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SWORN COMPLAINT
TO NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

Susan Lerner, Executive Director of Common Cause/NY, and Sonia Ossorio, President of NOW-NYC, allege on information and belief that Assembly Speaker Sheldon Silver, Assemblymember Vito Lopez, certain members of the staff of the New York State Assembly and certain past and present members of Assemblymember Lopez' staff have violated sections 74(d) and 74(h) of the Public Officers Law as follows:

1. Complainants allege, on information and belief, that the following conduct and events constitute a violation of Public Officers Law Sec 74(d): At some time prior to June, 2011, two female members of Assemblymember Vito Lopez' legislative staff complained to members of the staff of the New York State Assembly that they had been sexually harassed by Lopez. Nevertheless, in contradiction to the Assembly's stated procedures, the harassment allegations were not referred to any ethics oversight body. Instead, the Assembly entered into a secret settlement agreement with the two staffers and paid the two women over \$100,000 in public moneys to settle their harassment claim and buy their silence. These basic facts are a matter of public record, having been revealed to the public first by the New York Times in articles attached as Attachment A, and then carried by newspapers throughout the state.
2. The conduct as alleged, representing instances where members of the legislature and legislative employees used their official position to secure unwarranted exemption from ethics oversight for Assembly Member Lopez, constitutes a violation of Public Officers Law Sec. 74(d). Investigation by the Joint Commission on Public Ethics is necessary to ascertain the full set of facts, including identities of all of the individuals and entities involved in the exemption and cover-up and hold them responsible.
3. Complainants further allege, on information and belief, that the following conduct and events constitute a violation of Public Officers Law Sec 74(h): On August 24, 2012, Assembly Speaker Sheldon Silver publicly announced that the Assembly Committee on Ethics and Guidance found that Assemblymember Lopez had violated the Assembly's sexual harassment policy. In a public letter of admonition

addressed to Lopez, Speaker Silver further announced that he was immediately implementing the Committee's recommendations by:

- Removing Lopez as Chairman of the Assembly Committee on Housing and banning him from any other committee chairmanship or leadership position;
- Reducing Lopez's staff allocation through attrition to the amount reserved for a first term member and forfeiting his seniority in the Assembly;
- Requiring the Assemblyman to undergo supplemental sexual harassment training; and
- Prohibiting Lopez from employing staff under 21 years old or interns in his Assembly offices.

A copy of the letter of censure and its accompanying public press release is attached as Attachment B. That letter details instances of sexual misconduct by Lopez representing gross violations of the public trust reposed in him as a consequence of his official position. The letter details harassment occurring in July, 2012, after the June date of the secret settlement of earlier instances of sexual harassment revealed in the New York Times articles attached as Attachment A.

4. These series of events as alleged in Paragraph 3 and detailed in news accounts constitute a course of conduct which raises suspicion among the public that the individuals who are the subject of this complaint are likely to be engaged in acts that are in violation of the public trust reposed in them in violation of section 74(h) of the Public Officers Law. Lopez' conduct raises suspicion that, having engaged in two known instances of sexual harassment, he is likely to further violate the public trust with additional instances of sexual harassment of female staffers, hence the need for the Assembly to prohibit him from employing female staffers and interns under the age of 21. The conduct of Speaker Silver and various staff members of the Assembly and Lopez raise suspicion that in the future they will not follow the Assembly's stated procedures for handling sexual harassment claims and other sensitive matters which could prove politically embarrassing for Assembly members, their colleagues and political allies by referring them to the appropriate ethics oversight body. Rather, their conduct as alleged herein raises suspicions that they will handle future instances on an *ad hoc* basis, using public money without adequate disclosure to cover up harassing or other illegal conduct by Assemblymembers in the future, thus violating the trust reposed in each of them.

Complainants request that the Joint Commission on Public Ethics conduct a full investigation of the conduct alleged herein, to ascertain whether other similar instances of violation regarding Assemblymember Lopez occurred and to hold all those who participated in these alleged violations of law responsible so that they and others do not similarly violate the law and the public's trust in the future.

Complainants state that they have not referred this matter to any other agency and are not aware of any litigation currently pending involving the alleged conduct.

I, Susan Lerner, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Susan Lerner

Sworn to before me this day
of _____, 20__

NOTARY PUBLIC

I, Sonia Ossorio, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sonia Ossorio

Sworn to before me this day
of _____, 20__

NOTARY PUBLIC

ATTACHMENT A

<http://www.nytimes.com/2012/08/28/nyregion/claims-vito-lopez-harassed-staff-cost-state-103000.html?pagewanted=print>

August 27, 2012

Assembly Paid \$103,000 in Harassment Case

By **DANNY HAKIM**

ALBANY — Sheldon Silver, the New York State Assembly speaker, authorized a secret payment of \$103,080 to settle sexual harassment claims against Assemblyman Vito J. Lopez this year, according to records released by the Assembly on Monday night.

Mr. Lopez, 71, was censured by the Assembly on Friday after an internal investigation substantiated sexual harassment allegations brought by two female employees in his office. But The New York Times reported over the weekend that a previous sexual harassment claim was quietly settled by the Assembly earlier this year, in an arrangement that included public money, a confidentiality agreement and mandatory attendance by Mr. Lopez at a sexual harassment workshop.

The revelation about the amount of money that the Assembly paid to quietly settle a harassment case is sure to further stoke debate about the handling of harassment cases by Mr. Silver, the Legislature's most powerful Democrat for the last 15 years. Officials familiar with the Assembly said they knew of no precedent for such a secret payment, and government watchdog groups called for an investigation.

The previous claim was brought by at least one other woman who worked for Mr. Lopez — and possibly more than one — and who was represented by Gloria Allred, the prominent Los Angeles lawyer. The \$103,080 does not represent the full size of the settlement, because money controlled by Mr. Lopez was used as well, people with knowledge of the deal said — though it was not clear if it was from his personal finances, campaign money or money affiliated with his nonprofit group. Mr. Lopez also spent \$46,000 on legal fees in March and April, according to state records.

Several people said it was two women, not one, who were involved in the settlement that was negotiated among the state, Mr. Lopez's representative and Ms. Allred. The settlement was paid by the state on June 13, about two and a half months before Mr. Lopez was censured by the Assembly based on the allegations that he sexually harassed two other women.

Mr. Lopez, an ally of Mr. Silver who is the head of the Democratic Party in Brooklyn, is among the most powerful Democrats in New York. In a statement Monday, Mr. Lopez said, "The charges made against me are unfair and untrue. Never did I intentionally touch or attempt to kiss either of the complainants. I have never forced myself on anyone, nor would I."

"I have no intention of resigning, and instead look forward to continuing to represent my constituents to the best of my ability," he added.

Since the censure on Friday, Gov. Andrew M. Cuomo, Senator Charles E. Schumer and several lawmakers have called for Mr. Lopez's resignation.

Edward F. Cox, the chairman of the state Republican Party, called for the appointment of a special prosecutor to investigate the case.

"If in fact this goes back to the Assembly leadership, this is something where a special prosecutor is needed, or else the Democratic establishment is covering up a cover up," Mr. Cox said in an interview. "It was done to cover up what I assume was a crime and to settle it with hush money. That is a violation of the law." Mr. Silver censured Mr. Lopez Friday after the Assembly's ethics committee — made up of four Democrats and four Republicans — ruled unanimously that claims by the two women that Mr. Lopez had verbally and physically harassed them were credible. The earlier claim was not referred to the ethics committee.

Dick Dadey, the executive director of [Citizens Union](#), an advocacy group, called Monday for the state's Joint Commission on Public Ethics to review the payment.

"Taxpayers should be funding public education, not to sweep harassment charges aside for bad elected officials," he said. "While we need to respect the wishes of the staff person, the public has a right to know when an elected official misbehaves and the state pays for it."

"This is just unfathomable that such deplorable behavior by an elected official could be kept from the public," he added.

[Susan Lerner](#), the executive director of Common Cause New York, has also called for an investigation by the state ethics commission, and called the latest revelations “shocking” — particularly that Mr. Lopez was censured for harassing women shortly after settling a claim for sexual harassment.

“Clearly Lopez did not get the message,” she said, adding, “Assemblyman Lopez’s conduct in the ensuing months was worse, not better.”

“The fact and the size of the settlement raise questions as to whether this is the only instance of sexual misconduct that predates the censure,” she said.

The speaker has declined to discuss why he kept previous allegations from the public and used public money in a settlement.

Mr. Silver has previously been accused of responding slowly to accusations of sexual misconduct. In 2003, one of his top aides, J. Michael Boxley, was accused of rape and later pleaded guilty to sexual misconduct; he had earlier been accused of sexual assault. Assembly members were also embroiled in scandals involving current or former interns in 2006, 2007 and 2008.

In a statement Monday, Michael Whyland, an Assembly spokesman, would not specifically discuss the settlement, but generally speaking, said: “The only instance in which a complaint would not be handled by the ethics committee would be if a victim insisted for reasons of personal privacy that it not go before the committee. The Assembly would only keep such a matter confidential at the express insistence of the victim.”

Mr. Silver described the allegations that led him to censure Mr. Lopez in a graphic letter released Friday.

“There were multiple incidents of unwelcome physical conduct toward one complainant, wherein you put your hand on her leg, she removed your hand, and you then put your hand between her upper thighs, putting your hand as far up between her legs as you could go,” he wrote.

He added that one of the complainants was assaulted by Mr. Lopez after he required her to accompany him on a trip to Atlantic City. “She struggled to fend you off before you stopped, and that on the drive back from Atlantic City you again put your hand between her legs,” Mr. Silver wrote.

Michael M. Grynbaum contributed reporting from New York.

<http://www.nytimes.com/2012/08/29/nyregion/lopez-to-lead-party-leadership-role.html?pagewanted=print>

August 28, 2012

Assembly Leader Admits Fault as Critics Assail Secret Payoff

By **DANNY HAKIM**, **MICHAEL M. GRYNBAUM** and **WILLIAM K. RASHBAUM**

ALBANY — The latest scandal to hit the State Assembly has engulfed Speaker **Sheldon Silver**, the Legislature’s most powerful Democrat, as Gov. Andrew M. Cuomo and other elected officials on Tuesday called for an investigation into the Assembly’s handling of sexual harassment claims against a prominent assemblyman, including a secret settlement payment of more than \$100,000.

Even as Assemblyman **Vito J. Lopez**, the man at the center of the scandal, agreed to give up his power base as chairman of the **Democratic Party** in Brooklyn, it was Mr. Silver’s decision to make the payment and keep the allegations against Mr. Lopez secret that drew the most outrage. Public advocacy and women’s groups, and even some Democratic lawmakers, expressed shock that the state would pay so much without public disclosure. Governor Cuomo — who had previously called for Mr. Lopez’s resignation over a separate set of allegations — became the most prominent voice calling for an ethics investigation as well.

The growing scandal led Mr. Silver to say that he had been wrong to approve the settlement. He said that he had previously endorsed the view of his counsel’s office that if an employee bringing a harassment claim requested confidential mediation, then the Assembly would accede to that request and not refer the claim to the Assembly’s bipartisan ethics committee.

“I take full responsibility in not insisting that all cases go to the ethics committee,” he said in a statement. “While that opinion is both legally correct and ethical and can result in a resolution sought by complaining employees, I now believe it was the wrong one from the perspective of transparency.”

He added that, in the future, the Assembly “should not agree to a confidential settlement,” should always refer cases to the ethics committee and “should publicly announce the existence of any settlement, while protecting the identity of the victims.”

Late Friday night, Michael Whyland, Mr. Silver’s spokesman, said there had been no previous secret settlements.

“We scoured our records and this is the only settlement request from the Assembly,” he said.

The scandal first emerged on Friday when the Assembly censured Mr. Lopez after an internal investigation by the ethics committee unanimously substantiated allegations of harassment brought by two female employees. The New York Times reported over the weekend that the Assembly had also authorized a secret payment to settle prior allegations against Mr. Lopez — allegations that were never referred to the ethics committee.

Documents released by the Assembly on Monday showed that it paid \$103,080 on June 13 to settle the earlier case, which is said to have involved claims brought by two other women.

Tuesday brought new revelations of broader involvement by state officials; the secret settlement was reviewed by a staff lawyer in the office of Eric T. Schneiderman, the attorney general, and the payment was approved by the office of Thomas P. DiNapoli, the state comptroller.

Mr. Silver’s office would not say on Monday specifically why this case was not referred to the ethics committee, but said that such a case would not be referred only if that is what the victim requested, suggesting that is what had occurred. But on Tuesday, Gloria Allred, the prominent Los Angeles lawyer who represented at least one woman involved in the secret settlement, offered a contradictory account, saying her office would never have discouraged a formal investigation by the State Assembly.

“We have never requested or insisted that a legislative committee or other body not proceed with an investigation,” Ms. Allred said in a statement. “To the contrary, we believe that it is in the interest of good government and working women that there is full accountability and transparency about workplace sex harassment and that there should be full investigations of accusations of workplace harassment.”

Mr. Lopez, 71, continued to insist he had done nothing wrong, and resisted calls to resign from his Assembly seat even as he said he would not seek another term as Brooklyn Party chairman next month — a decision that will rob him of the considerable power he has long wielded. Some close to Mr. Lopez said he had resisted stepping down as chairman until late Monday or early Tuesday, and only after several district leaders convinced him that he had lost support.

“The onslaught of character attacks has put enormous emotional pressures on my family and close friends,” Mr. Lopez said in a statement. “I cannot sit by and allow that to continue.”

“I have never sexually harassed any staff and I hope and intend to prove in the coming months the political nature of these accusations,” he added.

Those comments led to a sharp response from Kevin Mintzer, a lawyer representing the two female Assembly employees who brought the complaints against Mr. Lopez that led to the censure.

“Mr. Lopez’s partial resignation is wholly insufficient,” Mr. Mintzer said, adding, “The notion that Mr. Lopez will continue to be in a position to sexually harass other Assembly employees is intolerable.”

“No one should take seriously Mr. Lopez’s self-serving statements about the ‘emotional pressures’ he now faces as a result of his behavior,” he said. “Indeed, Mr. Lopez would do well to consider the considerable emotional distress he caused his victims.”

Mr. Cuomo said the state ethics commission “should do an investigation of the allegations that have been made,” adding, “If the facts are true about Mr. Lopez and the incidents of harassment, I think he should resign. That’s my opinion, but let’s get the facts.”

It was unclear where exactly the money had come from. While the Legislature has wide discretion over how it spends its own budget — the Assembly’s is about \$102 million — rank-and-file lawmakers expressed befuddlement at the secretive nature of the settlement and how the funds were accounted for.

“My first reaction was, ‘Really? We can do that?’ ” said Senator Liz Krueger, a Manhattan Democrat. “I had never even heard of a mechanism for a secret private payout in a case” like this.

“I’m still very confused what line in the budget of the State of New York is available for private, nondisclosed civil case resolution,” Ms. Krueger added. “And at minimum, I think that all needs to be transparent, as other budget dollars should be.”

Senator Diane Savino, a Staten Island Democrat, asked why the settlement was not made public or referred to the ethics committee. She urged the Legislature to “come up with some hard and fast rules” on what should occur when a lawmaker is accused of abusive behavior. “There should have been one standard all the time, not secret decisions and settlements,” Ms. Savino said.

A lawyer in Mr. Schneiderman’s office did review the settlement document, an official in the office said, but only made one recommendation and had no formal role in approving the settlement, since a lawsuit was never filed.

Kate Gurnett, a spokeswoman for Mr. DiNapoli, said his office had received a request for payment from the Assembly for what it characterized as “legal services” and processed the payment on June 13. She added that the comptroller’s office does not evaluate the merits of

legal settlements. “The settlement was negotiated by the Assembly with the claimants,” she said. “The comptroller’s office was not party to the negotiations.”

Questions surrounding the actions of Mr. Silver, one of New York’s most influential Democrats, were met predominantly with silence by many of the same city and state officials who had loudly called for Mr. Lopez’s resignation last week.

Several New York City mayoral candidates, including Christine C. Quinn, the City Council speaker; Bill de Blasio, the public advocate; and Scott M. Stringer, the Manhattan borough president, would not comment on Tuesday about the Assembly’s settlement; neither would Senator Charles E. Schumer nor Representative Jerrold Nadler.

But not all were silent.

“I don’t think it’s good leadership,” said Senator Bill Perkins, a Manhattan Democrat, adding, “It’s devastating in terms of our credibility.”

Mr. Perkins said he hoped the settlement would be formally investigated, possibly by the attorney general’s office. “It begs the question: how many more of these have happened in the past?” he said, adding, “For the government to be paying for what that money apparently was paid for, it’s a very dark, dark day for Albany.”

The National Organization for Women, which often relies on Assembly Democrats for support, also did not hesitate to criticize the Assembly speaker. “Sheldon Silver is now in the hot seat with Lopez and he has a lot of explaining to do,” said Sonia Ossorio, president of the group’s New York City chapter, adding, “this is a bombshell.”

David W. Chen contributed reporting.

ATTACHMENT B



SHELDON SILVER
Speaker of the Assembly

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Room 932
Legislative Office Building
Albany, New York 12248
(518) 455-3791

August 24, 2012

Assemblymember Vito Lopez
434 South 5th Street
Brooklyn, NY 11211

Dear Assemblymember Lopez:

I have been advised by the Standing Committee on Ethics and Guidance that it has concluded its investigation of a complaint made by two employees of the New York State Assembly alleging that your conduct toward them violated the Assembly's Sexual Harassment/Retaliation Policy.

The Committee unanimously found as follows:

1. That complainants' allegations of unwelcome verbal and physical conduct of a sexual nature were credible, including:
 - That there was pervasive unwelcome verbal conduct by you toward both complainants from early June 2012 until the time they made complaints of sexual harassment in mid-July 2012, including repeated comments about their physical appearance, their bodies, their attire, and their private relationships;
 - That the unwelcome verbal and physical conduct escalated over time;
 - That there were multiple incidents of unwelcome physical conduct toward one complainant, wherein you put your hand on her leg, she removed your hand, and you then put your hand between her upper thighs, putting your hand as far up between her legs as you could go;
 - That you required one of the complainants to take a trip with you to Atlantic City in July 2012, and that you attempted to kiss her, that she struggled to fend you off before you stopped, and that on the drive back from Atlantic City you again put your hand between her legs; and
 - That other incidents of unwelcome physical conduct occurred, including holding one complainant's hand and playing with her hair.
2. That complainants' perception that such conduct created an intimidating, hostile and offensive working environment was reasonable;
3. That complainants' allegations that you required them to write to you about how much they loved their jobs and cared about you, and that you criticized their notes for being insufficiently effusive, were credible;
4. That your response was not credible; and
5. That you violated the Assembly's Sexual Harassment/Retaliation Policy, which appropriately provides that every Assembly employee is entitled to an employment environment free from sexual harassment and that sexual harassment will not be tolerated within the Assembly workplace.

The Committee thereafter offered its considered judgment that your conduct constituted a violation of the Assembly's Sexual Harassment/Retaliation Policy and that such conduct warrants a response which is designed to stop the harassment and ensure that similar harassment does not recur in the future towards other employees. The Committee unanimously recommended the following:

1. That you be immediately removed as Chair of the Assembly Committee on Housing and that you not be appointed as the Chair of any other committee or to any leadership position;
2. That a letter of censure and admonition be issued publicly by the Speaker on behalf of the House, enumerating the findings of the Committee and indicating that your conduct with respect to this matter violates the Assembly's Policy and is inconsistent with the standards of conduct to which Members of the Assembly should be held;
3. That you are not to have any interns placed or working in your Assembly offices and that you are not to have any employees under the age of 21 in your Assembly offices;
4. That any rights or privileges of seniority currently retained by you be forfeited;
5. That your staff allocation be reduced in the amounts commensurate with the reassignment of the complainants to other Assembly offices and not be replaced with new funding; and that your staff allocation be further reduced in the amounts commensurate with the compensation of any employee who leaves employment in your offices and not be replaced with new funding, and that such attrition process remain in effect until your staff allocation has been reduced to that of a first-term member; and
6. That supplemental sexual harassment training be provided to you and your staff.

I accept the recommendations of the Committee, in full. As a result, please be advised that you are hereby removed as Chair of the Committee on Housing, that any rights or privileges of seniority you currently retain are deemed forfeited, and that your staff allocation will be reduced in a manner consistent with the Committee's recommendation. In addition, you are hereby directed that you are not to have any interns placed or working in your offices, or any employees under the age of 21 in your offices. Supplemental sexual harassment training will be scheduled for you and your staff.

Finally, based upon the foregoing and upon the unanimous recommendation of the Committee on Ethics and Guidance, I hereby censure and admonish you on behalf of the New York State Assembly and its Members and declare that your conduct with respect to this matter violates the Assembly's Sexual Harassment/Retaliation Policy and is inconsistent with the standards of conduct to which Members of the Assembly should be held.

Signed,



SPEAKER

News Release

QuickTime™ and a
decompressor
are needed to see this picture.

Assembly Speaker Sheldon Silver

ASSEMBLY.STATE.NY.US

CONTACT: Michael Whyland
Press Secretary
[\(518\) 455-3888](tel:(518)455-3888)

**FOR IMMEDIATE
RELEASE:**
August 24, 2012

Silver Implements Recommendations from Assembly Committee on Ethics and Guidance

The bi-partisan Assembly Committee on Ethics and Guidance today unanimously recommended that Assemblyman Vito Lopez be removed as Chairman of the Assembly Committee on Housing and forfeit his seniority after reviewing allegations of sexual harassment against him. The findings were delivered to Speaker Sheldon Silver who said he would immediately implement the recommendations.

“The bi-partisan Committee on Ethics and Guidance today delivered to me a report signed by all eight of its members finding that Assemblymember Vito Lopez violated the Assembly’s sexual harassment policy,” said Silver. “I have reviewed the report and will fully implement its recommendations. The members of the committee have fulfilled their obligation to independently and thoroughly review these allegations, and I thank them for their hard work.”

In its report to Speaker Silver, the committee found that Lopez created a hostile workplace which included both verbal and physical sexual abuse and determined that his response was not credible.

In a letter of admonition to Assemblyman Lopez, the Speaker said that he has accepted the findings of the committee and will fully implement its recommendations, including:

- Removing Lopez as Chairman of the Assembly Committee on Housing and banning him from any other committee chairmanship or leadership position;
- Reducing Lopez’s staff allocation through attrition to the amount reserved for a first term member and forfeiting his seniority in the Assembly;
- Requiring the Assemblyman to undergo supplemental sexual harassment training; and
- Prohibiting Lopez from employing staff under 21 years old or interns in his Assembly offices.

“The Assembly has a zero tolerance policy when it comes to sexual harassment and we are committed to ensuring a safe and respectful workplace for all our employees,” said Silver. “The Committee on Ethics and Guidance has been diligent in thoroughly and fairly investigating the allegations made in this case and I will immediately implement its recommendations.”

Pursuant to Assembly Rules, the Assembly Committee on Ethics and Guidance is made up of an equal number of majority and minority members. The committee, chaired by Assemblyman Daniel O'Donnell, includes four Democrats and four Republicans.

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Note: The Speaker’s letter to Assemblyman Lopez is attached.