

1

Clean Up Albany: Restoring Trust and Accountability

New York State government was once a national model, but now it is plagued by dysfunction, scandal and gridlock, resulting in deep distrust and cynicism. And now, when New Yorkers most need government to function well — to get our fiscal house in order, reduce taxes, and get people back to work — government cannot answer the call.

The problem is that government too often is beholden to the special interests and unaccountable to the people; critical decisions are made behind closed doors without public input or adequate deliberation; and our most cherished institutions have been weakened by scandal and corruption. We must clean up Albany and reform how government operates to restore trust and accountability, so that

government can once again be a part of the solution to the many challenges we now face.

As Attorney General, Andrew Cuomo has been steadfast in his determination to restore the public trust by investigating corruption and bringing transparency to our government. For example he:

- Expanded the Attorney General Office’s Public Integrity Unit into a stronger and more potent force against public wrongdoing and Albany corruption, initiating investigations at the highest levels of State government that have:
 - led to indictments and guilty pleas of former officials of the State Comptroller’s Office 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; and,
 - revealed improper use of the State Police by Former Governor Spitzer’s administration to discredit the Former Senate Majority Leader Joe Bruno.
- Recovered millions of taxpayers’ dollars lost when school district employees “double-dipped” by collecting pensions and salaries simultaneously.

- 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.
- 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.

As Governor, Andrew Cuomo will build a coalition of New Yorkers and elected officials who are willing to change the status quo and reform our State government. It is not enough to rail against the Legislature or other public officials and hope for the best. Now is the time for action, because we can no longer afford to wait; we must restore trust and make the government function effectively again. The specific proposals that follow set forth the plan of action for doing just that. It is time now to make them a reality.

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.¹ In fact, in the last few 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.



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.

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.²

Outlaw "Pay to Play"

We must 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:

- **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, and political committees controlled by any of these entities or persons.³ Numerous other states have these kinds of pay-to-play limitations on government contractors.⁴
- **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.⁵

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.

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. Accordingly, we must require our elected

representatives in Albany to disclose the sources and clients that produce any significant outside income they receive.

Reform New York State’s Campaign Finance Laws

In order to restore trust and accountability in government, we must reform the very foundation of democracy — the ballot box. Therefore, we must change our antiquated campaign finance laws. Our current laws amplify the voices of wealthy individuals and special interests and entrench incumbents at the public’s expense.

Individuals can now contribute up to \$55,900 to candidates for statewide office. 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, and leaves 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 that are 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.

Therefore, as Governor, Andrew Cuomo will work to fundamentally reform our system of financing elections that achieves three core goals: transparency, integrity, and participation. 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 in place, the alternative is to lower contribution limits, close loopholes in the campaign finance law and allow for more 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. Like New York City, New York State needs a system of public campaign financing to allow limits on campaign spending and to increase participation by qualified candidates who lack the means or connections to raise significant campaign funds.⁶ Candidates should also be required to agree to participate in debates in order to receive public financing.

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.⁷ Political parties’ housekeeping accounts should no longer be exempted from contribution limits and, as discussed below, those limits should be lowered significantly.

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.⁸

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 (“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.⁹

Accordingly, reforms must include (1) granting the Attorney General full concurrent jurisdiction to investigate and prosecute civil and criminal violations of the laws; (2) 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; (3) 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 (4) significantly increasing the penalties for violations of campaign finance laws across the board.

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.¹⁰ Studies show that the longer legislators stay in office, the less their policy choices conform to public opinion in their districts.¹¹



Since 1970, only 40 incumbent state legislators have lost their seats in an election — out of more than 4,000 races.

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 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: four members of the Legislature, majority and minority, and two citizens handpicked by the Legislature’s leaders.¹² 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 self-interest, 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.¹³ 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.

Codify and Expand AG Reforms of Legislative “Member Items”

Last year’s State budget included approximately \$200 million in member items.¹⁴ 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.¹⁵

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 and should

not 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.

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.¹⁶



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.

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.¹⁷ 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.¹⁸ 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.¹⁹

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. Such 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 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.

Reform New York’s Succession Laws

We must also protect a right that ranks “among our most precious freedoms” — the right of popular election.²⁰ Today, four of the six people who hold statewide-elected office—the Governor, the Lieutenant Governor, the Comptroller and a U.S. Senator — were not elected to the offices they now hold. They obtained their offices through succession or appointment — not by the people’s choice — and will serve in them for lengthy periods of time.

In each of these situations, the voters were deprived of any role in choosing a replacement through a special election. Under existing law, when there is a vacancy in the offices of Governor, Lieutenant Governor, Comptroller and Attorney General, there is no special election to fill the vacancy.²¹ As a consequence, we are witnessing a time in State history where multiple persons hold our highest offices, literally for years, without so much as a single vote having been cast for them.



We are witnessing a time in State history where multiple persons hold our highest offices, literally for years, without so much as a single vote having been cast for them.

New York's succession laws for these offices must be re-written to ensure that the voters choose who governs them. Never again must the State face the specter of having two thirds of its statewide-elected offices held by unelected officials. To that end, upon taking office, Andrew Cuomo will propose and fight for new succession laws that will ensure

prompt elections to fill vacancies for statewide offices.

Amending the New York State Constitution — A Process for Reform

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

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 fear as well 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....”²²

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.