

LEGISLATIVE PACKET PART II

LOBBYING FOR THE 2010 LEGISLATIVE AGENDA

TO: Local League Presidents/Action Chairs
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PURPOSE AND TIMETABLE FOR 2010

Given the state Legislature's intention to address ethics reform early in January, we broke our lobbying efforts this year into two parts. Part I of the Legislative Packet came out in December and focused on immediate and comprehensive ethics and campaign finance enforcement reform. Thank you to all the local leagues who took the opportunity to engage on this issue.

A brief update of the current status of ethics and campaign finance enforcement reform is the first section of this Part II. The remainder of the packet provides a brief description of the other items on the 2010 Legislative Agenda and the action we want you to take. For those who are interested, more background is available in the attached Supplement but you should be comfortable relying on the main points in the Packet. Lobbying on Part II should be scheduled after April 1 in the district office, hopefully after the state budget is finished. This will be a good time to acquaint (or re-acquaint) your legislator with our 2010 Legislative Agenda.

Information on how to set up an appointment and how to lobby is at the end of this packet. More *Fix Albany Now* buttons (at a cost of \$1 each) and Legislative Agenda brochures (for the cost of shipping) can be ordered by contacting Stephanie Lopez at 518-465-4162 or stephanie@lwvny.org. Please use the 2010 Legislative Agenda brochures in your advocacy efforts and leave a copy (or several) with your legislator(s). Keep several handy at all times – they are a great PR and membership tool.

These meetings will give legislators an opportunity to learn about League positions and share their ideas and agenda. ***This exchange of information benefits the state League in its efforts to develop strategies that promote our legislative agenda. Our influence in Albany depends on your contact with your state senator and assemblyperson(s). They know you elect them!***

When talking to a legislator and asked a question to which you do not know the answer, it is fine to say so and indicate that you will get back to him or her with further information. Feel free to contact the state League office for assistance in responding to legislator's requests. Some legislators may indicate that our current list of recommendations is more wide-ranging than the reforms we supported during this year's negotiations with the Assembly and Senate. Negotiations never represented what the League felt was necessary to implement meaningful reform; they represented a small first step. In light of the legislature's failure to move forward with even a small first step, we feel that the public is looking to the League for guidance in developing a meaningful system of reform.

Legislative Packet Parts I and II are available on our home page at www.lwvny.org. Extensive background material on the issues, especially ethics, and our League positions is contained in the Supplement, along with links to more resources. If you access the Legislative Packet online it will link you directly to these resources.

Please return the attached Lobby Report Form as soon as possible after your meeting or by June 1, 2010.

Don't forget to sign up through the Citizen Action ToolkiT (CATT) for action alerts on this and other issues.

2010 TIPS FOR LOBBY VISITS

PREPARATION

1. **Making the appointment:** Contact the legislator's district office. Ask for an hour's time, but accept less if necessary, and do not overstay your welcome. Notify the legislator of the number in your group as well as their names, if possible. Send a letter or e-mail confirming the appointment, mentioning the issues you will discuss. Note: if you cannot meet with the legislator, ask to meet with senior staff.

Try to arrange for three to five League members to attend. If your League meets with several assembly members or senators, be sure to have a League member who is a constituent present. At least one person should be experienced in League. League members well versed on the issues to be lobbied should be included when possible. A new member can be included in this exciting action if accompanied by experienced League members. When more than one local League is involved, try to have representatives from as many of the constituent Leagues as possible.

2. **Assigning roles:** Each member of the lobby team should be assigned a specific role. The following are possible assignments:
 - Researching the legislator. Someone should be prepared to brief the other members of the lobby team on the legislator's relationship with the League and his/her voting record (if the legislator is a re-elected incumbent). What are his/her committee assignments and/or leadership positions in the legislature? Is this legislator a member of the League? If this legislator sponsored bills that League supported, you may want to take a moment to express League's appreciation.
 - Moderator/leader. This person should be certain that each League member introduces himself/herself. The leader must also watch the clock. Knowing ahead how much time the legislator has agreed to spend with you, the leader must allot an appropriate amount of time for each issue. It is the leader's responsibility to "pace" the visit and tactfully keep everyone (including the legislator) on the subject. **Remember, opinions expressed should be those of the League, not of individuals.**
 - Researching the issue or issues to be discussed. Look to the Legislative Packet and LWVNYS *Impact on Issues*.
 - Recording and reporting the legislator's response. The leader should not be the recorder.

NOTE: If you anticipate printing any part of the interview in a League bulletin or newspaper, the recorder is obligated to get the legislator's permission and specific conditions under which you may print.

Write a follow-up thank you after the visit. This is not only a gesture of politeness, but it also allows you to underscore some points made during the visit, answer any questions you were not sure about, or send a League publication to which you may have referred during the course of the visit.

ETHICS AND CAMPAIGN FINANCE ENFORCEMENT UPDATE

In January, both houses passed a reform bill for campaign finance enforcement and ethics reform. We were at the Capitol during the negotiations and offered input to the process. The bill did not purport to address all the issues that we had hoped it would, including the limiting of campaign contributions. This was not the subject of the negotiations and we will continue to press for this piece separately as detailed in the next section below.

While not everything that the League and our good government colleagues had sought, the proposed changes in this bill would have improved both ethics and campaign finance enforcement and created greater transparency. We viewed this bill as a first step toward reform that would have made a significant improvement to the status quo in Albany.

Specifically the bill:

- Strengthened the enforcement unit within the State Board of Elections and increased transparency of filings and enforcement.
- Created three new oversight agencies for ethics and lobbying.
- Required more extensive disclosure from legislators and lobbyists.

For more details, see [Memorandum in Support of S.6457 and A.9544 Concerning Ethics, Lobbying and Campaign Finance Enforcement Reforms](#) (1/19/2010)

The Governor vetoed the bill and the Legislature failed to override the veto. For the time being we are in a situation where the Governor has proposed more sweeping changes but there are no current negotiations or progress anticipated on his proposal.

ACTION

Inform your Legislator of the League's position that real ethics and campaign finance enforcement reform should be accomplished in this legislative session. We view S.6457/A.9544 as setting a floor from which we will make further progress.

CAMPAIGN FINANCE REFORMS

The recent U.S. Supreme Court decision in *Citizens United*, which addressed independent expenditures by corporations in political campaigns not campaign contributions, does not impact our ability to continue pursuing our longstanding commitment to campaign finance reform in New York.

The League's advocacy has two tracks: first to achieve regulatory reforms and second to build support for public financing as the best long-term solution to combat undue influence in the election process.

In addition to having **real and independent campaign finance enforcement**, the League's proposals on campaign finance reform include the following goals:

- **Decrease sky-high campaign contribution limits.**
New York has a system of indefensibly high campaign contribution "limits", many times the limit in federal campaigns, and among the highest in the country. We believe they should be lowered significantly
- **Eliminate soft money.**
Unlike at the federal level, New York allows donations of unlimited size to political party "housekeeping accounts". These are accounts established by a political party for headquarters and staff and to carry on activities not related to specific candidates.
- **Eliminate transfers of campaign contributions**
On top of the sky-high contribution "limits," political parties and candidates are allowed to transfer donations of unlimited size to other candidates and political parties.
- **Ban campaign fundraising during the legislative session.**
New York imposes no additional limits on campaign fundraising during the legislative session, nor does it impose any limitations on lobbyists' involvement in campaign activities.
- **Increase disclosure of contributors**
Unlike federal law, contributors do not have to disclose the names of their employers or even the names of those who actually delivered the contributions (a.k.a. "bundlers").
- **Ban personal use of campaign funds by candidates**
- **Require Disclosure of Independent Expenditures**
Expenditures by individuals or groups that are independent of the candidate should be disclosed in a way that tracks that required of direct contributors.

ACTION

Ask your Legislator if he or she would support legislation to accomplish the above goals.

REDISTRICTING

Redistricting Decisions Limit Competitiveness

New York legislative elections are extremely one-sided and incumbent state legislative candidates are re-elected at a staggering rate. How district lines are drawn has a dramatic effect on the lack of competitive elections. Few legislative districts have balanced enough party enrollments to allow competitive elections.

Redistricting decisions play a critical role in having maintained Albany's legislative status quo

for decades.

At the heart of the public's general discontent with Albany is a feeling that state lawmakers rig the system for their own political gain. Nowhere is this more apparent than in the way legislative district lines are drawn.

It does not have to be done this way. The state of Iowa, for example, has a non-partisan system of redistricting on which New York could partially model a new system in time for the 2012 changes. An independent commission makes the first draft of the district lines and is not allowed to consider incumbents' home addresses or to use the party affiliation of voters in considering district lines.

Currently in New York, the political parties in the majority draw the lines for their respective houses. The only check on this system is whether the Governor chooses to allow this practice to continue or use his veto powers to force changes. We believe that creation of an independent redistricting commission must be a top priority for those interested in reform. While it is too late to support a Constitutional Amendment to create a nonpartisan redistricting commission in time for the drawing of Congressional and Legislative lines in 2011, we urge support for a legislative solution that would immediately create an independent redistricting commission.

ACTION

Ask your legislator if he or she would support an independent redistricting commission to draw the lines for the 2012 election.

ELECTION LAW

Revision of the NYS Absentee Ballot Application

The League has worked for the last few years toward expanding access to the use of the franchise by advocating to revise the absentee ballot application. Currently, the application requires an unnecessary amount of personal information to document the reason for the application. It serves no administrative purpose, is intrusive and a deterrent for the voter. Legislation to reduce and simplify the information a voter must provide to obtain an application for absentee ballots was introduced in prior Legislative sessions and is expected to pass the Senate this session. See: [Memorandum in Support of S.2868B Concerning Simplification of the Absentee Application Form](#) (2/1/2010). The Assembly companion (A.5276A) passed the Assembly in January 2010.

ACTION

Thank your Legislator if he or she voted for this bill and watch for updates on election items from Aimee Allaud, Issues Specialist, in forthcoming SBRs, sign up through Catt for action alerts on this and other issues.

SUPPLEMENT

The following provides additional information about the League's *Fix Albany Now* 2010 Legislative Agenda, including positions in these issues areas, and links to more reference material. For more information about particular areas, if you are reading this on the website, click links contained in the footnotes or at the end of each section.

THE LEAGUE'S POSITIONS – WHY THESE ISSUES MATTER

The League's lobbying in this area is governed by its government positions, which, are paraphrased below:

- The League believes that strong democracy depends on the active and informed participation of individuals in government;
- The League supports a system of government that is open, representative, accountable, and responsive to citizen participation;
- Governmental bodies must protect the right of the individuals to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible;
- Competitive elections are the lifeblood of democracy, serving to educate the population about complex public policies, stimulating voter interest, and increasing voter turnout;
- An impartial commission should be responsible for drawing of redistricting lines, with approval by the legislature. In drawing lines, it should apply the following standards: districts should follow existing political sub divisional boundaries; districts should be of contiguous territory with the smallest perimeter possible; districts should; be based on the principle of population equality;
- The League believes that the method of financing political campaigns should ensure the public's right to know, combat both corruption and the appearance of corruption, minimize undue influence, enable maximum citizen participation in the political process, and enable candidates to participate more equitably for public office. To this end, it supports both reform of the private campaign finance system and creation of a system for public financing of state campaigns;
- The League believes that ethics and lobbying reforms are necessary to safeguard the public's right to know about those who seek to influence, to combat both corruption and the appearance of corruption in government, and to minimize the undue influence of special interests on governmental operations and the political process. The League supports a combined system of both prohibition and disclosure.

The League has been involved with the issue of campaign finance and ethics reform since the early seventies and believes that methods of financing political campaigns should ensure the public's right to know, combat corruption, as well as the appearance of corruption, minimize undue influence, enable candidates to compete more equitably for public office and allow maximum citizen participation in the political process.

Our approach to ethics and campaign finance reform is that any effective system requires certain prohibitions, limitations, and disclosure requirements, penalties sufficient to compel the desired behavior, and a sufficiently well funded independent enforcement body with independent

audit/investigatory authority to ensure compliance and punish noncompliance. Some legislators will argue for public financing of campaigns as an alternative to these reforms. We believe that reform requires both; it is not an either/or proposition. Given that any system for public finance of elections would be voluntary, the success and affordability of a system of public finance will be dependent on concurrent regulation of contributions.

Full positions can be found in *Impact on Issues*
<http://lwvny.org/advocacy/impact/impact.html>

Ethics and Campaign Finance Reform-Too Much Money

A system that allows nearly \$100,000 in legal “hard money” campaign contributions to party and legislative committees unlimited giving to soft money accounts, virtually unfettered use of such campaign contributions for personal spending by incumbents, and is riddled with loopholes and non-existent enforcement breeds public cynicism instead of respect in its own government’s deliberations.

There is no question that money plays a major role in New York politics. In 2008, the top ten spenders spent a total of slightly under \$20 million on lobbying and campaign contributions.¹

Altogether too often, money results in undue influence and inappropriate behavior on the part of both elected officials and those who seek to influence public policy. A November, 2009 Citizens Union report, *Examining Turnover in the New York State Legislature: Ethical Misconduct Increasingly the Cause for Legislators Leaving Framework for Reform to Address Misconduct, Special Elections, and Redistricting*, endorsed by the League and its good government partners, found:²

1. One of every fifteen seats in the legislature turned over in the past ten years because of ethical or criminal misconduct or related issues. This does not count seats of those who are still in office and under investigation or whose fates are currently being decided;
2. Law enforcement agencies, rather than state ethics watchdogs, are unearthing, investigating and handling the serious instances of ethical misconduct by state elected officials;
3. Overall turnover in the state legislature is low, with only 9 to 16% of seats turning over during two-year periods from 1999 to 2009.
4. In holding the state legislature accountable in 2010, voters are unfortunately hindered by the lack of competition due to draconian ballot access laws, weak campaign finance laws and districts drawn to favor particular candidates or parties.

These problems with ethics and campaign finance reform in New York State are not new. In 1989 the Feerick Commission Report highlighted the problems with the State’s system of campaign finance and recommended extensive changes. To date, little has changed.³ Similarly, the League has long advocated for a list of ethics reforms, with little success.⁴

¹ The 2008 “Fat Cat Factor,” NYPIRG, at <http://www.nypirg.org/goodgov/2008FatCatFactor.pdf>.

² See: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUF_Turnover_Report-November%202009.pdf, for full report.

³ See http://lwvny.org/advocacy/issues/CFR_Testimony060309.pdf.

⁴ See http://lwvny.org/advocacy/legAction/Memo_EthicsBillSupport0609.pdf for a list of League recommendations.

New York allows donations to its Assembly and Senate races far in excess of those allowed in federal elections.

In a 2009 analysis of the election of state legislators in 42 states over a period of 26 years (1980-2006),⁵ the Brennan Center found that:

- Contribution limits lead to more competitive elections: the lower the limit, the more competitive the election.
- Lower contribution limits (\$500 and below) increase the likelihood that challengers will beat incumbents.
- Lower contribution limits reduce incumbents' considerable financial fundraising advantage.
- State public financing programs, like low contribution limits, can increase the competitiveness of elections.

The advantages of lower contribution limits included decreasing the winner's margin of victory, entry of more viable challengers into races, and greater likelihood that challengers would win elections. It is important to note that these effects are found only with low (\$500 or less) contribution limits. Across the board, incumbents raise more money than challengers, by a ratio of more than 4 to 1, but there is a narrowing of the fundraising gap in states with low limits. The analysis also found that low contribution limits increase the number of contested races.

As of 2006, limits of \$500 or less per election cycle were in effect for house races in eight states (Arizona, Colorado, Connecticut, Maine, Michigan, Montana, South Dakota, Wisconsin).

In addition to inadequately regulating campaign finance and ethics, New York State fails to enforce its current laws in these areas adequately. A 2009 review of campaign disclosure filings by the League and our good government partners indicated potential widespread violation of the law with minimal impact in terms of penalty. In addition to the list of nearly 350 apparent violators of the corporate contribution limits for last year, we also identified 5,316 contributions of over \$100 whose donors' addresses were not disclosed in the state's campaign finance database, 473 "24 hour notices" that were not reported in the state's database, and 576 committees with over \$1,000 in the bank who had not filed July 2009 disclosure reports as disclosed in the state's database.⁶

That New York State fails to enforce its ethics laws comes as no surprise because those whom they are supposed to regulate control its ethics enforcement entities. In this, New York State is far from the national norm. Currently, 29 states provide external oversight of their state government officials through a single independent ethics commission that has statutory authority and staffing that are independent of the rest of state government. Ethics commissions in only six states including New York do not have jurisdiction over state legislators. Such unified authority residing in a truly independent body not only ensures that the laws are interpreted in the same manner regardless of which type of public official is being considered, but also that the

⁵ See Electoral Competition and Low Contribution Limits, the Brennan Center for Justice at New York University School of Law, at http://brennan.3cdn.net/8b28d2860605922003_vwm6ib37g.pdf.

⁶ See http://lwvny.org/press/Press_1109.pdf.

regulating officials do not look the other way to protect their colleagues at the expense of the public's interests.⁷

Additional specific League recommendations with respect to ethics reform:

- Restriction of pay to play, including: Placing of reasonable limits on contributions to candidates 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;
- Reporting of contributions made by the above category of individuals to candidates and party housekeeping accounts made within 36 days of an election no later than 48 hours after the contribution is made;
- Restriction of the personal business the above category of individuals can undertake with candidates;
- Prohibition against the above category of individuals serving as officers of political committees that work with candidates; and
- Prohibition against the state, its counties, and municipalities from entering into contracts with entities that have made political contributions that exceed the statutory limits; discussed above.
- Ban gifts to legislators. New York's ethics law currently allows gifts with a value of up to seventy-five dollars. Unfortunately, the statute itself does not clarify whether this limit refers to individual gifts of that value, or to an aggregate annual value. The law also contains a loophole in that it only bars gifts that are given "under circumstances in which it could reasonably be inferred that the gift was intended to influence [the recipient]." Such ambiguities have resulted in vastly different interpretations of this statute by three different governmental entities. Furthermore, legislators are currently required to disclose gifts only if they are worth more than \$1,000. N.Y. PUB. OFF. LAW 73-a (9).
- Ban honoraria to legislators. Current New York law does not prohibit honoraria in any form for state legislators, and it only requires that such payments be disclosed if their value exceeds \$1000. At least 23 states prohibit honoraria in some manner if they are offered in connection with a legislator's official duties. Honoraria for services performed in connection with the official's private profession would still be allowed, but only if such compensation does not exceed the value of fees charged by specialists in the relevant professional field.
- Strengthen ban on personal use of campaign contributions: While current NY law forbids contributions for strictly personal use, the statute's language is too vague to provide any meaningful restraint. N.Y. ELEC. LAW § 14-130.
- Strengthen revolving door bans: New York already has a "revolving door" ban for certain public officials. New York is one of six states that impose a two-year ban on legislators and state agency officers and employees. New York's ban does not apply, however, to political party officials and imposes a ban on lobbying by legislative employees that lasts only until the end of the legislative session during which the individual was employed. Accordingly, a legislative employee could leave at the end of a session and begin lobbying immediately thereafter.

⁷ See *Strengthening Ethics in New York: The Ethics in Government Act of 2006*, The Brennan Center for Justice at New York University School of Law, 2006, at http://www.brennancenter.org/page/-/d/download_file_8611.pdf.

- Require lobbyists and their clients to report business relationships with state public officials;
- Require legislators to report outside business dealings, including the names of clients

Additional League Recommendations with respect to Oversight and Enforcement

- Uniform reporting in a searchable, computerized format readily understandable by voters;
- Creation of an oversight body that is neither controlled by nor beholden to the individuals it oversees. The League believes appointment of an independent designating commission for appointing members of the oversight body deserves serious consideration. At a minimum no one elected official or party should control a majority of appointments to the designating commission or oversight body; no current or former legislator should serve; no member should be a current or past registered lobbyist; no member should serve or have served as a party official or seek a leadership position with a state or local political party; and no member should hold a paid position with a campaign for elective office;
- Appointment of an executive director for a fixed term, with removal for cause.
- Grant to oversight agency such powers and funding as are necessary for it to perform its duties efficiently and effectively, including independent audit authority, subpoena authority, ability to initiate complaints for noncompliance;
- Transparency of oversight operations.

Additional resource materials:

Ciara Torres-Spelliscy & Ari Weisbard, *What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action* 1 Albany Gov't L.R.194 (2008) available at www.ssrn.com.

Suzanne Novak & Seema Shah, *Paper Thin: The Flimsy Facade of Campaign Finance Laws in New York* (2006),

http://www.brennancenter.org/content/resource/paper_thin_the_flimsy_facade_of_campaign_finance_laws_in_new_york/

For additional League materials in these areas, see:

http://lwny.org/advocacy/issues/CFR_Testimony060309.pdf;

<http://lwny.org/advocacy/issues/TestimonyEthics%20Committee060209.pdf>;

http://lwny.org/advocacy/legAction/Testimony_EthicsReform060909.pdf,

(giving a description of a new ethics oversight entity)

Redistricting Reform

The New York State Legislature's district lines are redrawn every ten years after the federal census by the New York Legislative Task Force on Demographic Research and Reapportionment (LATFOR) in order to ensure that each district fits within the state's guidelines for population distributions. The Task Force consists of six members, including four legislators and two non-legislators. Given that legislators serve on LATFOR, making up the majority of members as appointed by the legislative leaders, districts are often drawn to favor one party or candidate over another

Historically, New York's redistricting process has been extremely partisan and done to maintain incumbency protection. The Democrats in the State Assembly and the Republicans in the State Senate each control the district lines in their respective houses. Both houses agree to the other's plans and the legislation is then sent to the Governor for his signature. By using techniques like "packing," whereby lines are drawn to concentrate many supporters of political opponents into a few districts, and "cracking," whereby opponents' supporters are split among several districts, they dramatically increase their party's chances of incumbency for the next decade. These "designer districts" literally allow for legislators to choose the voters before the voters have a chance to choose them.

Contrary to what might be expected, losing an election, whether primary or general, is not the most common cause of turnover for members of the New York State Legislature. Elections are often uncompetitive, with few challengers willing to run against incumbent legislators; moreover, for those incumbent members who seek reelection, they very rarely lose. A 2006 report found

- 29 of 212 legislative districts (14 percent) are within one percent of the "ideal size."
- Population trends since the last census have exacerbated the problem of disproportionately sized districts. The census estimates of 2004 show dramatic changes in population since the last redistricting in 2000. As a result, Senate districts with the smallest populations (upstate) have, typically, lost population while those districts with the largest populations (in New York City) have grown. Thus, the population range in Senate districts is now likely to exceed 10 percent. In the Assembly, the impact is different, with one exception. Long Island Assembly districts that have relatively large populations have experienced growth and as a result, it is possible that the Assembly population range may exceed 10 percent.
- District lines are drawn to minimize electoral competition. Only 25 of the 212 legislative districts (11 percent) have close enrollments. The populations of the other 187 districts favor one party or another by a wide margin.⁸

For more information about this topic, see a forum on redistricting co-sponsored by the League and the Rockefeller Institute at <http://www.rockinst.org/forumsandevents/>

Also see Justin Levitt, Commentary Before the New York State Bar Association Committee on Attorneys in Public Service on 2/11/2010, at

http://www.brennancenter.org/content/resource/justin_levitt_before_the_new_york_state_bar_association_committee_on_a/

⁸ *Unfair Advantage: New York State's Redistricting Process*, NYPIRG, 2006, at <http://www.nypirg.org/goodgov/redistrictniReport4.20.06.pdf>.