](http://brennan.3cdn.net/20b4bbcf6a61b5bc_kfm6b512q.pdf).

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<sup>27</sup>See Reform NY: The Brennan Center Blog on New York *available at* <http://reformny.blogspot.com/2009/12/3-men-in-cell.html>.

<sup>28</sup>Thirty-nine states provide external oversight of their State government officials through an independent ethics commission that has statutory authority and staffing that are independent of the rest of State government. Ethics commissions in only six states, including New York, do not have jurisdiction over state legislators. 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.

<sup>29</sup>Connecticut has a complete ban on contributions during the contract period. The restriction has been challenged (*see Green Party of Connecticut v. Garfield*) and the case is currently pending in the Second Circuit Court of Appeals.

<sup>30</sup>See <http://www.cleanupwashington.org/documents/paytoplay2009.pdf>. At the time of Public Citizen's report, New Jersey's law was a proposal. Information regarding NJ's restrictions, which appear substantially similar to Public Citizen's account are



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available at

<http://www.nj.gov/treasury/purchase/Chapter51RecentQ&A.shtml>;

<http://www.nj.gov/treasury/purchase/execorder134.shtml>.

<sup>31</sup>This is similar to the proposal made by advocates in a proposed “Ethics in Government Act of 2006” that was not adopted. See

[http://www.brennancenter.org/page/-/d/download\\_file\\_8611.pdf](http://www.brennancenter.org/page/-/d/download_file_8611.pdf).

<sup>32</sup> See Henry G. Miller & Mark Davies, *Why We Need a New State Ethics Law for Municipal Officials*, FOOTNOTES, Winter 1996, at 5 (County Lawyers’ Association of the State of New York).

<sup>33</sup> See N.Y. Gen. Mun. Law §800 (4).

<sup>32</sup> See Temporary State Commission on Local Government Ethics ET AL., *In Search of a Wise Law: Municipal Ethics Reform* (March, 1991) at 7 available at [http://www.nyc.gov/html/conflicts/downloads/pdf2/In\\_Search\\_of\\_a\\_Wise\\_Law.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/In_Search_of_a_Wise_Law.pdf).

<sup>35</sup> See Mark Davies, *Enacting a Local Ethics Law-Part III: Administration*, NYSBA/MLRC MUNICIPAL LAWYER, Winter 2008, Vol. 22, No. 1, at 15.

<sup>36</sup> See N.Y. Gen. Mun. Law §§800-813.

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<sup>37</sup> NYS Office of the State Comptroller, Division of Local Government and School Accountability, *Ethics Oversight in New York State Municipalities 2009* at 9 available at [http://www.nyc.gov/html/conflicts/downloads/pdf2/In Search of a Wise Law.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/In%20Search%20of%20a%20Wise%20Law.pdf).

<sup>38</sup> *Id* at 8.

<sup>39</sup> *Id* at 7.

<sup>38</sup> Temporary State Commission on Local Government Ethics ET AL. *supra* note 32, at 13. New York City has had an extensive code of ethics for their public servants, and an active ethics board, since 1959. See NYC Local Law No. 73, 74, 75 (1959), enacting former NYC Ad. Code §§ 1106-1.0, 1106-2.0, 1106-3.0, and 1959 NY Laws ch. 532, revising former NYC Charter § 886, available at <http://www.nyc.gov/html/conflicts/downloads/pdf2/Old%20NYC%20Ethics%20Laws.pdf>. Since 1989, when New York City's ethics board was given enforcement power, it has had an active enforcement program, including the imposition of 98 fines in 2009 totaling over \$160,000. See 2009 Annual Report of the Conflicts of Interest Board, Exhibit 9, page 45, reproduced at [http://www.nyc.gov/html/conflicts/downloads/pdf2/annual reports/annual report 2009 final.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/annual%20reports/annual%20report%202009%20final.pdf). The City's current conflicts of interest and financial disclosure laws are set forth in NYC Charter Chapter

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68 and NYC Ad. Code § 12-110, respectively, available at <http://www.nyc.gov/html/conflicts/html/law/law.shtml>.

<sup>41</sup> See Mark Davies, *Enacting a Local Ethics Law—Part I: Code of Ethics*, NYSBA/MLRC MUNICIPAL LAWYER, Summer 2007, Vol. 21, No. 3, at 5.

<sup>42</sup> Temporary State Commission on Local Government Ethics ET AL. , *supra* note 32, at 3.

<sup>43</sup> See Miller & Davies, *supra* Note 30, at 5. See also Steven G. Leventhal, *Needed: A New Statewide Ethics Code for Municipalities*, NYSBA/MLRC MUNICIPAL LAWYER, Fall 2009, Vol. 23, No. 4, at 19.

<sup>44</sup> Mark Davies, *Enacting a Local Ethics Law-Part II: Disclosure*, NYSBA/MLRC MUNICIPAL LAWYER, Fall 2007, Vol. 21, No. 4, at 8.

<sup>45</sup> See Temporary State Commission on Local Government Ethics ET AL., *supra* Note 32, at 7.

<sup>46</sup> See Leventhal, *supra* note 41 at 21.

<sup>47</sup> See Temporary State Commission on Local Government Ethics, ET AL. *supra* note 32, at 5.

<sup>48</sup> *Id* at 14.

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<sup>49</sup> See N.Y. Legis. Law § 1-m (prohibition of gifts).

<sup>50</sup> See N.Y. Gen. Mun. Law § 805-a.

<sup>51</sup> See N.Y. A.B. 10682/ S.B. 7400A of 2010. The Comptroller's bill sets a threshold for mandating an ethics board in cities, towns, and villages at a population of 50,000, which, however, would include only 12 cities (out of 62), 21 towns (out of 933), and one village (out of 553). See NYS Dept. of State. Local Government Handbook, at 5 (Table 1) and 54 (Table 9), available at <http://www.dos.state.ny.us/lgss/pdfs/Handbook.pdf>.

<sup>52</sup> Mark Davies, *Local Ethics Law: Model Administrative Provisions*, NYSBA/MLRC MUNICIPAL LAWYER, Summer 2008, Vol. 22, No. 3, at 14.

<sup>53</sup> See N.Y. A.B. 10682/ S.B. 7400A of 2010.

<sup>54</sup> Davies, *supra* note 33 at 11.

<sup>55</sup> See N.Y. Gen. Mun. Law §§800-813.

<sup>56</sup> See N.Y. A.B. 10682/ S.B. 7400A of 2010. Recoveries have been suggested as the amount of the greater of: a) the total damage incurred by the municipality, b) three times the benefit that the

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municipal employee obtains from the violation or c) a dollar range up to ten thousand dollars.

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

<sup>58</sup>See Assemblymember Sandy Galef's "Assemblywoman Sandy Galef Offers Proposals to Reform the "Member Item" Distribution System" (May 8, 2008) *available at* <http://assembly.state.ny.us/mem/?ad=090&sh=story&story=27302>.

<sup>59</sup> For example, Assemblyman Brian McLaughlin was prosecuted for illegally taking money from a Little League organization funded by his own member item funds to pay his personal expenses. *See* NYPolitics (May 16, 2009) *available at* <http://www.nypolitics.com/2009/05/16/brian-mclaughlin-sentencing-stirs-up-political-storm/>.

<sup>60</sup>See section 6 of the Executive Law.

<sup>61</sup>Allegations of corruption in the State Pension fund are not a new phenomenon. *See generally, Governor's Task Force on Pension Fund Investment, Our Money's Worth* (June 1989). For years, academics, commissions, government officials, good government groups and informed citizens have recognized the need to reform the pension fund's governance structures in order to protect its members and beneficiaries.

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<sup>62</sup>N.Y. Retire. & Soc. Sec. Law §§ 13(b), 422(1).

<sup>63</sup>Reformers have long argued in favor of creating a board of trustees to manage CRF. See M. Moss, *The Next Scandal*, *N.Y. Times*, Nov. 12, 2006. Over the years, there have been various legislative proposals calling for the creation of a board of trustees to manage the pension fund. For example, in 1993, the State Assembly enacted legislation that would have created a multi-member board of trustees to manage CRF. See N.Y. Assembly Journal, 216th Sess., vol. 1, pp. 859 (1993) (stating that on May 17, 1993 the Assembly, by a vote of 86 to 57, passed A. 2454-B, “An act to amend the retirement and social security law, in relation to the creation of a board of trustees for the common retirement fund”). Although the State Senate did not pass the bill, the Senate Majority Leader countered the Assembly proposal with his own version of a board of trustees. See Ralph J. Marino, Letter to the Editor, *Viewpoints: Protecting Retirement Funds*, *Newsday*, June 15, 1993, at 85 (proposing multi-member board of trustees which would include the Comptroller and members appointed by the Governor and leaders of the Senate and Assembly).

<sup>64</sup> Such states include Alabama, California, Colorado, Georgia, Hawaii, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, North Dakota, Ohio, Rhode Island and Texas.

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<sup>65</sup> New York State Penal Law, Article 195.20, Defrauding the Government,  
[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$PEN195.20\\$\\$@TXPEN0195.20+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=00353382+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$PEN195.20$$@TXPEN0195.20+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=00353382+&TARGET=VIEW).

<sup>66</sup> The proposed Public Corruption Prevention and Enforcement Act is an important first step towards reform. As Governor, Andrew Cuomo will work towards the changes proposed in the bill and take the additional steps necessary to make real progress on this issue. The bill is available at <http://open.nysenate.gov/legislation/bill/S7707>.

<sup>67</sup> In a recent decision, the Supreme Court found the honest services doctrine overly vague and limited its application to bribes and kickbacks. *Skilling v. United States*, 2010 U.S. LEXIS 5259 (2010).

<sup>68</sup> New York State Criminal Procedure, Article 30.10 (3), Timeliness of prosecutions; periods of limitation,  
[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$CPL30.10\\$\\$@TXCPL030.10+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=00353382+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$CPL30.10$$@TXCPL030.10+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=00353382+&TARGET=VIEW).

<sup>69</sup> *People v. Tran*, 80 N.Y. 2d 170, 176 (1992)  
*See also* N.Y. A.B. 10942-A/S.B. 7707A of 2010.

<sup>70</sup> N.Y. A.B. 10942-A/S.B. 7707A of 2010.

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<sup>71</sup> New Jersey's pension forfeiture law is often looked to as a good model for such legislation. Passed in March of 2007, Chapter 49, P.L. 2007/ Title 43 "imposes mandatory imprisonment and mandatory forfeiture of pension and retirement benefits for public officers or employees convicted of certain crimes involving or touching their office or employment." See New Jersey Statute- Title 43 (43:1-3.1.) Forfeiture of pension, retirement benefit for conviction of certain crimes; definition, certain <http://www.state.nj.us/treasury/pensions/newlaw07.shtml#1>. Pennsylvania's statute requires pension forfeiture for legal offenses "committed by a public official or public employee through his public office or position or when his public employment places him in a position to commit the crime." As quoted in "Pension forfeiture: a problematic sanction for public corruption," *American Criminal Law Review* (September 22, 1997) <http://business.highbeam.com/434805/article-1G1-20361538/pension-forfeiture-problematic-sanction-public-corruption>

<sup>72</sup> For example, under Florida law, public employees forfeit certain parts of their pension for committing crimes such as theft, any felony related to his or her official duty, and even for certain sexual offenses. See [http://www.seattlepi.com/local/269826\\_pensionstates11web.asp#list](http://www.seattlepi.com/local/269826_pensionstates11web.asp#list), see also [http://www.nasra.org/resources/Forfeiture statutes.pdf](http://www.nasra.org/resources/Forfeiture%20statutes.pdf)



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<sup>73</sup> In 1954 Congress passed the *Hiss Act* which mandates pension forfeiture for federal employees convicted of certain crimes:

“The Hiss Act prohibits the payment of title II benefits and other annuities to a person based on remuneration received for services performed while employed by the Federal government (includes Armed Forces and District of Columbia employees) if that individual has committed an offense against national security. This prohibition also applies to perjury, false testimony, refusal to testify and to persons remaining outside the U.S. to avoid prosecution when such acts or omissions involve the national security.” See

<https://secure.ssa.gov/apps10/poms.nsf/lrx/0202602015!opendocument>

In 1994 an amendment to the original act was passed, see 5 U.S.C. § 8312-8322 (1994),

[http://www.law.cornell.edu/uscode/5/usc\\_sec\\_05\\_0008312----000-.html](http://www.law.cornell.edu/uscode/5/usc_sec_05_0008312----000-.html).

In New York State, at least six separate bills have been submitted to the State Assembly since 2004 that would similarly force elected officials and state employees to forfeit the receipt of a public pension or retirement rights if convicted of a felony related to his or her duties as a public employee. They include:

S4068 FLANAGAN, LANZA, LITTLE, MORAHAN, ROBACH, WINNER would amend the retirement and social security law by requiring a

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public employee to “forfeit his or her retirement rights and benefits if he or she is convicted of or pleads to certain crimes related to public employment.” See

<http://open.nysenate.gov/legislation/api/1.0/html/bill/S4068>

S1733 KRUEGER, DUANE, C. JOHNSON, SCHNEIDERMAN would prohibit “the receipt of pension benefits by an elected official who has been convicted of a designated felony offense relating to such person's performance of official duties or responsibilities; and defines terms; provides for the return of retirement contributions made by the official.” See

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=S01733&Summary=Y&Actions=Y&Votes=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=S01733&Summary=Y&Actions=Y&Votes=Y&Text=Y)

A9401 PAULIN, FIELDS, GALEF, HOYT, SCHIMMINGER, JAFFEE, BACALLES, KOON “Provides that an elected official shall forfeit his or her retirement rights and benefits if he or she is convicted of or pleads to certain crimes related to public employment.” See

<http://open.nysenate.gov/legislation/bill/A9401>

S6823-B C. JOHNSON “Amends the retirement and social security law by adding a new article 23 ‘Pension Forfeiture for Public Corruption Act’.” See

<http://open.nysenate.gov/legislation/bill/S6823B>

A9559 SILVER, MAGNARELLI, would amend the public officers law to prohibit and criminalize the use by certain public officers and employees of state

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property, services or resources for activities related to private business or to a political campaign.

“Prohibits and criminalizes the use by certain public officers and employees of state property, services or resources for activities related to private business or to a political campaign.” See

<http://open.nysenate.gov/legislation/bill/A9559>.

<sup>74</sup> See

<http://www.dos.state.ny.us/info/constitution.htm>.

See S6823-B C. JOHNSON. This bill provides a creative way around Article V by creating a Taxpayer Abuse Sanction. S6823 states, “Section 632a of the Executive Law, more commonly known as the “Son of Sam” law, put restrictions on the income of criminals trying to profit from their crimes. This measure will achieve this goal, as well as provide additional protections to taxpayers by offering this stiff deterrent to those seek to abuse the system.” See <http://open.nysenate.gov/legislation/bill/S6823B>

<sup>75</sup> See <http://www.ig.state.ny.us/>.

<sup>76</sup> See <http://mtaig.state.ny.us/>.

<sup>77</sup> See <http://www.panynj.gov/inspector-general/>.

<sup>78</sup> See <http://www.owig.state.ny.us/owig/>.

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<sup>79</sup> See <http://omig.ny.gov/data>.

<sup>80</sup> See [http://dmna.state.ny.us/ig/ig\\_faq.html](http://dmna.state.ny.us/ig/ig_faq.html).

<sup>81</sup> We will also look to thoughtful and innovative efforts underway by other governments, as far away as Australia and Great Britain, which have detailed blueprints for transformation, and as close as New Jersey, which has a well done transparency website. Open NY is powered by new ideas and new technology, but our goal is to take effective action to win better government.

<sup>82</sup> See <http://www.sunlightny.com/snl1/app/index.jsp>.

<sup>83</sup> For example, New York State spends tens of millions of dollars a year on environmental studies. These studies gather enormous amounts of information about everything from water quality to marine life to plants and soil to historical artifacts to information about local businesses, schools and transportation. Yet, they are usually not posted online. When they are online, these expensive studies are not machine searchable or downloadable.

<sup>84</sup> Washington D.C. is doing this, and we think it is a great way to increase government accountability. See [http://data.octo.dc.gov/Main\\_DataCatalog.aspx](http://data.octo.dc.gov/Main_DataCatalog.aspx).

<sup>85</sup> Contract's with state vendors are already subject to public release under the state's Freedom of

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Information Law. Open NY will put these contracts online, in one place and make them easy to find and download. Our goals are to make it clear who is getting paid by the state, and what they are doing with the money. This includes complicated tax credits and “tax expenditures.” It’s the public’s money and they should be able to tell how their money is being spent, whether it’s for building a bridge or creating jobs with a tax credit.

Moreover, Open NY will strive to publish a new online, frequently updated, downloadable, machine readable, state budget. Information on Open NY could include charts showing each agency’s spending for the last five years, the Governor’s proposed budget and subsequent changes through amendments and legislative action.

<sup>86</sup> The federal government has helped show the way towards better state spending accountability with its “IT Dashboard.” This website tracks about \$76 billion in federal spending, encompassing 7,000 federal IT projects, with specific milestone and performance data on 800 priority projects. After IT spending is tracked, we will track capital projects. (The MTA has just started doing this online with a “dashboard” feature. ) We will then progressively add more and more categories of state spending.

<sup>87</sup>Peter J. Galie, *The Constitutional Commission in New York: A Worthy Tradition*, 64 Alb. L. Rev. 1285 (2001).





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