

Outside Counsel

Expert Analysis

Curing Albany's Corruption Epidemic: It's Time for a Conflict-Free Legislature

In 2015, two of the three most powerful politicians in New York State government stood trial for corruption charges at the same time in the federal courthouse in Manhattan. The sentencings this month of former Assembly Speaker Sheldon Silver to 12 years in prison, and of former Senate Majority Leader Dean Skelos to five years in prison, have once again laid bare what has increasingly been described as Albany's pervasive and persistent epidemic of corruption.

As The New York Times recently noted in an editorial, "Corruption remains the great, crippling defect of New York State government, tainting all that it does and fails to do."¹ This article explores this great taint of corruption on the New York State Legislature and proposes a three-part fix to reduce the incentives and opportunity for future corruption.

AVI WEITZMAN is a partner and JASON P.W. HALPERIN is of counsel in the New York office of Gibson, Dunn & Crutcher. Both are former prosecutors with the U.S. Attorney's Office for the Southern District of New York. MARIETOU DIOUF, an associate with Gibson Dunn, contributed to this article.



By
**Avi
Weitzman**



And
**Jason P.W.
Halperin**

Albany's Corruption Crisis

Since 2009, 17 state Senators and Assembly members have been convicted of federal corruption charges.² Their crimes have

run the gamut from bribery, kickbacks, and extortion under color of official right, to obstruction of justice and tax evasion. There is no doubt that the vast majority of New York State legislators are honest, well-intentioned, and execute their legislative discretion in an untainted and uncorrupted manner. But it is equally true that, with the stream of high-profile

public corruption convictions of so many New York legislators—including most recently both leaders of the New York State Legislature—change is needed to ensure that New York's lawmakers uphold their oaths to the public. While there are a number of worthwhile proposals for addressing corruption, including legislation for public campaign financing, greater disclosure from legislators, and forfeiture of state pensions upon conviction, one idea has the potential to remake the New York State Legislature in a manner that will far better serve the public and will greatly reduce politicians' potential conflicts of interest—it is time to make the job of a New York State legislator full-time, to increase their salaries, and to ban them from earning all but a de minimis amount of outside income. Recent federal corruption prosecutions serve only to underscore the importance of implementing such a proposal.

Sheldon Silver. On Jan. 21, 2015, the government arrested Sheldon Silver, a member of the Assembly for nearly 40 years and the Assembly Speaker since 1994, on federal corruption charges. As Assembly Speaker, Silver was one

public corruption convictions of so many New York legislators—including most recently both leaders of the New York State Legislature—change is needed to ensure that New York's lawmakers uphold their oaths to the public. While there are a number of worthwhile proposals for addressing corruption, including legislation for public campaign financing, greater disclosure from legislators, and forfeiture of state pensions upon conviction, one idea has the potential to remake the New York State Legislature in a manner that will far better serve the public and will greatly reduce politicians' potential conflicts of interest—it is time to make the job of a New York State legislator full-time, to increase their salaries, and to ban them from earning all but a de minimis amount of outside income. Recent federal corruption prosecutions serve only to underscore the importance of implementing such a proposal.

Sheldon Silver. On Jan. 21, 2015, the government arrested Sheldon Silver, a member of the Assembly for nearly 40 years and the Assembly Speaker since 1994, on federal corruption charges. As Assembly Speaker, Silver was one

of the “three men in a room”: For decades, the governor, Senate Majority Leader, and Assembly Speaker have met behind closed doors to negotiate many of the state’s most important legislative initiatives and decisions, including negotiating the state’s approximately \$140 billion budget.

In the fall of 2015, Silver was tried on charges of mail and wire fraud, honest services fraud, and extortion under color of official right. At trial, the government proved that Silver corruptly received and extorted approximately \$4 million in asbestos- and real estate-related payments through two law firms, at which he claimed to be employed. Following a five-week trial, the jury convicted Silver on all counts.

The first law firm from which Silver extorted corrupt payments was a Manhattan real estate firm that represented property owners in tax certiorari claims. Silver was charged with using his official position to funnel to the firm potential clients with tax certiorari work, in exchange for approximately \$700,000 in unlawful kickbacks from the firm. Importantly, as Assembly Speaker, Silver used his powerful role in a rent regulation and tax abatement program and his position as a Public Authorities Control Board member, which oversaw tax-exempt financing, to pressure developers depending on favorable official action to hire the law firm, which in turn paid him hefty kickbacks.³ On his financial disclosure forms, Silver then disguised these illegal payments as legitimate income from the real estate firm.⁴

Silver’s relationship with the second firm was even more lucrative, netting Silver more than \$3 million in quid pro quo referral fees. As Assembly Speaker, Silver exercised control over a pool of money totaling approximately \$8.5 million annually, to be disbursed at his discretion through, among other state agencies, the Department of Health.

In September 2002, the firm, which specialized in asbestos-related diseases such as mesothelioma, hired Silver as of counsel, paying him an annual salary of \$120,000. Silver was also eligible to receive 33 percent of the firm’s share of any recovery obtained on behalf of his client referrals. For more than 10 years, Silver fed to the firm mesothelioma leads that were provided by a doctor. In exchange, Silver used his Speaker position to provide state funding amounting to more than \$500,000 to the doctor’s mesothelioma center, without public disclosure.

Silver also caused the New York State Assembly to issue an official resolution honoring the doctor, offered his assistance in securing permits in an official memorandum, and used his official position to pressure a nonprofit organization to hire the doctor’s son.⁵

At Silver’s May 3 sentencing, U.S. District Judge Valerie E. Caproni observed that Silver’s crimes “cast a shadow over everything he has done and has thrown into doubt every difficult decision any legislator has ever made.”⁶

Anthony Seminerio. Former Queens Assemblyman Anthony Seminerio, a 30-year public

servant, pleaded guilty in 2009 to honest services fraud, for which the court sentenced him to six years in prison. The indictment against Seminerio charged that from 1998 until his arrest in 2008, Seminerio used the power and influence of his public office to extort payments from a consulting company and a not-for-profit hospital. When his victims resisted, Seminerio told the consulting firm’s clients that they needed Seminerio more than the consultants, because Seminerio could “do things that [the consultants] could not.”⁷ Seminerio similarly threatened the hospital executive, stating that he would “kill” any bill the executive tried to pass in Albany.⁸ In an attempt to extort a different hospital, Seminerio asked an executive if he knew how difficult Seminerio could make his life.⁹

Seminerio directed these illegal payments, which totaled approximately \$1 million, through his shell consulting company, of which he was an employee. By funneling these illegal payments as “income” through a consulting firm, and because New York law requires (to this day) that public officers disclose the source of their outside income by identifying the business or entity from which they directly received the income, not the specific clients of the paying entity, Seminerio hid his criminal scheme for many years.¹⁰

While Silver’s and Seminerio’s cases are egregious examples of corruption in Albany, many other New York lawmakers have been convicted of diverse corruption

schemes over the past decade, including former Assemblyman Brian McLaughlin and former State Senator Shirley Huntley, who were convicted in separate cases of misappropriating public monies. These cases underscore that even the best policy proposal cannot fully stamp out corruption.

A Three-Part Policy Proposal

The corruption schemes of which Silver, Seminerio, and other legislators have been convicted reveal the inherent risks associated with state legislators' accepting of outside income. Not only does such outside income have a corrupting influence on elected officials, but it also permits state legislators to conceal their corrupt schemes—effectively permitting corrupt politicians to launder their dirty money through legitimate institutions and entities.

By eliminating or greatly reducing legislators' ability to earn outside income, while at the same time making the legislators' jobs full-time and increasing their salaries to \$150,000, for example, New York can make great strides in restoring the public's confidence in the integrity of state government. Indeed, this three-part fix would also help eliminate the inherent conflicts of interest resulting from outside employment and ensure that lawmakers legislate for the benefit of the public.

Currently, New York legislators are paid a statutory base salary of \$79,500 annually, for a legislative session that runs only from January to June.¹¹ Many

lawmakers earn additional monies by serving on committees and taking leadership positions, but these posts are, in part, determined in their respective chambers by the Assembly Speaker and Senate Majority Leader, which gives the leadership an even greater ability to dole out favors and compensation to their loyal members.¹² New York imposes no limits on the amount of outside income legislators can earn.

Not only does outside income have a corrupting influence on elected officials, but it also permits state legislators to conceal their corrupt schemes—effectively permitting corrupt politicians to launder their dirty money through legitimate institutions and entities.

In contrast, U.S. Congress members are paid \$174,000 a year, and the job is full-time.¹³ Senior-level staffers and members of Congress are prohibited from earning outside income in excess of \$27,495.¹⁴ These financial limits were enacted 40 years ago as a post-Watergate reform because, as the U.S. House of Representatives House Ethics Manual explains, “[M]any citizens perceive outside earned income as providing Members with an opportunity to ‘cash in’ on their positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.”¹⁵

This policy proposal goes far beyond the current bills proposed in Albany. For example, faced with Albany's corruption crisis, Governor Andrew Cuomo in January called for a cap on outside income of 15 percent (or \$11,925) of a legislator's base salary, while Assembly Speaker Carl Heastie proposed in March an outside income cap of \$69,600. While admirable, neither proposal goes far enough, since they keep lawmaking a part-time job and fail to increase legislator salaries.

In contrast, the three-pronged proposal outlined above respects the size and importance of New York—a global financial hub with a gross state product of more than \$1.4 trillion and an economy roughly the size of Australia's¹⁶—and appropriately values the important job of a state legislator. By comparison to legislators' base annual salary of \$79,500, New York State Supreme Court justices currently earn an annual salary of \$193,000 (which will rise to \$207,000 by 2018),¹⁷ while the governor earns a salary of \$179,000, with almost 1,800 other state employees earning even more.¹⁸ Legislators, members of a co-equal branch to the Executive and Judiciary branches, should not be relegated to part-time, half-pay jobs in fulfilling their constitutional duties.

Public interest groups also support establishing a full-time legislature. In an article this month in *The New Yorker* that referred to legislators' outside activities as “the prime source of corruption in Albany in recent years,” Blair Horner, the executive director

of the New York Public Interest Research Group, said, “New York has a part-time legislature.... That means that most legislators have other jobs. As long as lawmakers are allowed to serve two masters, the temptation to misbehave is too great. So what winds up happening, over and over again, is that they take money in their private jobs to take action as legislators.”¹⁹

Furthermore, increasing legislators’ salaries to \$150,000, for example, would greatly decrease the financial burden of public service—a burden that only increases the risks (and temptation) of corruption. Assuming the 213-member state Legislature receives an annual salary increase to \$150,000, the cost of this proposal would amount to between \$10 and 15 million, less than 0.01 percent of New York’s \$142 billion budget. While not insignificant, these costs would be greatly offset by the benefits that result from making Albany more productive, having lawmakers available to legislate year-round, and reducing incentives and opportunities to engage in graft, embezzlement, and corruption. In short, the relatively modest costs of this proposal are a small price to pay for a full-time, conflict-free New York State Legislature.

Conclusion

Corruption imposes enormous costs on society. Not only are taxpayers forced to foot the bill for expensive investigations and prosecutions, but New Yorkers are also denied the full benefit of

taxpayer dollars when those dollars are allocated in a fraudulent way or in a manner not designed to promote the public good. The costs on the public are intangible as well: Widespread corruption causes citizens to lose faith in the institutions that are formed solely for their benefit. As Judge Caproni said at Silver’s sentencing, “there had been an ‘incalculable, intangible harm’ to the people of New York” and, “the cumulative effect of public corruption ‘makes the public very cynical.’”²⁰

To our knowledge, no other state prohibits legislators from earning outside income.²¹ While unprecedented, this proposal would give New York an opportunity to set the gold-standard for good governance. By banning all but de minimis outside income, increasing legislators’ salaries, and making the job of New York State legislator full-time, New York can lead by example and set a new bar for other states to follow. These vital reforms would go a long way in addressing Albany’s corruption problem and providing New Yorkers with the conflict-free state legislators they deserve.



1. <http://www.nytimes.com/2016/03/30/opinion/dont-let-albany-ethics-reform-slip-away.html>.

2. See *United States v. Sheldon Silver*, S1 15 Cr. 093 (VEC) (filed April 20, 2016), ECF No. 264.

3. *United States v. Sheldon Silver*, 15 Cr. 093 (VEC), Dkt. 213 at 10-11.

4. *United States v. Sheldon Silver*, 15 Cr. 093 (VEC), Dkt. 32 at 15 ¶ 26a.

5. *United States v. Sheldon Silver*, 15 Cr. 093 (VEC), Dkt. 213 at 3-10.

6. <http://www.nytimes.com/2016/05/04/nyregion/sheldon-silver-ex-new-york-assembly-speaker-gets-12-year-prison-sentence.html>.

7. *United States v. Seminerio*, No. S1 08 Cr. 1238 (NRB), Indictment (“Seminerio Indictment”) ¶6.

8. Seminerio Indictment ¶8.

9. Seminerio Indictment ¶11.

10. See N.Y. Pub. Officers Law §73-a(13).

11. <http://www.ncsl.org/research/about-state-legislatures/2015-state-legislator-compensation.aspx>.

12. See N.Y. LEGIS. LAW §5-a.

13. <https://pressgallery.house.gov/member-data/salaries>.

14. <http://www.ethics.senate.gov/public/index.cfm/financial-thresholds>.

15. House Ethics Manual, Comm. on Standards of Official Conduct, at 213 (2d Sess. 2008), available at http://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf.

16. <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

17. <http://www.nydailynews.com/news/politics/panel-approves-big-pay-boosts-new-york-state-judges-article-1.2465861>.

18. <http://blog.timesunion.com/capitol/archives/245694/payroll-data-1797-state-employees-earned-more-than-the-governor/>.

19. <http://www.newyorker.com/magazine/2016/05/09/the-man-who-terrifies-wall-street>. Common Cause, which released an analysis in 2015 of the outside income of the 213 members of the New York State Legislature, likewise recommends banning outside income, raising legislators’ pay, and establishing a full-time legislature. <http://www.commoncause.org/states/new-york/press/press-releases/common-causeny-releases.html>.

20. <http://www.nytimes.com/2016/05/04/nyregion/sheldon-silver-ex-new-york-assembly-speaker-gets-12-year-prison-sentence.html>.

21. <http://www.poughkeepsiejournal.com/story/news/local/new-york/2015/02/21/new-york-ethics/23821507/>.