

# THE 2019 ALBANY ACCOUNTABILITY ACT:

A Plan to Restore the Public's Trust in Government

**MARC** ★ ★ ★ ★ ★  
**MOLINARO**  
FOR GOVERNOR

7.12.18

## Introduction

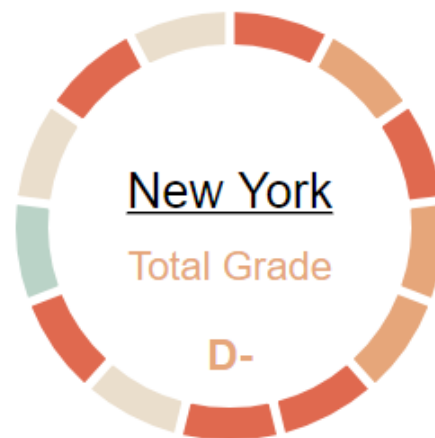
It is neither unfair nor inappropriate to suggest that New York is one of the most corrupt states in the nation. In 2015, FiveThirtyEight ranked states using various metrics for corruption (total number of convictions, convictions per capita, reporter ranking, and lack of stringent laws), New York ranked in the top 15 for most corrupt in every category.<sup>1</sup> That same year the Center for Public Integrity gave New York a “D-minus” on an assessment of state government accountability and transparency earning it the rank of 31st in the nation. Also in 2015, Politico named New York the most corrupt state in the country.<sup>2</sup> These rankings are not surprising to anyone who watches the local news or reads the daily papers, as it is hard to recall a time in recent memory when Albany wasn’t being “rocked” by the latest corruption trial or newest scandal.

*“The culture of corruption in Albany must change. It’s time to restore the public’s trust in State Government. It’s time to believe again.”*



## Introduction Cont.

The three most recent governors were either personally embroiled or directly connected to a scandal. Add to this tally, five recent Senate Majority Leaders and the man once thought to be the true power in Albany, former Assembly Speaker Sheldon Silver. When 2018 is finished, five high-profile corruption trials will have been completed including the retrials of Dean Skelos and Sheldon Silver as well as the trials of Governor Cuomo's close friend and former aide Joe Percoco, key economic development figure Dr. Alain Kaloyeros, and former Erie County Democratic Chairman Steve Pigeon.<sup>3</sup>



At some level, corruption is not a problem that can be legislated away. There will always be bad actors willing to distort, twist, and break the law to utilize the levers of government to serve themselves. However, there are systemic and structural failures that allow bad actors to thrive and too often perversely incentivize corrupt behavior. These failures must be addressed. Consider the contribution limit loophole enjoyed by limited liability companies, political careerism, the lack of transparency and independent oversight, and the overall transactional nature of the State's economic development policy - these are all failures that can only be addressed by changing the law, policy approach, and culture of New York State Government.

Corruption for many often seems abstract and people often, rightfully, wonder how it impacts their daily lives - my answer to them is there is an insidious cost to corruption that every taxpayer, voter, and resident pays.

## The Cost of Corruption

Every New Yorker pays a "corruption tax" to cover the costs of the never-ending stream of corruption trials and misspent economic development dollars doled out to buy votes or worse yet to curry favor with campaign donors. It is hard to put a dollar amount on it, but a good place to start is \$4 billion or roughly the cost of the State's economic development efforts which are rife with corruption and incompetence. New Yorkers also pay for corruption in countless other ways as Albany diverts time and energy away from worthy causes like actually creating sustainable long-term economic growth, repairing

<b>Public Access to Information</b>	GRADE: F(55)	RANK: 11 <sup>th</sup>
<b>Political Financing</b>	GRADE: D-(62)	RANK: 24 <sup>th</sup>
<b>Electoral Oversight</b>	GRADE: F(39)	RANK: 49 <sup>th</sup>
<b>Executive Accountability</b>	GRADE: D+(68)	RANK: 15 <sup>th</sup>
<b>Legislative Accountability</b>	GRADE: D-(62)	RANK: 26 <sup>th</sup>
<b>Judicial Accountability</b>	GRADE: F(43)	RANK: 48 <sup>th</sup>
<b>State Budget Processes</b>	GRADE: F(52)	RANK: 50 <sup>th</sup>
<b>State Civil Service Management</b>	GRADE: C-(72)	RANK: 1 <sup>st</sup>
<b>Procurement</b>	GRADE: F(49)	RANK: 48 <sup>th</sup>
<b>Internal Auditing</b>	GRADE: B+(89)	RANK: 1 <sup>st</sup>
<b>Lobbying Disclosure</b>	GRADE: C+(77)	RANK: 5 <sup>th</sup>
<b>Ethics Enforcement Agencies</b>	GRADE: F(51)	RANK: 38 <sup>th</sup>
<b>State Pension Fund Management</b>	GRADE: C+(77)	RANK: 10 <sup>th</sup>

Source: Center for Public Integrity<sup>4</sup>

our aging infrastructure, fixing the New York City subway system, providing safe and affordable housing, and educating our children. It is so omnipresent in New York, that every late train, failed education reform, or lost job is tied to the culture of corruption in Albany. A recent study offered proof of the far-reaching costs of corruption, as state-level corruption was tied to decreases in private firm value.<sup>5</sup>

Worse yet is the cost to our democratic institutions and beliefs. Without the public's trust, democratic governments cannot function. Without at least a basic level of understanding that, in general, government is working in your best interest, democratic government cannot function. We must address corruption and root it out for the sake of our state and for the preservation of democracy.

## Goals

This document contains policy proposals to combat the persistent and destructive culture of corruption gripping New York State government. I fully support these proposals and will energetically advocate for them as a citizen, candidate, and as Governor of the Empire State. The various component proposals of my plan are organized around five goals:

1. **Creating a Government “of the People, by the People, and for the People”**
2. **Opening the Doors of Government and Providing Real Transparency**
3. **Taking Big Money Out of Politics**
4. **Holding Politicians Accountable and Providing for Independent Oversight**
5. **Rethinking and Rightsizing our Economic Development Programs**

These goals speak to principles - transparency, voter participation, public trust, and accountability - that are an intrinsic part of any functioning democracy. I believe the proposals put forward here will allow New York State government to live up to its rich history and its responsibility to the people of this great state.

The proposals contained within are admittedly not all original ideas. Legislation to close the LLC loophole, restore Comptroller oversight of contracts, or create a “database of deals” have been languishing in Albany. This makes the problem of corruption in Albany all the more frustrating - ideas to alleviate the systemic and structural failures that allow corruption to occur are out there, but they have not been a priority of those in power.

Governor Cuomo has time and time again exercised his rhetorical muscles calling for ending the LLC loophole and putting forward legislation to enact term limits. Yet the contributions continue to flow and members continue to serve for over twenty years. One can only surmise that either he lacks the skills to negotiate with the legislature or that he simply lacks the commitment to see these policies through and free New York from the costs and embarrassment of corruption.

The following is my plan to meet the goals that I have set and to end corruption and alleviate the burden it places on every New Yorker.

## 1. Creating a Government “of the People, by the People, and for the People”

New Yorkers deserve a government that is accessible and responsive to their needs and concerns. The influence of special interests, the power of incumbency, the siren call of political careerism and self-preservation, and the ubiquity of non-competitive elections have driven a wedge between voters and elected officials, while at the same time rendering Albany inert, unaccountable, and rife with corruption. The democratic contract between elected leaders and their constituents needs to be rewritten. We need to go back to our founding principles and create a government “of the people, by the people, and for the people” by:

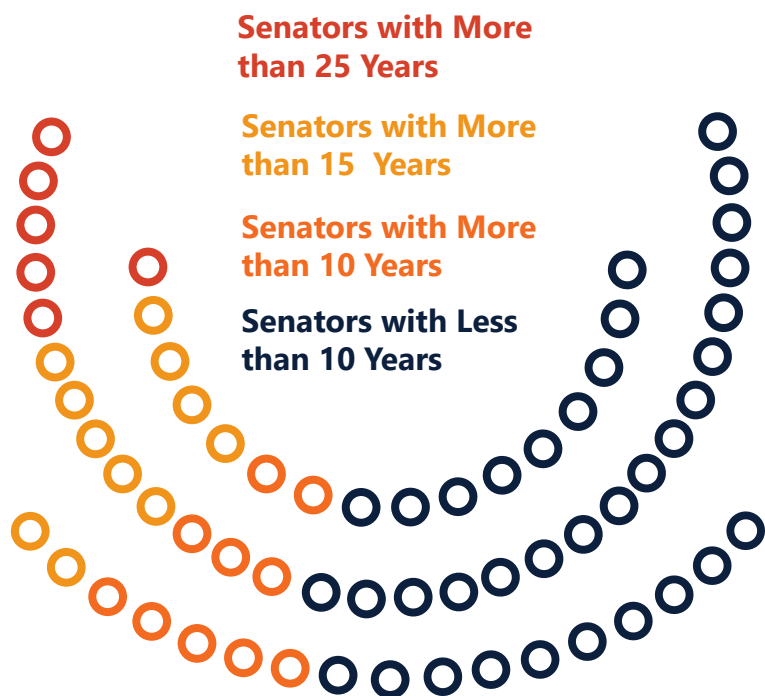
### **A. Limiting the Governor, Attorney General, and State Comptroller to Two 4-year terms and State Senators and Assembly Members to Six 2-year terms**

New York State has no set term limits for governor, attorney general, comptroller, or for members of the Senate and Assembly. Term limits offer the best way to infuse Albany with fresh faces and to sever cozy, long-standing relationships between special interests and key legislative players. Fifteen states have some form of term limits for state legislators, 36 states term limit governors, and 16 states term limit attorney generals.<sup>6 7 8</sup>

As Governor, I would hold myself to my personal pledge to serve only two terms and make amending the constitution to include term limits for state elected politicians a day-one priority. In order for term limits to go into effect, a proposal must be referred to the Attorney General for an opinion, once an opinion has been rendered it must be passed by two separately elected legislatures (ex. first Passage in 2020 and second passage in 2022) and then offered to the voters on the ballot. Term limits would, if approved by the voters, finally take effect on January of the year following voter approval.

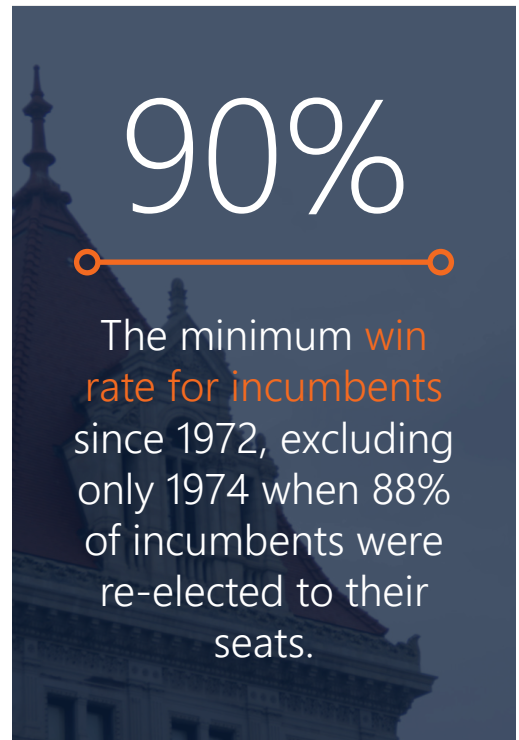
Governor Cuomo has routinely included as part of his Executive Budget a freestanding proposal to enact term limits. Unlike Governor Cuomo, I plan to make enacting such a proposal or one of similar-effect a prerequisite for signing any budget legislation. I would prefer to work with the members of the legislature to pass a reform as momentous as term limits, but if necessary, I will judiciously exercise my authority as governor and use the power of the bully pulpit to make my case statewide to ensure that term limits become a reality in New York State.

#### YEARS OF SERVICE - NEW YORK STATE SENATE



Term limits are not a cure-all for Albany's many ills, but they are an important step to a more responsive, citizen-focused, and less corrupt state government. Term Limits would:

- Reinvigorate the State Legislature** - The current State Legislature is comprised of nine State Senators and 28 Assembly members who have served for over 20 years. Many of these long-standing members control critical policy pipelines and have an outsized impact on the direction of New York. As the average length of service in the current legislative body is roughly 11 consecutive years, limiting legislators to six two-year terms would phase out long-standing members without losing critical institutional knowledge and policy expertise. Other states have experimented with more restrictive limits, however, they posed or continue to pose serious practical and institutional constraints. For example, in 2012, California raised the number of years members of their state legislature may serve from six years to 12 years for Assembly members and from eight years to 12 years for Senate members in response to issues of diminishing legislative engagement, expertise, and effectiveness. The 12-year restriction would force both houses to adopt a merit-based system for determining committee assignments and leadership positions, create opportunities for new members which may in-turn entice even more talented people to run for office, and engender a spirit of change in the halls of the Capitol.
- Strengthen our Democracy** - In 2014, the Gotham Gazette found that nearly 35 percent of races for seats in the New York State Legislature featured a candidate running without an opponent.<sup>10</sup> This lack of competitiveness is typical throughout the nation, a Ballotpedia analysis found, in regards to state legislative elections, that "since 1972, the win rate for incumbents has not dropped below 90 percent—with the exception of 1974, when 88 percent of incumbents were re-elected to their seats."<sup>11</sup> Electoral races without legitimate challengers fail to draw voters to the booth and undermine a citizen's ability to hold their elected officials accountable. Term limits would not eliminate the incumbency advantage as members may still serve six terms and other problems such as gerrymandering persist, but term limits would serve to mitigate the negative effects of incumbency by effectively guaranteeing open seat elections for each seat every twelve years.



### ***B. Providing Voters with the Power of Initiative and Referendum***

Empowering citizens to have a more direct and active role would serve to increase participation and give voters an avenue to effect change. Currently, New Yorkers do not have the right to propose laws, constitutional amendments, or repeal laws. Twenty-seven states grant their citizens the power of initiative and/or referendum.<sup>9</sup>

I propose New York joins these states by amending the State Constitution to allow for:

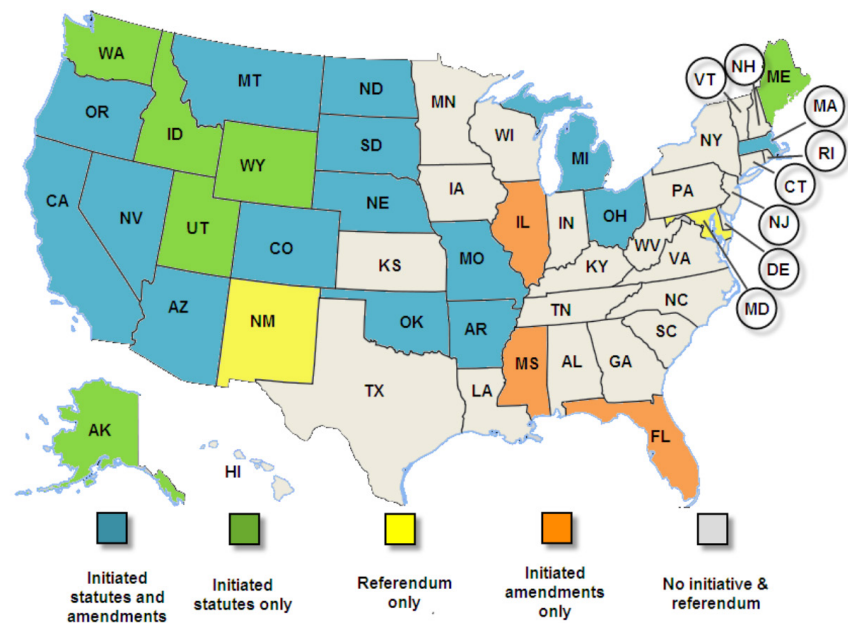
- **Initiative** - Granting New Yorkers the power to petition to place a measure before the legislature to amend state law or the constitution. Such measures would be required to address a single issue and, among other restrictions, may not seek to:
  - constrain individual rights afforded by federal law;
  - call for elections;
  - appropriate funds, except for a single object or purpose;
  - name an individual to hold office; or
  - grant any power or duty to any private entity or direct such an entity to perform a function.

In order for a citizen-proposed statute or constitutional amendment to be placed before the legislature, the following requirements would need to be met:

- submit a proposal to the State Attorney General bearing at least 300 signatures for the preparation of a petition and measure summary;
- submit said proposal to Legislative Bill Drafting Commission for comment and technical support;
- in the case of a statute, circulate a petition to be signed by a number of voters equal to greater than five percent of the total votes cast in the most recent gubernatorial election; and/or
- in the case of an amendment to the constitution, circulate a petition to be signed by a number of voters equal to greater than eight percent of the total votes cast in the most recent gubernatorial election.

If these requirements are met, the proposal would be placed before the legislature where they may vote to adopt, reject, or refer such a proposal to the voters in the form of a ballot measure. If the measure is amended by the legislature it would be required to go before the voters at the next general election. If a measure is not voted upon or referred to the voters within six months, a subsequent petition would be circulated to allow such a measure to go directly before the voters at the next general election.

**CHART OF POWER BY STATE**



Source: *Ballotpedia*<sup>12</sup>

- **Referendum** - Granting New Yorkers the authority to petition to have a measure placed on the ballot at the next general election to vote to approve or disapprove an act of the legislature. In order for such a referendum measure to be placed on the ballot, the petition must be signed by a number of voters equal to or greater than 5 percent of the total votes cast in the most recent gubernatorial election and must be submitted within 90 days of passage of the legislation for which the referendum is sought. If the petition is successful, the law in question would not take effect until after the measure has been voted on and the voters have approved the law. If the voters do not approve the act, the law would be voided and shall not take effect.

### ***C. Encouraging Competitive Elections and True Representation through Independent Redistricting***

As previously argued, the incumbency advantage in the New York State Legislature is strong and persistent. Although term limits will help address this issue, I believe it is necessary at this juncture to once again revisit independent redistricting with the 2020 census looming. Independent redistricting is a means to mitigate the incumbency advantage and to more strictly adhere to the one-person, one-vote principle.

A 2014 report endorsed by Common Cause, Effective NY, and the New York Public Interest Research Group (NYPIRG) found that many State Senate district populations deviated from the average by greater than two percent and a minority of all legislative districts fell within +/- one percent of the average.<sup>13</sup> The same report noted that Congressional districts within New York had nearly no population difference and California, Washington and Wisconsin had population deviations of less than one percent of the average while Illinois had no deviation.

In 2014, New York voters approved a constitutional amendment with the hopes of a new process that would address the State's unequal and gerrymandered districts. Sadly, the new process is flawed. The commission created by the amendment consists of ten commissioners, eight of which are appointed directly by the various legislative leaders (Minority and Majority), as well as two commissioners, who may be enrolled in neither major political party, appointed by the other commissioners. The established process would require the legislature to vote on the the commission's redistricting plans and if two separate plans are rejected, the legislature may then alter such plans.

I would suggest a completely different process, as follows:

- Form a commission comprised of an equal number of appointees enrolled in the two major parties as well as a set number of appointees not affiliated with either major party.
- To qualify to serve on such a commission, an individual must have been enrolled with their current party for at least five years prior to their appointment.
- The Chief Judge of the State Court of Appeals would appoint a panel consisting of one member registered with the State's largest party, one registered with the second largest party, one member who is not registered as a member of either major party. This panel would compile a list of eligible candidates from which the legislature can choose individuals to appoint to the commission by a separate vote in each chamber of the State legislature.



- The commission would submit a plan for an up/down vote by the legislature. If the legislature rejects two separate plans, the most recent version of the plan would go before the voters for approval as a ballot measure in the following general election.

Currently, six states utilize an independent redistricting commission to draw their state and congressional political districts. I believe a similar reform in New York would create a more representative legislative body.

## 2. Opening the Doors of Government and Providing Real Transparency

Former Supreme Court Justice Louis D. Brandeis famously stated "Sunlight is said to be the best of disinfectants...", and it is in the spirit of those immortal words that we should throw open the doors of government and let the light shine throughout the halls of power. The following are a compilation of needed reforms to make New York State Government more open and transparent:

*"Sunlight is said to be the best of disinfectants..."*

Justice Brandeis

### **A. Creating a "Database of Deals" that Allows Individuals to Search all State Economic Development Benefits and Subsidies**

According to the Citizens Budget Commission:

*"For the last year in which full spending data is available, fiscal year 2016, New York spent \$4 billion on economic development programs, including \$2.4 billion in tax breaks. Local governments and authorities spent \$4.6 billion of their own dollars in addition to this amount."*

Over \$8 billion in economic development support flows to business entities from different levels of government and numerous programs. Adding to the complexity is that this funding also comes in multiple forms (e.g. direct subsidies, tax expenditures, and State grants). One of the most critical and widely supported reforms to provide more oversight, accountability, and transparency, as it relates to this spending, is to create a "Database of Deals" which will allow individuals to search all State subsidy and economic development benefits. Many states and cities including Florida, Maryland, Indiana and even New York City utilize similar databases.<sup>14</sup> Both the Senate and Assembly included a "Database of Deals" in each of their one-house budget proposals, but disappointingly this critical reform was not included in the final budget agreement. The New York State Senate unanimously passed legislation to establish such a database (62-0), while in the Assembly, legislation has failed to receive a vote despite having over 50 sponsors.

As Governor, I would sign the legislation passed by the Senate which:

- Required the Urban Development Corporation (UDC) to create and maintain a searchable State subsidy and economic development benefits database that would include:

- name and location of the participant;
  - time span of received economic development benefits;
  - type of benefit received;
  - total number of employees at all sites of a project;
  - number of jobs a participant is obligated to retain and create during the project;
  - amount of economic development benefits received for the current reporting year; and
  - statement of compliance indicating if any other State agency has reduced, canceled or recaptured economic development benefits from a participant.
- Provided that the database must be searchable by individual fields, be able to be downloaded entirely or in parts, allow contract and award agreements to be downloaded, and provide definitions for every search field term and summary of each available economic development benefit available.
  - Required UDC to provide quarterly updates.
  - Defined economic development benefits to include:
    - State grants, loans, loan guarantees, loan interest subsidies, and/or subsidies allocated through the Urban Development Corporation; and
    - tax credits, tax exemptions or reduced tax rates and/or benefits which are applied for and preapproved or certified by a state agency.

This legislation has both widespread support in the legislature as well as the support of 20 budget and good government watchdogs, a full list of groups supporting this proposal, can be found in Reinvent Albany's release on widespread support for a "database of deals."<sup>15</sup>

However, I would also seek support for a more comprehensive proposal expanding on the above-referenced legislation, to include **all** direct subsidies, tax expenditures, and spending by authorities within the definition of economic development benefits. In addition, my proposed legislation would require such a database include benefits from Industrial Development Agencies (IDAs) and Local Development Corporations (LDCs). Legislation that requires an accounting of **all** spending, including local spending, provides citizens and policymakers with a more complete funding picture.

Creating a "database of deals" is a necessary reform that will allow for increased understanding of what efforts are working and what investments are paying off. Such a database would also provide independent entities greater ability to track benefits and potentially uncover corruption.

### ***B. Empowering an Independent Auditor to Review all State Government Contracts***

In order to ensure that State funds are being spent properly, I would empower an independent auditor to make sure that taxpayer money is being spent ethically and responsibly. The need for an independent auditor has sadly been shown time and time again during the last eight years, from the numerous economic development related scandals, to the sky-high costs of MTA construction that have contributed to the horrendous condition of the MTA. This independent auditor would serve under the supervision of the State Comptroller, and would assist the Office of the State Comptroller (OSC) in ensuring that taxpayer money is being spent correctly.

## Did you know?

\$800  
Million



The United States Attorney General alleged that \$800 million in **state contracts were rigged** to benefit campaign contributors of Governor Cuomo.

\$8.6  
Billion



In 2016, State and Local economic development plan spending totaled \$8.6 billion.

\$2.8  
Billion



Empire State Development's 2017-18 budget of \$2.768 billion is **eight times larger** than the 2012-13 budget of \$335 million.

### ***C. Granting the Committee on Open Government the Power to Enforce Freedom of Information Law (FOIL) and Open Meetings Law (OML)***

The Committee on Open Government provides an invaluable service to the residents of New York State by helping various levels of government throughout the State meet the requirements of both the Freedom of Information Law (FOIL) and Open Meetings Law (OML). Although the Committee's role is primarily advisory, offering advisory opinions and guidance, their actions have supported the cause for greater transparency and public engagement. I believe we should continue to explore ways to increase transparency, and one way to accomplish that is by providing the Committee on Open Government with the power to enforce Freedom of Information Law (FOIL) and Open Meetings Law (OML). This would be a major change in the operation of the Committee and would require a change of law. Providing such authority is complex, so it would be my intention as Governor to consult with good government groups, local governments, interested legislators, state agency personnel, and the Committee's Executive Director Bob Freeman prior to laying out a specific proposal.

### ***D. Extending Open Meetings Law and Strengthening Freedom of Information Law (FOIL)***

As many citizens of this State have discovered over the past eight years, it is extremely difficult to access information about their government. When citizens and reporters file FOIL requests, it frequently takes several months for the State to get back to them, and the information that they respond with is frequently not quite what the individual was seeking in the first place. Similarly, citizens who wish to observe the decisions that are made that impact their communities frequently run into problems with Open Meetings Law, which result in them being shut out from the meetings where decisions are made. This lack of transparency contributes to people distrusting their government. This is why it is critically important for New York's Freedom of Information Law and Open Meetings Law to be addressed in such a way that results in New Yorkers feeling increased trust and confidence in their government.

One way to remedy this would be to reform and expand New York's Freedom of Information Law. One approach that has been supported by good government groups, specifically Reinvent Albany, is the creation of a simple website to serve as a portal for FOIL requests. Thankfully, after nearly eight years in office, the Cuomo Administration finally launched a FOIL Portal in late June. While this is certainly a welcome (if delayed) step, this portal will not be as valuable a tool for citizens as it has the potential to be unless other changes are made to fix FOIL. These changes must include reforming the process to ensure that citizens get the information that they are seeking in a timely manner. Additionally, as a result of the scandals that have plagued this Administration's Economic Development programs, subjecting all State economic development entities to Open Meetings Law and FOIL would provide an important level of transparency that would help to restore trust in those programs, and ensure that any future projects are completed in an open and honest manner.

Another way to provide New York's citizens with the information and transparency that they deserve would be to expand FOIL to the State Legislature. While the Legislature has pushed back on the expansion FOIL to include them in the past, according to Reinvent Albany, 23 states, as well as the New York City Council and the legislatures of other New York local governments are already subject to Freedom of Information laws.<sup>16</sup> Other legislatures have not found this added transparency has made their jobs more difficult, and taking this action on the State level would help regain the public trust.

### ***E. Increasing Lump Sum Appropriation transparency***

A recent Citizens Union report estimated that the FY 2019 Enacted Budget included at least \$12.7 billion in funds “set out in the budget with no real criteria for spending, no indication of who controls funding decisions, and little reporting requirements to tell whether money has been well spent - or spent at all.”<sup>17</sup> According to the same report, over \$2 billion of the funds identified are lump-sum appropriations for which elected officials control disbursement. There is a distinct lack of transparency that inhibits the public from determining if the legislator requesting such funds has a conflict of interest, such funds were used for their intended purpose, and/or if the funded projects were completed. It is also unclear how any of this funding, whether it is controlled specifically by elected officials or it is more broadly categorized as economic development and/or infrastructure funds, fits into the overall economic development strategy.

As Governor, I would bring transparency and accountability to this chaotic and haphazard spending by requiring:

- a legislative resolution detailing the recipients, requested amount, and reason for requests of a lump sum appropriation be approved by a majority vote of each the Assembly and the Senate before such an appropriation may be disbursed;
- members of the legislature and the executive to attest in writing that the appropriation is for a lawful purpose, no conflict of interest exists, and that the elected official requesting the allocation is in compliance with all financial disclosure requirements set forth in Public Officers Law (This requirement has been championed by Citizens Union);
- the Division of the Budget to issue a report detailing the recipient, disbursing agency, actual amounts disbursed, amounts spent by funding recipient, project status, and purpose of funding request; and
- banning a lump sum allocation to any entity that donated money to the elected official(s) requesting such an allocation and to any entity that is owned or operated by an elected official or employs a family member or cohabitating individual of any elected official(s) requesting such an allocation.

Many of these steps or similar concepts have been proposed by good government advocates like Citizens Union.

Such steps would make lump sum appropriations more transparent and provide for increased accountability of elected officials and funding recipients. Although I believe these measures to be a good start, however, examining the entire practice of utilizing lump sum appropriations is a worthwhile endeavor. If such reforms were unable to pass, I would also consider signing legislation as part of a comprehensive reform package that required all such unallocated funds “to be subject to allocation pursuant to a competitive process with clear, measurable, public and objective criteria defined in statute or by regulation” as supported by Comptroller DiNapoli.<sup>18</sup>

### ***F. Creating a Unified Economic Development Budget***

The “database of deals” will show where economic development funding goes, but a Unified Economic Development Budget (UEDB) will clearly delineate where economic development funds come from and how much is really being spent.

According to the Citizens Budget Commission, which has repeatedly called for the creation of UEDB, State and local economic development spending totals over \$8 billion.<sup>19</sup> The Commission compiles such data utilizing spending amounts published for past years. Senator Liz Krueger, the sponsor of legislation that would require the creation of a UEDB which unanimously passed the Senate, characterized the situation perfectly:

***“Coming up with a complete accounting of all the programs is extremely difficult. New Yorkers need to know how much money is being given away in the name of economic development, and, more importantly, whether that investment is actually creating meaningful jobs for New Yorkers, or is just wasteful corporate welfare.”<sup>20 21</sup>***

Senator Krueger’s bill is imperfect in my eyes, but if presented with the opportunity, I would sign the legislation as it is an important step towards providing greater transparency and accountability. The Senator’s bill requires the Division of the Budget to prepare a UEDB that, among other provisions, aggregates economic development assistance amounts, recipients of said assistance, and total jobs created and/or retained related to said assistance. I believe we can build on the spirit of this legislation by including a UEDB as part of the Executive Budget and the Enacted Budget so that legislators and the public have a full accounting and comprehensive view of economic development efforts including the cost to the State of tax expenditures provided as incentives.

### **G. Letting the Sunlight into the Governor’s Office**

As Governor, I would focus on leading by example. If I want the halls of government to be basked in the cleansing light of public scrutiny then I must be willing to make my future office transparent and hold myself to a high standard. I would seek to pass legislation requiring the governor’s office post online daily a schedule of official meetings including the participants and general purpose of such meetings. Additionally, I would make fully available my travel and visitor records.

I would seek to strengthen my relationship with the press and accept their role as a pillar of democracy. I would direct my press office to hold scheduled bi-weekly briefings for reporters. My goal in general is to be as regularly available to the press as my schedule would permit. I would ensure my use of executive state aircraft, including itinerary and passengers, would be available to the press via a standard FOIL request.

Speaking of state aircraft and the use of state resources, as Governor, I would restrict the use of State resources including the use of state facilities for political purposes and via executive order change the code of ethics to restrict the use of state aircraft to only official duties - not commuting to a private residence.

These changes are representative of my philosophy of governing - I want to embrace the press and the public, not keep them at arm’s length.

### 3. Taking Big Money Out of Politics

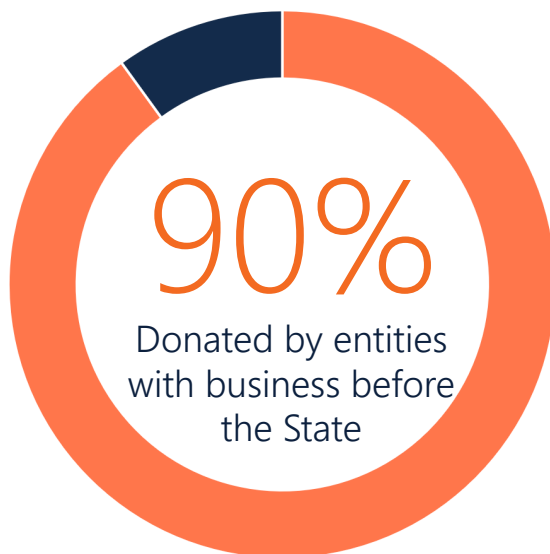
Politics is never going to be free of the influence of money. The best we can hope for is a system that discourages money from being the primary or sole driver of public policy. We have yet to truly devise a system that can both provide voters the ability to exercise their right of free expression and donate to political candidates of their choosing while at the same time restrict the outsized influence of moneyed-interests. This problem is exacerbated in New York by the transactional nature of all relationships in Albany and the view that political giving is not a matter of free expression, but a means to gain influence. Companies consider political contributions a cost of doing business in New York, an investment in the “pay-to-play” culture that is corroding public trust and undermining efforts to address the needs of New Yorkers. We must work to take big money out of politics to provide a voice to everyday New Yorkers and to restore the public’s trust in state government.

#### ***A. Ending Albany’s “pay-to-play” culture by banning political contributions from individuals and entities pursuing government contracts***

One thing that has served as a common thread between all of the scandals that have taken place in Albany in recent years is a corrosive “pay-to-play” culture. This culture empowers bad actors, wastes taxpayer money, and reduces New Yorker’s faith in their government. Therefore, it is vital that we tackle this problem head on to make sure that New Yorker’s have a government that works for them instead of well-connected donors.

This pay-to-play culture is so strong that in order to get anything done, even State entities feel that they need to lobby the State to receive any attention. Every year over \$8 million is spent on government to government lobbying in New York.<sup>22</sup> It is unacceptable that this practice goes on, and we need to reform our State so that our government can do the People’s business without feeling the need to inject money into the process.

In the summer of 2016, Politico New York reported that in the prior July financial disclosure period, of the \$5 million that Governor Cuomo raised, a whopping 90 percent of this money, over \$4.5 million was donated by entities with business before the State.<sup>23</sup>



According to good government groups, the US Attorney has brought charges over roughly \$800 million of State contracts that were rigged in favor of donors to the Governor.<sup>24</sup> Additionally, there is currently an ongoing federal and county investigation into over \$25 million of grants that went to a healthcare company that donated heavily to Governor Cuomo.<sup>25</sup> What makes this case even more troubling is that the company in question had already started construction on this project months earlier, and was going to continue this project regardless of State funding. One of the ways to stop corruption cases like these from happening is to ban companies and individuals with business before the State from donating to the sitting Governor. This reform will ensure there is additional integrity in State contracting, and that projects are being awarded based on the value they provide to the taxpayers.

## **B. Closing the LLC Loophole**

In 1996, the State Board of Elections issued an opinion, breaking from previous practice and federal law, determining that, for the purposes of political contributions, a Limited Liability Company (LLC) shall be treated as an individual, and as such may contribute up to \$150,000 in any given year (\$60,800 per candidate in a statewide race). It was on this day that the so-called LLC loophole was born. Since then, the loophole has been at the center of controversy and the calls to close the loophole have been constant - even its biggest beneficiary, Governor Cuomo, has vowed to address this long-standing problem.

The LLC loophole has allowed nearly unfettered donations from powerful interests and created an environment ripe for corruption. Scandal after scandal involve groups who use said loophole to curry favor with political leaders. 2018, the year of public corruption trials, has been chock full of examples of the negative impact of the LLC loophole. Consider the example of Glenwood Management, the development firm and notorious exploiter of the loophole frequently used LLCs to funnel over \$10 million to politicians since 2005 through 26 different LLCs.<sup>26</sup> The development firm and its head Leonard Litwin, highlighting the nexus between LLC giving and corruption, popped up in the retrials of former Senate Majority Leader Dean Skelos and Former Assembly Speaker Sheldon Silver. Mr. Litwin was named as a co-conspirator in the original Skelos' trial and was one of two developers Silver was involved with in a clear pay-to-play scheme involving pushing business to law firms for a fee in exchange for supporting legislation critical to Glenwood Management's operations. During Governor Cuomo's first term, Glenwood was the Governor's largest supporter providing nearly \$1 million in funding. More recently, another incident came to light in the trial of Governor Cuomo's friend and former aide, Joe Percoco, which uncovered that Todd Howe had encouraged COR development to use LLCs to contribute to Cuomo to avoid media attention and exploit the loophole.<sup>27</sup>

Despite these cases and the attention focused on the loophole, little has been done. The Governor has proposed several pieces of legislation, but as many good government advocates have noticed there is little urgency on the part of the Governor to get them passed. Contrary to his protestations that the Senate Republicans are the primary roadblock to closing the loophole due to the number and amount of contributions they receive, Mr. Cuomo himself is by far the loopholes biggest exploiter and beneficiary. According to Politico New York's Bill Mahoney, Cuomo has raised nearly \$17 million since taking office from LLC contributions whereas Senate Republicans have received only \$6.4 million from such contributions.<sup>28</sup> The reality is the Governor is too close to this issue and it is hard to take his rhetoric about closing the loophole seriously as it belies the reality of the benefit it provides him.

In 2018, legislation closing the LLC loophole once again passed the Assembly with bipartisan support 123-11.<sup>29</sup> The legislation has failed to pick up steam in the Senate. This legislation would subject LLCs to the same \$5000 aggregate limit placed on corporations. In addition, the legislation would constrain those seeking to funnel money through multiple LLCs by requiring all LLCs which make a political contributions to disclose the identity of all owners as well each owner's proportion of ownership interest, and that all contributions made to a campaign or political committee shall be attributed to the LLC as well as each owner in proportion to their ownership interest. I would sign this legislation and work to build support in the State Senate through good-faith negotiations while also considering addressing this issue in a more comprehensive reform package.



As part of this effort, it would be necessary to provide modest additional support to the Board of Elections' Finance and Enforcement Unit for the purposes of increasing staff to handle additional enforcement duties.

#### **4. Holding Politicians Accountable and Providing for Independent Oversight**

Editorial boards, advocates, citizens, and reform-minded political leaders know creating independent ethics oversight and investigatory bodies are critical in the effort to reduce and root out corruption. For too long Albany insiders have been left to run free in the halls of power without a watchdog that is not beholden to their authority. It is time to dig deeper into Albany's corrupt underbelly and provide true independent oversight by:

##### ***A. Convening a Moreland Commission to Investigate Public Corruption***

In 2013, Governor Cuomo launched a Moreland Commission with the intention of rooting out corruption in Albany, before disbanding the Commission in 2014 before it's work had been finished. The New York Times reported that Larry Schwartz, the Secretary to the Governor, had intervened in the work of the Commission to prevent prosecutors from looking into organizations with ties to the administration.<sup>30</sup> Then United States Attorney Preet Bharara took over the investigations of the Commission, which ultimately led to the indictments of the Speaker of the Assembly and the Majority Leader of the Senate. Many consider this brief convening of the Commission a failure, yet to me it demonstrated the potential of such a Commission which despite the intervention of a self-interested politician still contributed to major corruption indictments. That is why as one of my first acts as Governor I will convene a Moreland Commission to investigate public corruption. Further, I will seek legislation amending the State Executive Law to require that any time such a commission is formed, the Governor shall fix a set period for said commission's existence, extendable by the Governor in consultation with the Attorney General and the Chief Judge of the New York State Court of Appeals.

##### ***B. Establishing a Five-member Truly Independent Oversight Committee that would Assume the Duties of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC)***

There remain critical structural issues that inhibit Albany's ethics oversight bodies. Primary among these issues is the fact their members are appointed by the very people they oversee. Further, the division of the jurisdiction to investigate and the jurisdiction to review and recommend sanction renders both JCOPE and LEC impotent in their efforts to curtail corruption. It is necessary to start from scratch and create a new entity.

I will support any effort or lead an effort to create a truly independent oversight body as long as the goal is to create a new body:

- that merges the current authority and duties of JCOPE and the LEC;
- appointed by either the Chief Judge of the Court of Appeals and the Presiding Justices of each of the four Appellate Divisions of the Supreme Court or by members of all branches of government with at least a majority of the members not appointed by authorities they will oversee;

- appointed in a non-partisan fashion;
- acting via a majority vote of the members thereby ending the current practice which allows as few as two members to block an investigation or adverse finding;
- which prohibits members from being removed by their appointing authority; and
- that has a separate and set funding source.

The necessity for such a body is so great that I will support any proposal within reason which meets these goals whether enacting such a proposal via a constitutional amendment or through traditional legislation. The New York City Bar Committee on Government Ethics and State Affairs and the Committee to Reform the NY Constitution supports a comprehensive constitutional amendment that accomplishes several of the goals listed above, I would be supportive of that measure or another of similar quality and purpose.

### ***C. Strengthening the State Code of the Ethics including making Sexual Harassment an Ethics Violation***



The Code of Ethics is something which should constantly and consistently be reviewed as a matter of course. As Governor, I will convene a commission comprised of representatives from each conference within the State Legislature, the Governor's Office, the Office of the Attorney General, OSC, and various good government advocacy groups to write a report recommending alterations to the State Code of Ethics. Such recommendations will go before the legislature in the form of a properly prepared bill for a vote.

In addition to this effort, there are a few critical changes that I believe deserve immediate action. One, legislation should be passed and signed into law that makes sexual harassment a violation of the Code of Ethics. Currently, sexual harassment does fall within the scope of JCOPE's jurisdiction, however, it is not specifically enumerated in the Code of Ethics. Additionally, a new ethics violation of a failure

to report misconduct by any employee falling within JCOPE's jurisdiction should be adopted to ensure timely and comprehensive reporting of misconduct. Lastly, I would seek to require any policy-making employee seeking a leave of absence to submit such a request to JCOPE for opinion on allowable activities during such leave. These are small but powerful changes that will strengthen the Code of Ethics while at the same time providing for a safer work environment and a more accountable state government.

## 5. Rethinking and Rightsizing our Economic Development Programs

A 2017 report from the nonpartisan W.E. Upjohn Institute for Employment Research, found that New York State’s economic development programs were the most expensive in the nation.<sup>31</sup> Further analysis by the Citizens Budget Commission found that “when compared to the 10 largest states by population, economic development incentives cost New York as much as the next 3 states combined.” New York’s expansive and expensive economic development efforts require state and local development agencies, authorities, and other entities to distribute direct grants, tax credits, property tax abatements, and other incentives to select industries. Such an approach fosters a purely transactional relationship where corporate interests must ply their influence in an effort to gain direct material benefit and where political donations are a prerequisite to gaining state support.

“When compared to the 10 largest states by population, economic development incentives cost New York as much as the next 3 states combined.”

The more programs designed to benefit specific businesses, corporations, and/industries, picking the winners and losers to borrow a commonly used phrase, the more you have people willing to find any means necessary to gain a competitive edge. More money, more complexity, more corruption. The best strategy to address this problem is a wholesale rollback of many of the State’s numerous economic development programs. We need to evaluate these programs, consolidate the ones that work, increase transparency and accountability, set strategic goals and measure our success against those goals, and finally pay for results not for promises. The following are proposals that will immediately address the intersection of economic development and corruption:

### **A. End the Practice of Providing Direct Grant Funding to Private Corporations and Focus on Cultivating an “Environment of Growth”**

At the heart of New York’s bloated and ineffective economic development efforts is the practice of providing direct and discretionary funding to private corporations. This practice, more than any other, contributes to the transactional relationship between government and private businesses in New York State. As was previously mentioned, there are companies that consider political contributions a normal cost of doing business while at the same time there are businesses that believe direct payments are their right. Even more troubling yet is that direct spending continues to expand, the Citizens Budget Commission offered the following analysis:

*“The State allocated \$4 billion to economic development in 2016. The State’s overall spending remained virtually flat between 2014 and 2016, but State tax expenditures decreased from \$2.7 billion to \$2.4 billion, while State direct spending increased from \$1.3 billion to \$1.6 billion. This shift away from as-of-right tax expenditures and toward direct grants to businesses is not well justified. In addition, changes have expanded programs during the past two years without sufficient evidence of an adequate return on investment of taxpayer dollars.”<sup>32</sup>*

As the Citizens Budget Commission points out, these programs are expanding without evidence. In many cases it is not only a problem of a lack of results, it is also a case of not having any evidence at all. A 2017 audit performed by OSC, found that the Empire State Development Corporation (ESD) “failed to meet more than half of the reporting requirements for tax credit and job creation programs.”<sup>33</sup> This finding is consistent with an overall economic development approach that is directionless, opaque, and lacking results.

While not all funding categorized as direct spending flows directly to private industries, a good chunk of it does, and it is this funding we must cease. Just this year Governor Cuomo and the other members of the Public Authorities Control Board approved \$1million in ESD funding for Cadillac’s New York City headquarters. The rationale is a bit confusing unless you consider that a PAC run by General Motors, Cadillac’s parent company, has “pumped \$31,500 into Cuomo’s campaign coffers since he was elected, and divvied \$155,000 among other lawmakers since 2010.”<sup>34</sup> It is clear that this practice offers few positives while contributing to the “pay-to-play” culture of Albany.

It is time to rethink our economic development strategy starting with ending the practice of providing direct grants to private businesses. Any funding provided to business should be on pay for performance basis demanding recipients invest in creating jobs and ending funding if businesses fail to meet performance metrics. Economic development funds should be redirected to focus on broad pro-growth reforms such as regulatory reform and people-centric policies like job training and education rather than place-centric policies. We need to rethink all of our assumptions and allow data to drive our future efforts.

More information about how I will rightsize and rethink our economic development efforts will be coming soon.

### ***B. Convening a Moreland Commission to Investigate Public Corruption***

In an effort to correct the problems and scandals plaguing New York’s economic development programs and to protect the taxpayer’s money, it would be necessary to first halt current economic development efforts by restricting the disbursement of any funding not currently part of a contract, agreement, or any other formalized understanding between the State and an outside party. Funding would be halted until the following anti-corruption proposals, long advocated for by members of the legislature and good government groups, are implemented:

- **Establishing a “Database of Deals”** - Allowing citizens to easily see where State economic development incentives have been awarded. See the previous section on the “database of deals” for more information.
- **The New York State Procurement Integrity Act** - Passing this legislation would:
  - restore OSC’s authority to review and approve SUNY, CUNY, and OGS centralized contracts previously eliminated in 2011 and 2012;
  - authorize OSC to oversee the procurement process of contracts in excess of \$1 million awarded by the SUNY Research Foundation;
  - prohibit state contracting through state-affiliated not-for-profit (NFP) entities unless explicitly authorized;

- require agencies to place a notice of all requests for an exemption from advertising procurements in the Procurement Opportunities Newsletter 15 days prior to seeking such an exemption and before they award a contract;
- require State authorities to adopt procurement guidelines that are consistent with those of State agencies; and
- strengthen ethics requirements for procurement officials by requiring state officials to recuse themselves from any conflict of interest in writing and include such a recusal in the procurement record.

This legislation would be a critical step toward curtailing corruption and I can say, unequivocally, that if the legislation were law eight years ago, many of the most recent scandals may not have been as costly as they were or even occurred in the first place. For instance, billions of dollars flowed through non-profits connected to SUNY Polytechnic and Dr. Kaloyeros.<sup>35</sup> These entities were used to skirt state procurement oversight in relation to scandals involving COR Development and the Buffalo Billion. If the Procurement Integrity Act were law, these entities would have been prohibited from participating in State contracting. Other provisions such as requiring procurement guidelines consistent with those of State agencies would have mandated guidelines that provide for competitive bidding when feasible, standardize advertising and evaluation criteria, and ensure vendors are in compliance with State law. It is clear how such provision could have reduced effort to direct funding to specific vendors.

These reforms will ensure that any future economic development projects will be handled ethically and transparently, enabling these projects to help our State's economy to grow without the risk of being engulfed in the type of scandals we have seen far too often over the last eight years. Once these reforms become law, then and only then will we once again begin to provide funding, albeit in a more targeted, efficient, and limited fashion.

## Conclusion

Contained within this document are nearly 20 pages of proposals to address corruption in New York... this is just the beginning. The following are other proposals worth exploring as we attempt to end the culture of corruption in Albany:

- increasing support for the Authorities Budget Office (ABO);
- creating an independent policy and budget analysis office;
- requiring authorities to disclose to the Public Authorities Control Board (PACB) information including job commitments, security interests, and clawback provisions on proposed projects;
- banning former Governors and Members of the State Legislature from lobbying for life;
- requiring unspent campaign contributions of elected officials convicted of a felony offense related to his or her official duties to be returned to donors or donated;
- amending state law to recognize modern relationships as many other states have done and require disclosures of significant others;

- end the practice of the Attorney General distributing settlement funds with little oversight—an estimated \$1 billion has been diverted from the State treasury;<sup>36</sup>
- providing the State Board of Elections with the resources to institute real time reporting of all campaign contributions over \$500; and
- requiring members and employees of an entity handling State contracting or the disbursement of economic development funds to receive good government training.

The policies proposed in this plan are not a panacea for all of Albany's ills, but I truly believe they will help root out the problem and alter the systemic and structural failures in a way that will curtail corruption in Albany. I believe that by closing the LLC Loophole we can begin to mitigate the disproportionate impact of monied-interests. I believe that by ending Albany's "pay-to-play" culture and making our economic development programs more transparent, we can alter the transactional relationship of state government and business while at the same time broadening and bettering our approach to economic development. I believe that by enacting term limits and encouraging voter participation through direct democracy, we can rewrite the relationship between politicians and the people they serve. I believe in comprehensive reforms to end corruption and I believe that by enacting such reforms, we can make New Yorkers once again believe in government. I urge you to believe again in the power we each have to encourage reform and create a home for all New Yorkers that is free of the crushing costs of corruption.

## Endnotes

- 1 <https://fivethirtyeight.com/features/ranking-the-states-from-most-to-least-corrupt/amp/>
- 2 <https://www.politico.com/magazine/story/2015/05/how-new-york-became-most-corrupt-state-in-america-117652>
- 3 <https://www.newsday.com/news/region-state/new-york-trials-corruption-1.15673087>
- 4 <https://www.publicintegrity.org/2015/11/09/18822/how-does-your-state-rank-integrity>
- 5 <https://www.sciencedaily.com/releases/2016/03/160331124537.htm>
- 6 [https://ballotpedia.org/State\\_legislatures\\_with\\_term\\_limits](https://ballotpedia.org/State_legislatures_with_term_limits)
- 7 [https://ballotpedia.org/States\\_with\\_gubernatorial\\_term\\_limits](https://ballotpedia.org/States_with_gubernatorial_term_limits)
- 8 [https://ballotpedia.org/Attorneys\\_General\\_with\\_term\\_limits](https://ballotpedia.org/Attorneys_General_with_term_limits)
- 9 <http://www.iandrinstitute.org/states.cfm>
- 10 <http://www.gothamgazette.com/state/6536-2016-again-highlights-new-york-incumbency-protection-machine>
- 11 [https://ballotpedia.org/New\\_York\\_State\\_Assembly\\_elections,\\_2018](https://ballotpedia.org/New_York_State_Assembly_elections,_2018)
- 12 [https://ballotpedia.org/States\\_with\\_initiative\\_or\\_referendum](https://ballotpedia.org/States_with_initiative_or_referendum)
- 13 <https://www.nypirg.org/pubs/goodgov/2014.06.23Redistricting-CanthePlan/cantheplan.pdf>
- 14 <https://reinventalbany.org/2018/06/widespread-support-for-database-of-deals-procurement-integrity-act-but-heastie-blocks-vote/>
- 15 <https://reinventalbany.org/2018/06/twenty-budget-and-govt-watchdogs-plus-progressive-groups-issue-memo-of-support-for-database-deals-and-procurement-integrity-act/>
- 16 <https://reinventalbany.org/2016/01/extending-foil-to-the-ny-state-legislature-modest-burden-modest-value/>
- 17 [http://www.citizensunion.org/spending\\_in\\_the\\_shadows\\_nonspecific\\_funding\\_in\\_the\\_fy\\_2019\\_new\\_york\\_state\\_executive\\_budget](http://www.citizensunion.org/spending_in_the_shadows_nonspecific_funding_in_the_fy_2019_new_york_state_executive_budget)
- 18 [https://www.osc.state.ny.us/reports/fiscal/fiscal\\_reform\\_2016.pdf](https://www.osc.state.ny.us/reports/fiscal/fiscal_reform_2016.pdf)
- 19 <https://cbcny.org/research/increasing-without-evidence>
- 20 <https://www.nysenate.gov/legislation/bills/2017/S3354>
- 21 <https://www.nysenate.gov/newsroom/press-releases/liz-krueger/state-senate-passes-unified-economic-development-budget>
- 22 <https://www.politico.com/states/new-york/albany/story/2016/09/new-yorks-governments-spent-84-million-lobbying-each-other-in-2015-105692>
- 23 <https://www.politico.com/states/new-york/albany/story/2016/07/nearly-all-cuomo-money-comes-from-donors-with-business-before-his-office-103795>
- 24 <https://www.nypirg.org/pubs/201803/percoco.pdf>
- 25 <https://www.timesunion.com/news/article/U-S-Attorney-probing-major-donor-to-Gov-Andrew-12885094.php>
- 26 <https://www.nytimes.com/2015/12/19/nyregion/real-estate-firms-power-is-laid-bare-in-fall-of-albany-leaders.html>
- 27 <https://www.nytimes.com/2018/02/06/nyregion/howe-percoco-cuomo-albany-corruption.html>
- 28 <https://www.politico.com/states/new-york/albany/story/2018/05/06/though-he-backs-reform-cuomo-has-raised-more-from-llcs-than-every-legislator-combined-388190>
- 29 [http://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A09758&term=2017&Summary=Y&Actions=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y](http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A09758&term=2017&Summary=Y&Actions=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y)
- 30 <https://www.nytimes.com/2015/09/13/nyregion/leaders-of-moreland-commission-panel-felt-cuomo-intervened-prosecutors-say.html>
- 31 <http://research.upjohn.org/cgi/viewcontent.cgi?article=1228&context=reports>
- 32 <https://cbcny.org/research/increasing-without-evidence>
- 33 <https://osc.state.ny.us/press/releases/may17/051717.htm>
- 34 <https://nypost.com/2018/02/19/cuomo-approves-1m-plan-to-renovate-swanky-cadillac-office/>
- 35 [https://www.syracuse.com/opinion/index.ssf/2017/06/pass\\_clean\\_contracting\\_bill\\_to\\_curb\\_ny\\_corruption\\_editorial.html](https://www.syracuse.com/opinion/index.ssf/2017/06/pass_clean_contracting_bill_to_curb_ny_corruption_editorial.html)
- 36 <http://www.gothamgazette.com/state/6686-massive-bank-settlements-fueled-spending-spree-by-electeds>