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ALBANY ETHICS REFORM IS INADEQUATE MORE COMPREHENSIVE PLAN IS STILL NEEDED

New York needs a much stronger response than the ethics bill finally presented mid-afternoon today by the governor and the legislature to solve Albany's crime wave of political corruption. That even the incremental reforms included in this budget were difficult to achieve indicates the powers that be in Albany are not fully responsive to the public's demand for transformative change in our state capital.

Further, we are troubled that ethics reforms are being presented with precious little time to adequately review and evaluate the bill and its many components, and will be passed via a message of necessity. Given that Albany's veil of secrecy contributes to the pervasive culture of corruption, it is simply unacceptable for ethics reform to be decided without any public review of the proposed legislation. Press releases and news accounts should not be considered reasonable substitutes for the legislative process.

The new ethics agreement does not limit the amount of outside income an elected official can earn, which our groups believe is an essential part of any acceptable solution. It will however add needed information to what is publicly disclosed about lawmakers' outside income – in many cases lawmakers will now have to disclose the names of their clients – a welcome measure we strongly sought when the Public Integrity Reform Act (PIRA) was enacted in 2011 but did not secure then. We will monitor closely both the impact of the blanket exemptions from disclosure which the measure includes and the process for winning an exemption for individual clients, although we note with approval that the number of practice areas for which such exemptions are automatically extended have been reduced in the final agreement from earlier reports.

In addition, crooked public officials will fortunately face the possible loss of their pensions—even if they were in office prior to 2012; lawmakers will also have to prove that they are in Albany in order to obtain per diems but stronger verification could have been required. Needed codification and clarification on some restrictions on the personal use of campaign contributions are included though the restrictions are not as clear or far-reaching as they were in an earlier version of the budget. There are also new disclosures required by those making independent expenditures in campaigns, as well as other measures. More state money is also being provided to the Joint Commission on Public Ethics (JCOPE) so it can be better equipped to enforce the law. As such, these changes represent necessary, but incremental improvements in some covered areas.

That said, these steps are simply insufficient to fully address the parade of scandals that have engulfed Albany and will do little to restore the public's growing cynicism about its own government.

These reactive improvements put nothing more than a dent in the problem of public corruption and obfuscate the reason our state is experiencing a crime wave of corruption.

The ethical problems that have plagued Albany too often include controversies surrounding lawmakers' use of

their public office for private gain and pay-to-play schemes at the highest levels of government. Relying on added disclosure requirements alone to address such potential conflicts does not fix that problem. Rather, the conflict of serving both the public interest while earning private income is best solved by further limiting the conflict and putting a cap on outside income.

Our organizations have therefore consistently urged that the governor and state lawmakers develop a limit on the amount of outside income lawmakers can earn. We have joined together in urging that reforms be implemented based on the system used by the Congress: a cap on outside income. We have also supported the creation of a quadrennial commission to examine compensation issues that we feel need to be part of any solution, which appears to be part of the final agreement, but whose independence must be secured. While some have argued that no other state has a cap on outside income, we respond that until the Congress established it, no legislature had such a system. And the Congress established its system for reasons that echo in Albany today.

As the bipartisan task force that drafted the federal law observed, the limits and restrictions were designed to ensure that:

“. . . Members are not using their positions of influence for personal gain or being affected by the prospects of outside income. . . .”¹

Moreover, it remains to be seen whether New York’s ethics agreement actually closes a large loophole in outside income disclosure by which lawyer-legislators who are “of counsel” to law firms with clients who do big business with the state are able to shield their source of income from public disclosure.

Any ethics agreement will have to be enforced by ethics enforcement entities—JCOPE and the Legislative Ethics Commission—that themselves require substantial improvement. While we agree that the additional work will require supplemental resources and are pleased that additional funding is provided in this budget, reforms must also be enacted to ensure that these oversight agencies can adequately protect the public’s interest.

The bill will also lead to the appointment of a review committee to look into JCOPE’s operations. However, existing law requires that the committee was to have been appointed by June 1st of 2014 and to produce its final report no later than March 1, 2015.² If that review committee had been appointed and met as was statutorily required, then policymakers would have had guidance to inform the shaping of the just negotiated ethics agreement. Unfortunately, the public will have to simply hope that the state’s ethics enforcement agencies, which are not independent enough and do not operate as transparently as is needed, will enforce ethics laws quickly without fear or favor.

We recognize that ethics reform would not be under discussion were it not for the arrest of former Assembly Speaker Sheldon Silver and the response of Governor Cuomo in proposing new measures. We urge New York’s elected leaders to see the steps taken today as reactive and initial steps in the long march to truly reforming the way that business is done in Albany. Meaningful reform must include a limit on legislators’ outside income, as well as comprehensive campaign financing changes such as public financing of election campaigns and fully closing the campaign finance LLC loophole. Much work remains.

¹ House Bipartisan Task Force on Ethics, Report on H.R. 3660, 101st Cong., 1st Sess. 12.

²Chapter 399, L. of 2011, the Public Integrity Reform Act.