

A Report of  
Citizens Union of the City of New York

# EXAMINING TURNOVER IN THE NEW YORK STATE LEGISLATURE: 2009 – 2010 Update

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## I. Executive Summary

The New York State Legislature looked far different in January 2011 than it did in January 2009, as there were 47 fresh faces out of 212, when the new legislative session began compared to two years ago.

This is the highest turnover in the number of legislative seats in one two-year cycle – at 22 percent – since Citizens Union first started keeping track twelve years ago in 1999, and possibly the highest in decades, perhaps going back as far as 1974 as a result of the historic Watergate election.

Underlying these large numbers are plenty of interesting and diverse reasons as to why. This report seeks to explain the causes of turnover from 1999 to 2010, focusing on turnover during the last legislative session from 2009 to 2010. One cause of turnover that gives Citizens Union and our endorsing partners concern is the troubling number of legislators who have left because of ethical or criminal issues.

While ethical and criminal misconduct does not just occur in the state's legislative branch, this report only contains data on the state legislature. Over the past four years, New York has been embarrassed by the number of high-profile scandals that have also plagued too many of our statewide officeholders. Two of the four statewide elected officials in 2006 were gone by the spring of 2008. Comptroller Alan Hevesi resigned just as he assumed office for a second four-year term because of inappropriate use of state resources, while Governor Eliot Spitzer resigned 15 months into his term for patronizing the services of a prostitute. Most recently, former Governor Paterson was fined \$62,000 in his final month in office for soliciting free Yankees tickets.

Citizens Union – with this February 2011 addendum – is updating its groundbreaking legislative turnover report issued in November 2009 and has found the following:

1. **The crime wave of scandals prompting state legislators to leave office because of ethical or criminal misconduct has worsened;** in fact, it has quickened at an alarming rate.
  - a. Over the past four years (2007 – 2010, a period when everything was supposed to change for the better), **the pace of state legislators leaving office because of ethical misconduct or criminal charges has doubled** – an alarming 9 legislators left during this four-year period, which is one more than the 8 legislators who left in the entire eight-year period before 2007 (1999 – 2006).
  - b. **And over the past six years (2005-2010), the number of legislators who left because of such incidents (13) is actually triple the number (4) of the prior six years (1999-2004).**
2. **One of every 11 state legislators, or 17 of 185, who have left office since 1999 have done so because of ethical misconduct or criminal charges.**
3. State Senator Hiram Monserrate became the first legislator in 90 years to actually be removed by the legislature itself for wrongdoing.<sup>1</sup> **In the vast majority of cases, criminal charges or charges of ethical misconduct resulting in departure from office have been brought from authorities outside of the legislature.**

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<sup>1</sup> Peters, Jeremy. "Monserrate Will Face Sanction Votes." The New York Times. January 12, 2010. Available at: <http://www.nytimes.com/2010/01/13/nyregion/13monserrate.html>

4. **More legislators (13) lost their seats outright (not counting those for whom ethical and criminal issues played a factor in their defeat) than at any time in the past twelve years of tracking.** The previous high was 7 in 2004.
5. In spite of 13 legislators being defeated, the incumbency re-election rate for state legislators remains high. **The twelve year incumbent re-election rate still averaged 96% from 1999 to 2010.**
6. Seventeen (17) legislators left during the 2009-2010 legislative cycle to run for or serve in another public office, a rate on par with the 16 who left in 2005-2006.

Given the acceleration of ethical and criminal misconduct by state legislators over the past six years, it has become even more important for real and meaningful ethics reform to take place. New Yorkers' impatience has worn thin and action is needed now to restore the public's faith in our state elected officials. Therefore the Governor and the Legislature need to enact ethics reform legislation that:

1. Creates a mechanism for independent oversight and enforcement of ethics laws, ideally in the form of a single commission with joint jurisdiction over the legislative and executive branches;
2. Ensures that no one elected official controls a majority of appointments and that appointees are not conflicted by either having been a recent member of state government or a lobbyist;
3. Ensures that the executive director is insulated from potential political pressure; and
4. Requires greater disclosure of outside income and conflicts of interest, specifically clients and those with whom they do business and the range of dollars generated from those relationships.

In addition to immediately strengthening ethics oversight and enforcement, several other political reform measures are needed to help stem the rising incidence of ethical misconduct and restore integrity to government functions and respect for our elected officials.

1. A fair and independent redistricting process that ends partisan gerrymandering.
2. A campaign finance system that reduces the influence of money and the power of special interests.
3. An election system that increases opportunities for voters to cast ballots and eases ballot requirements for candidates.
4. A special election system that opens up the process to more than just party designated candidates who are assured of winning election in low turnout elections.

## II. Introduction and Methodology

Citizens Union in November 2009 published a ground-breaking study of the causes of turnover in the New York State legislature<sup>2</sup>, which for the first time quantified the reasons why legislators left office. The report also crystallized for New Yorkers the sobering fact that a state legislator in New York State is more likely to leave office because of ethical misconduct than either being redistricted out of one's seat or even death. This finding spurred editorials<sup>3</sup> throughout the state and helped contribute to the legislature's passage of ethics reform legislation in 2010.

This report is an update on the report from 2009 and includes current and complete data on the reasons behind legislative turnover during the 2009-2010 session resulting in the new legislature that took office on January 1, 2011. It also updates the overall tallies for each cause of turnover from 1999 to 2010. The results of the 2010 General Election are listed as turnover in 2010, as the last date of service for those who left office last year was December 31, 2010. It should be noted that one state assembly race remains undecided at the time of publication of this report – Assembly District 100, where ballots are still being counted in the race between incumbent Democrat Frank Skartados and former Republican Assemblymember Tom Kirwan.

Turnover can be either productive or unproductive for voters, and affects voters differently depending on the type of turnover and political or ideological orientation of the voters. While turnover due to a competitive election may be productive by resulting in better representation, there is also turnover that is unproductive, such as when legislators leave office due to scandal, which can be harmful to voter confidence in government – though this turnover can also be seen as productive because resignation is an appropriate consequence for illegal activities. In order to address these issues, this report provides recommendations for reform to encourage turnover that may lead to better representation, while discouraging turnover that decreases public confidence in government.

While ethical and criminal misconduct is not confined to the legislative branch, this report only contains data on the state legislature. Over the past four years, New York has been embarrassed by the number of high-profile scandals that have also plagued too many of our statewide officeholders. Two of the four statewide elected officials in 2006 were gone by the spring of 2008. Comptroller Alan Hevesi resigned just as he assumed office for a second four-year term because of inappropriate use of state resources<sup>4</sup> while Governor Eliot Spitzer resigned 15 months into his term for patronizing the services of a prostitute. Most recently, former Governor Paterson was fined \$62,000 in his final month in office for soliciting free Yankees tickets.<sup>5</sup>

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<sup>2</sup> Available on Citizens Union's website,  
[http://www.citizensunion.org/www/cu/site/hosting/Reports/CUF\\_Turnover\\_Report-November%202009.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUF_Turnover_Report-November%202009.pdf)

<sup>3</sup> See for example "New report on New York Legislature shines light on ethical lapses in Albany," Syracuse Post Standard. November 20, 2009. Available at:

[http://blog.syracuse.com/opinion/2009/11/new\\_report\\_on\\_new\\_york\\_legisla.html](http://blog.syracuse.com/opinion/2009/11/new_report_on_new_york_legisla.html)

<sup>4</sup> New York Times Topic Page, "Alan Hevesi." October 7, 2010. Available at:

[http://topics.nytimes.com/top/reference/timestopics/people/h/alan\\_g\\_hevesi/index.html](http://topics.nytimes.com/top/reference/timestopics/people/h/alan_g_hevesi/index.html)

<sup>5</sup> Blain, Glenn. "Former Governor David Paterson pays record fine over World Series tix fix." New York Daily News. February 5, 2011. Available at: [http://www.nydailynews.com/ny\\_local/2011/02/05/2011-02-05\\_dave\\_pays\\_record\\_fine\\_over\\_world\\_series\\_tix\\_fix.html](http://www.nydailynews.com/ny_local/2011/02/05/2011-02-05_dave_pays_record_fine_over_world_series_tix_fix.html)

This report was compiled using information on the causes of turnover from news articles, press releases, boards of election records and other publicly available information. The classification on the causes of turnover was developed to show trends in certain areas during two-year legislative session periods. From 1999 – 2010, there were six such two-year periods completed.

When classifying turnover as related to ethical or criminal issues, Citizens Union only counted those instances in which there was either an active investigation, formal charges of misconduct, or sanctions levied as turnover due to ethical or criminal issues. It should be noted that where loss of an election can be attributed to ethical lapses, as occurred most recently with Senator Pedro Espada who was under investigation for corruption, the instance is tallied as turnover due to unethical activity rather than merely due to losing the election. In the case of Antoine Thompson, who lost the General Election in 2010 and was heavily criticized for his distribution to constituents of a 102-page book of his accomplishments that was funded by taxpayer dollars, he is classified as having lost the election, as there was no formal investigation or charges levied against him for misconduct.

Other legislators had ethical issues or conflicts of interest that were raised at the time of their announcement of not seeking re-election. Assemblymember Ann Margaret Carrozza, who did not seek re-election was criticized for possibly not living in her district. As there was no formal investigation, she is classified as not seeking re-election. Similarly for Senator George Winner, he announced that he would not seek re-election at the same time that news reports indicated a possible conflict of interest between companies that sought gas drilling and his real estate firm. As there was no investigation into this conflict, he is categorized as retiring.

It should also be noted that where an election was lost due to the impact of redistricting, for example where two districts were merged pitting incumbents against each other, necessitating the loss of one incumbent, this instance is recorded as turnover due to redistricting.

Those legislators who did not seek re-election are classified as “retired” if news reports indicate that they are retiring from political life, while those who have no indicated future plans are listed as simply not seeking re-election. Both retirement and not seeking re-election, however, are combined in one category.

The findings of the research are first summarized for the changes in 2009-2010 in Section IV, and then are examined broadly from the full period of 1999 to 2010 in Section V. Section V also examines turnover in the following main categories of turnover: ethical or criminal lapses, losing an election, appointment or election to other public office, and retirement or death. Redistricting is not included in this update, as the most recent redistricting cycle was completed in 2002 and fully analyzed by the 2009 report. Recent case studies or examples of specific legislator misconduct are also provided to further illustrate the particular types of turnover. Recommendations are then provided in Section VI in five reform areas: ethics, redistricting, campaign finance, election reform and filling vacancies. Lastly, charts on the overall level of turnover each session and of the causes of turnover by percentage of total turnover are included as appendices, as well as a table which provides a listing of the specific instances of turnover from 2009 – 2010.

### **III. Acknowledgements**

This report was written by Rachael Fauss, Citizens Union's Policy and Research Manager who was aided in the research and writing by Ilana Novick, a CU policy and research intern. It was reviewed and edited by CU staff Alex Camarda, Director of Public Policy and Advocacy, Adelia Harrison, Executive Assistant, and Dick Dadey, Executive Director.

Citizens Union thanks Blair Horner and Bill Mahoney from the New York Public Interest Research Group, as well as Susan Lerner of Common Cause NY for their thoughtful suggestions and edits.

#### IV. Major Findings on Legislative Turnover, 2009 – 2010

On January 1, 2011, a new state legislature took office in New York, with a total of 47 new faces from those who took office two years earlier. Eight of these had been elected during the course of the past two years in special elections<sup>6</sup>, so there were only 39 totally new faces from those in December 2010.

In total, there are 47 legislators who will begin their first full term this year. This turnover of 47 legislators from 2009-2010 is the largest seen in New York State during the 1999 – 2010 period, at 22 percent of all legislative seats. It should be noted that one state assembly race remains undecided at the time of publication of this report – Assembly District 100, where ballots are still being counted in the race between incumbent Democrat Frank Skartados and former Republican Assemblymember Tom Kirwan.

The major reasons why 47 legislators left office during the 2009/2010 legislative session, from most frequent to least frequent, are:

- For another office, elected or appointed – 17
- Electoral defeat (without ethical or criminal factors) – 13
- To retire or work in the private sector – 12
- Ethical misconduct, criminal charges, or related issues (including ethics-related election loss) – 4
- Death – 1

Other key findings from 2009 through 2010 include:

- **Ethical and criminal lapses continue to be troublingly high**, signaling that the crime wave has not abated, with a total of 4 legislators leaving under a cloud of corruption, criminal issues or loss of public trust from 2009 to 2010.

Over the past four years (2007 – 2010, a period when everything was supposed to change for the better), the number of state legislators leaving office because of ethical misconduct or criminal charges has doubled – an alarming 9 legislators left during this four-year period. This is an increase of one more than the 8 legislators who left in the entire eight-year period before 2007 (1999 – 2006).

**And over the past six years (2005-2010), the number of legislators who left (13) because of such incidents is actually triple the number (4) of the prior six years (1999-2004).**

- **In total, 17 legislators have left office from 1999 to 2010 due to ethical or criminal lapses. With 185 legislators having left office over the past twelve months, this amounts to 1 in 11, or 9 percent, of all instances of turnover during this period arising from ethical or criminal misconduct.** Turnover due to ethical or criminal lapses is more than the total number of legislators who have either died in office or left office due to redistricting. As reported in CU's November 2009 turnover report, former Assemblymember Tony Seminerio resigned in June 2009 after being indicted for theft of honest services. Updates in 2009 and 2010 include the departures of the following legislators:

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<sup>6</sup> Those legislators taking office mid-term were Assemblymembers Castelli, Crespo, Gibson, Miller, Montesano, Murray and David Weprin (replacing brother Mark Weprin); and Senator Jose Peralta.

- Senator Hiram Monserrate, who was expelled from the State Senate after being convicted of misdemeanor assault for dragging his girlfriend down a hallway.<sup>7</sup>
  - Senator Pedro Espada, who lost the 2010 Democratic Primary Election while being investigated jointly by the Office of the NYS Attorney General, Federal Bureau of Investigation and Internal Revenue Service<sup>8</sup>; he was later indicted in December 2010 for embezzlement of funds from the Soundview health clinic for diverting funds for personal and campaign expenses.<sup>9</sup>
  - Senator Vincent Leibell, who resigned before the end of his term on December 3, 2010 and pled guilty to felony corruption charges for tax evasion for not reporting \$43,000 in cash kickbacks and obstruction of justice for trying to interfere with the corruption probe.<sup>10</sup> Leibell had also won election in November 2010 for Putnam County executive and did not take office on January 1, 2011, causing Putnam County officials to scramble for an interim county executive.<sup>11</sup>
- **The number one cause of turnover continues to be legislators seeking other public office.** Legislators' ambitions for higher office have not seen a downturn, and in fact hit a high of 17 departures from 2009 to 2010.
  - **More legislators lost elections than in previous years,** with 13 legislators losing at the polls (for reasons other than ethical issues), nearly double the previous high of 7 in 2003-2004.
  - **Many legislators continue to leave office before their terms have expired,** with 8 such departures resulting in special elections in 2009 or 2010. During special elections, party nominated candidates are chosen by the party leaders – not the voters as would happen in a primary election. Nearly one third of state legislators were first elected to office during a partisan special election.<sup>12</sup> Such elections are usually not held on a regularly scheduled election day, which results in unfortunately low turnout. Once chosen by party leaders and elected by less than 2 or 3% of eligible voters in a special election, these legislators are re-elected in routine fashion.
  - **Turnover is more often influenced by elected officials' actions rather than by the public in exercising its right to vote,** as only 31% of turnover was a result of voters' choices at the polls from 2009 to 2010. In the majority of cases, turnover is either due to legislators leaving for other office or choosing not to seek re-election.

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<sup>7</sup> Peters, Jeremy. "New York Senate Expels Monserrate Over Assault." The New York Times. February 9, 2010. Available at: <http://www.nytimes.com/2010/02/10/nyregion/10hiram.html>

<sup>8</sup> Confessore, Nicholas, "Office Raided in Espada Investigation." The New York Times Cityroom Blog, April 21, 2010, Available at: <http://cityroom.blogs.nytimes.com/2010/04/21/investigators-raid-office-as-part-of-espada-probe/>

<sup>9</sup> Press Release. "Attorney General Cuomo And U.S. Attorney Lynch Announce Indictment Of Senate Majority Leader Pedro Espada." New York State Attorney General's Office. December 14, 2010. Available at: [http://www.ag.ny.gov/media\\_center/2010/dec/dec14a\\_10.html](http://www.ag.ny.gov/media_center/2010/dec/dec14a_10.html)

<sup>10</sup> Tinker, Justin, and Kennedy, Helen. "Vincent Leibell, ex-GOP state senator, says he quit to plead guilty to felony corruption charges." New York Daily News. December 6, 2010. Available at: [http://www.nydailynews.com/ny\\_local/2010/12/06/2010-12-06\\_vincent\\_leibell\\_republican\\_state\\_senator\\_says\\_he\\_quit\\_to\\_plead\\_guilty\\_to\\_felony.html#ixzz1AIGPraqz](http://www.nydailynews.com/ny_local/2010/12/06/2010-12-06_vincent_leibell_republican_state_senator_says_he_quit_to_plead_guilty_to_felony.html#ixzz1AIGPraqz)

<sup>11</sup> Haley, T.J. "Paul Eldridge likely to be names to top post." Putnam County Courier. January 2011. Available at: [http://www.putnamcountycourier.com/news/2010-12-30/Front\\_Page/COURIER\\_EXCLUSIVE\\_Paul\\_Eldridge\\_likely\\_to\\_be\\_named.html](http://www.putnamcountycourier.com/news/2010-12-30/Front_Page/COURIER_EXCLUSIVE_Paul_Eldridge_likely_to_be_named.html)

<sup>12</sup> Citizens Union Foundation, "Circumventing Democracy: The Flawed System for Filling Vacancies for Elected Office in New York," April 2007. Available at: [http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport\\_2007special\\_election.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_2007special_election.pdf)

## V. Findings on the Causes of Turnover, 1999 – 2010

### a. Overall Findings

A total of 185 legislators have left office from 1999 – 2010.<sup>13</sup> During this period, turnover hit a high in the most recent cycle, 2009-2010, with a total of 47 legislators leaving office. The previous high of 36 seats occurred in 2005-2006. The most common cause of turnover from 1999-2009 has been leaving for another government office, either elected or appointed at the federal, state or local level, amounting to 37 percent of all cases of turnover. The second most common cause of turnover was no longer seeking office or retirement, which amounted to 24 percent of all instances of turnover. Losing a primary or general election is only the third most common cause of turnover, at nearly 21 percent of all cases of turnover. Turnover due to ethical lapses or criminal misconduct was the fourth most common cause of turnover, at 9 percent of cases. Other reasons for turnover such as redistricting and death each separately amounted to 4 percent of the incidents.

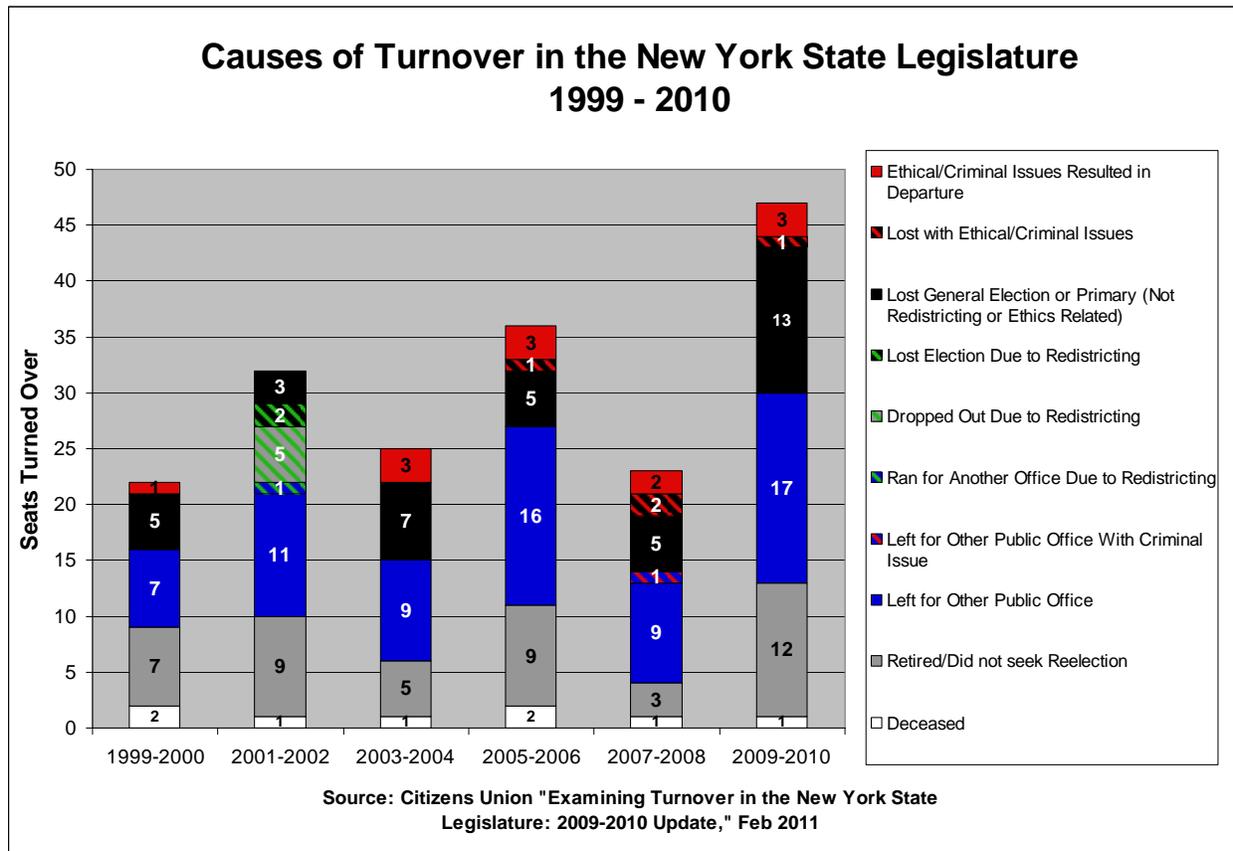
The total number of these 185 legislators in each category of turnover is listed below.

- For another office, elected or appointed – 69
- To retire or work in the private sector – 45
- Electoral defeat (without ethical or criminal factors) – 38
- Ethical misconduct, criminal charges, or related issue (including ethics-related election loss) – 17
- Redistricting – 8
- Death – 8

The chart on the next page shows the causes of turnover in each of the two-year legislative session periods from 1999-2010. It should be noted that where turnover can be attributed to more than one category, i.e. ethical lapses resulting in loss of an election, the category is striped with more than one color. For example, where a legislator lost an election while under investigation for ethical misconduct, it is represented in the chart as striped in red (corruption or criminal issues) and black (loss of an election). Findings in each category of turnover, such as trends, will be described in subsequent sections, as well as examples or case studies demonstrating a particular type of turnover.

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<sup>13</sup> Please note that this update includes 3 corrections from Citizens Union's 2009 Report on Turnover. This update now includes turnover of Assembly District 86, in which Luis Diaz retired and Nelson Castro won the seat in the 2008 General Election; and turnover in Senate District 48, when James Wright retired and was replaced by former Assemblymember Darrel Aubertine in the 2008 General Election. Aubertine's assembly seat, Assembly District 118, was won by Addie Russell in the November 2008 General Election.



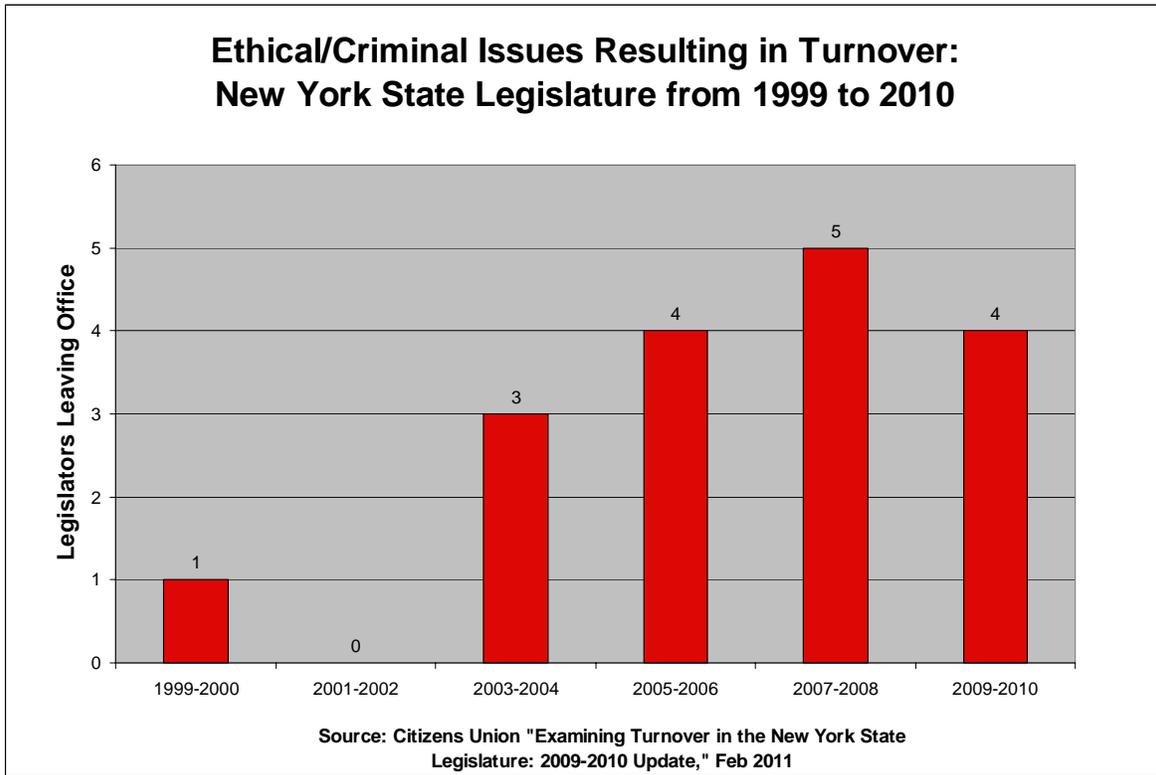
#### b. Turnover due to Ethical Lapses and Criminal Issues

##### *Ethics Case Study, Senator Vincent Leibell*

Former State Senator Vincent Leibell (R-Brewster) ended his 28 year career in the New York State legislature after pleading guilty in December 2010 to obstruction of justice and tax evasion charges. Leibell had won election for County Executive of Putnam County while federal prosecutors were investigating him for extorting cash payments from lawyers working in his district, and failing to report on his income tax returns the approximately \$43,000 in cash payments. He arranged for the lawyers to work for a charity he founded, but said they would not get paid until they gave him half of their salary in cash. While the investigation was in progress, Leibell met with one of the lawyers on a Carmel, NY street corner, and advised the lawyer to lie to prosecutors about the transactions Leibell requested. The lawyer, however, was wearing a wire, and turned the conversation over to the authorities, leading to the obstruction of justice charge. Leibell faces up to 13 years in prison, and will be sentenced on March 7, 2011. Leibell resigned both from the senate seat whose term was almost complete, and from the position of Putnam County executive.

For more information, see Harshbarger, Rebecca. "State Pol Guilty of Charity Scam." The New York Post. December 7, 2010. Available at: [http://www.nypost.com/p/news/local/state\\_pol\\_guilty\\_of\\_charity\\_scam\\_8OcezPDKqKqXyrv6sAFroL#ixzz1AwzgFXJd](http://www.nypost.com/p/news/local/state_pol_guilty_of_charity_scam_8OcezPDKqKqXyrv6sAFroL#ixzz1AwzgFXJd)

Turnover due to ethical lapses and criminal issues continues to be a troubling factor for the New York State Legislature. One of every 11 state legislators (17 of 185) who have left office since 1999 have done so because of ethical misconduct or criminal charges. From 2009-2010 there were four cases of turnover attributed to corruption or criminal issues of some kind, an increase from 1999-2000's single case, but similar to five and four such instances in 2007-2008 and 2005-2006, respectively. The chart below shows the level of turnover due to ethical or criminal issues from 1999 to 2010.



In some cases legislators who are under investigation for ethical lapses may lose an election before they are forced to resign; those losses often correspond to increasing levels of media scrutiny because of corruption charges. Senator Pedro Espada (D-Bronx) lost the Democratic Primary, with supporters of the challenger, Gustavo Rivera, emphasizing that the investigations into and accusations of ethical misconduct against Espada most likely led to his loss, even though he was not fired or forced to resign. In other cases, legislators may hold on to their positions as long as possible until they are convicted or strongly encouraged by their party to resign. As noted in the previous case study, Senator Vincent Leibell was forced to resign both from his newly won position as County Executive for Putnam County and the unfinished term of his senate seat when he pled guilty to charges of embezzlement and obstruction of justice.

While federal prosecutors or the state attorney general have most often launched investigations into the rampant corruption and ethical lapses in Albany, it is rare in New York State for a senator or assembly member to be censured by the legislature. In some cases the legislative ethics bodies or leadership handle investigations, but those situations are usually less serious than the more egregious cases profiled in this report. One notable exception is the Senate's investigation and 53-8 vote to expel Hiram Monserrate (D-Queens) in February 2010 following a conviction for misdemeanor assault. He is only the fourth senator ever to be expelled, and the first in nearly 90 years.<sup>14</sup>

The voting public, meanwhile, has become even more disenchanted with state government, resulting in lower voter turnout, and in turn, elected officials who are less accountable to their constituents. One unfortunate irony is that often politicians who are later convicted of corruption may begin with considerable support from their communities and other state officials. This support often comes through the allocation of member items or other resources to their districts, including jobs on Election Day, a perk that voters may be reluctant to give up. This time, however, for Senator Espada, as a New York Times editorial noted: "Mr. Espada's loss was an especially important victory for all New Yorkers. Bronx voters made clear that they would not be bought off again with free food and jobs on Election Day."<sup>15</sup>

#### ***Ethics Case Study, Senator Pedro Espada***

Former Senate Majority Leader Pedro Espada, Jr. (D-Bronx) was defeated by Gustavo Rivera in the September 2010 Democratic Primary for the 33<sup>rd</sup> Senate District. The defeat ended a 20 year career in the chamber amid accusations that he, along with his son Pedro G. Espada, embezzled over \$500,000 from Soundview Healthcare Networks, a network of low-cost health care clinics based in the Bronx and controlled by Espada. On December 14, 2010, both men were charged by federal prosecutors with five counts of embezzlement, and one count of conspiring to steal government funds. The indictment states that between 2005 and 2009, the Espadas diverted money from Soundview towards personal uses including entertainment, dining, and educational expenses for family members. The clinic received over a million dollars per year in the same time period in federal funds, leading to the charge of conspiring to steal from the federal government. Despite Espada's base of support in his district, the media coverage of the investigation into this scandal led to his defeat in the primary by Gustavo Rivera, a first time elected official, who had been an aide to various state and national officials.

For more information, see Rashbaum, William. "Tax Charges to be Added in Espada Case." The New York Times. January 7, 2011. Available at: <http://www.nytimes.com/2011/01/08/nyregion/08espada.html?sq=pedro%20espada%20jr&st=cse&scp=2&pagewanted=print>

The rising rate of turnover among legislators due to criminal or ethical issues underscores the need for independent ethics oversight in New York. New York State does not have an independent ethics oversight system to monitor the legislature, nor does the attorney general have broad authority to investigate and prosecute cases involving public corruption, including serious election law malfeasance. These and other needed ethics reforms are discussed further in Section VI.

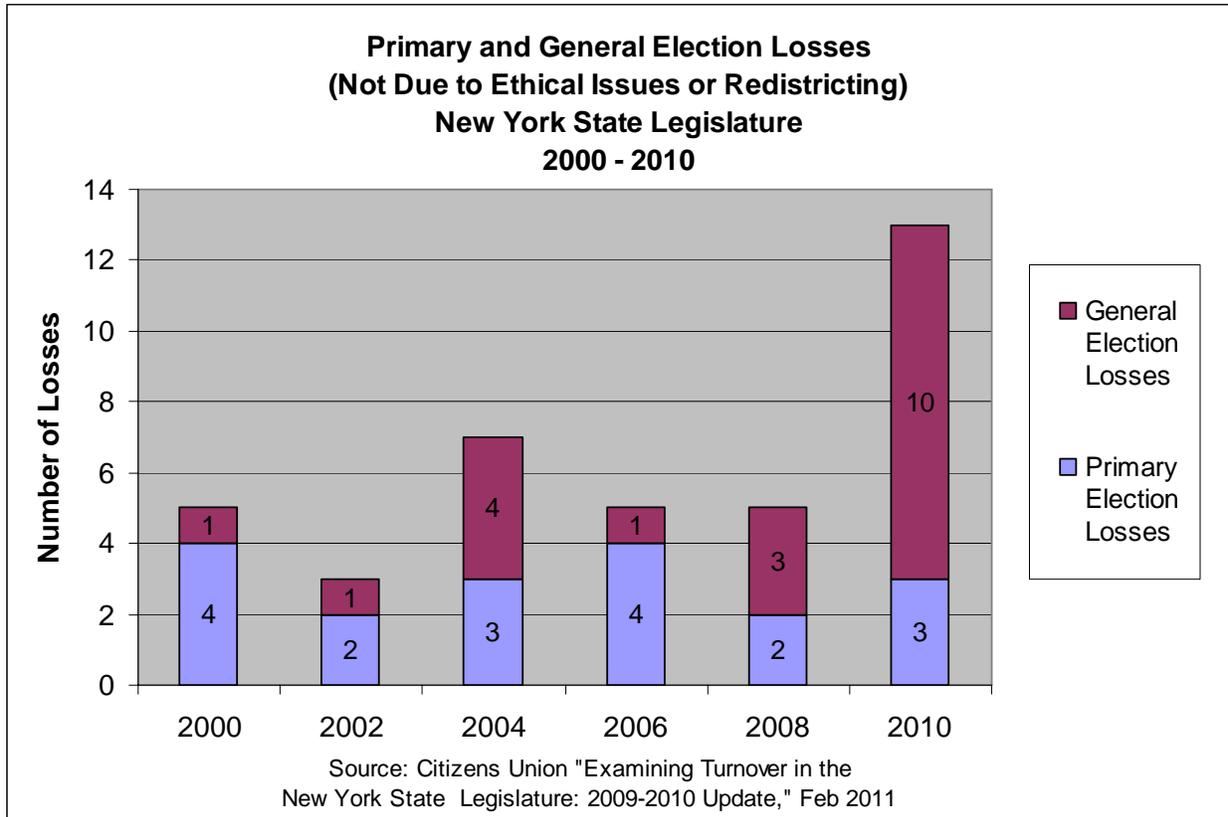
<sup>14</sup> Peters, Jeremy. "Monserrate Will Face Sanction Votes." The New York Times. January 12, 2010. Available at: <http://www.nytimes.com/2010/01/13/nyregion/13monserrate.html>

<sup>15</sup> See <http://www.nytimes.com/2010/09/16/opinion/16thu2.html?ref=hirammonserrate>

**c. Turnover due to Losing an Election**

New York has had a historically high rate of re-election for incumbents. Elections are typically uncompetitive, and turnout low.

This pattern recently saw a shift, however, in the 2010 elections when 13 incumbents lost their seats with no criminal or ethical issues affecting their races, compared to 5 in the previous election cycle. Even with the high level of turnover this year due to electoral defeat, incumbents still enjoyed a 96 percent overall average rate of re-election from 2000 to 2010.



Many legislators kept their seats for reasons mentioned in our 2009 report, including that challengers are often unwilling to run against incumbents who have spent years cultivating relationships in their districts and have a distinct fundraising advantage as sitting legislators. New York however, was not exempt from the frustration that voters around the country directed towards incumbents in national elections, and many newly minted legislators campaigned around themes of bringing about political reform, making government more accountable, reducing the size and spending of state government and cutting taxes. Democrats still control the Assembly, though with a reduced margin, and the Republicans have regained the majority in the Senate. The results of one remaining assembly race in district 100 will determine whether Assembly Democrats continue to hold a veto-proof majority.

In the 121<sup>st</sup> Assembly District near Syracuse, Republican Donald Miller defeated Democrat Albert Stirpe, a three-term assemblymember. The vote was close, but observers believe that anti-Albany

and anti-Democrat sentiment helped Miller.<sup>16</sup> Also in the Assembly, Republican Marc C. Johns defeated seven-term Democrat David Koon in the 135<sup>th</sup> Assembly District, as voters were intrigued by Johns' promises of fiscal conservatism and lower property taxes.

In the Senate, anti-Albany sentiment helped Patty Ritchie (R) defeat Darrell Aubertine (D) in the 48<sup>th</sup> District, for which Aubertine had served two terms. Former Senator Antoine Thompson (D), who lost the General Election for the 60<sup>th</sup> District in 2010, was heavily criticized for his distribution to constituents of a 102-page book of his accomplishments that was funded by taxpayer dollars. He is classified as having lost the election, as there was no formal investigation or charges levied against him for misconduct. In the Assembly, Janele Hyer-Spencer (D, Staten Island/Brooklyn) lost her bid for re-election partly due to concerns that she was less than responsive to the needs of the Staten Island section of her district, and was criticized for her failure to concede in public on election night.<sup>17</sup> Other losses due to electoral defeat are included in Appendix F in the table of causes of turnover from 2009 to 2010.

Putting aside the political and ideological orientation of the voters, turnover due to competitive elections is generally beneficial to voters, as candidates in close elections consider and debate new policy perspectives and the winners may more accurately reflect the needs of their constituents. Elections in New York, however, remain uncompetitive, with incumbents having won 92% of elections in 2010, and 35 incumbents unopposed on the ballot during the 2010 general election. In general, the high incumbent re-election rate is due to many factors, including the high cost of mounting and maintaining campaigns, the role of "soft money" contributions that allow groups to circumvent contribution limits, the lack of a public financing system, and complicated and arcane ballot laws.

While it is encouraging for government accountability that so many new legislators are entering the current session of the legislature, reforms as provided in Section VI are still needed to revise the ballot laws, expand funding for new candidates through a public campaign financing system, and ease the ability of new candidates to appear on the ballot, let alone win an election.

#### **d. Turnover due to Seeking Another Office: Appointments and Election**

The most common reason for turnover in the New York State Legislature continues to be appointment or election to another government office. Whether legislators have sought another office in federal, state or local government, it is not uncommon for state legislators to leave mid-term in pursuit of other political ambitions. Appointments to state, local, or federal offices are also common, particularly when a new administration comes to office, as occurred under Governor Eliot Spitzer in 2007.

Between 1999 and 2010, 69 legislators vacated their seat for another government office. The highest number of legislators left their positions during the most recent 2009-2010 session, with 17

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<sup>16</sup> Moses, Sarah. "Expert: Donald Miller Helped by Anti-Albany, Anti-Democratic Wave in Assembly Race against Al Stürpe" The Syracuse Post-Standard. November 4, 2010. Available at:

[http://www.syracuse.com/news/index.ssf/2010/11/don\\_miller\\_waits\\_to\\_declare\\_vi.html](http://www.syracuse.com/news/index.ssf/2010/11/don_miller_waits_to_declare_vi.html)

<sup>17</sup> Padnani, Amy. "Nicole Malliotakis, an Upstart from Rosebank, Runs Roughshod Over Assembly Incumbent" The Staten Island Advance, November 3, 2010. Available at:

[http://www.silive.com/news/index.ssf/2010/11/nicole\\_malliotakis\\_an\\_upstart.html](http://www.silive.com/news/index.ssf/2010/11/nicole_malliotakis_an_upstart.html)

legislators seeking other elected or appointed public office. The chart below depicts these instances of turnover during each legislative cycle from 1999 to 2010.

Past governors have often tapped sitting legislators to serve in appointed state positions, in some cases reaching across the aisle for members not of their own party. One notable case was when former Democratic Governor Spitzer appointed Republican Senator Michael Ballboni as the Deputy Secretary of Public Safety in 2007, which created a vacancy that resulted in a special election. Democrat Craig Johnson ultimately won the seat in that special election, aiding the Democrats in eventually taking control of the Senate in the 2008 General Election.

The 17 legislators who left for other public office between 2009 and 2010 include: Assemblymembers Pat Eddington (D – 2009 mid-year), Rob Walker (R – 2010 mid-year), Mark Weprin (D – 2009 mid-year), Michael Gianaris (D – 2010), Jose Peralta (D – 2010 mid-year), Adam Clayton Powell IV (D – 2010), Adriano Espaillat (D – 2010), Aurelia Greene (D – 2009 mid-year), Ruben Diaz, Jr. (D – 2009 mid-year), Adam Bradley (D – 2010 mid-year), Richard Brodsky (D – 2010), Greg Ball (D – 2010), David Townsend (R – 2010), Jim Bacalles (R – 2010), Tom O'Mara (R – 2010), and Jack Quinn (R – 2010); only one state senator left for other public office during this time period: Eric Schneiderman (D – 2010).

In many cases, legislators left to run for higher state office, either for state senate or for attorney general (9 total), though other legislators ran or were appointed to local office (7 total). Only one legislator ran for federal office – Assemblymember Adam Clayton Powell IV who sought what was previously his father's seat in the U.S. House of Representatives. One of these examples, Adam Bradley (D, White Plains), resigned from his assembly seat to successfully run for Mayor of White Plains, but later was found guilty of assault while still serving as mayor. Bradley is scheduled to be sentenced in March, and while he has not yet resigned as mayor a guilty plea for assault may force him to.<sup>18</sup>

### ***Seeking Other Public Office Case Study*** **The “Domino Effect”**

Turnover of elected officials often has a “domino effect,” with one elected leaving office triggering a chain of other openings for those with ambitions for higher office. In the 2010 elections, New York saw Attorney General Andrew Cuomo’s campaign for governor result in the opening of two legislative seats, one in the State Senate and one in the State Assembly. Incumbent State Senator Eric Schneiderman, representing upper Manhattan, as well as parts of Riverdale in the Bronx in Senate District 31, ran for state attorney general, leaving an open senate seat. Assemblymember Adriano Espaillat, also representing upper Manhattan, ran for Senate District 31, leaving Assembly District 72 open as well. Former New York City Council member Guillermo Linares ran in a competitive five-way Democratic primary race for the assembly seat, also ultimately the General Election. No current elected officials were in the race for assembly, however, thus ending the chain of open seats.

What is interesting to note for Senate District 31 is that the district was redrawn in the 2002 redistricting cycle which increased Latino representation in the district to 51 percent. At the time of the redistricting, some Democrats claimed that the Republican Majority in the Senate sought to push out Schneiderman, while Republicans contended that it was an effort to consolidate and empower the Latino community.<sup>1</sup> With the election of Adriano Espaillat to the district in 2010, Latinos ultimately captured the senate seat.

<sup>1</sup> “Eye on Albany: New York State Senate District 31,” Gotham Gazette. 2002. Available at: <http://www.gothamgazette.com/eyeonalbany/senate/district31.shtml>

<sup>18</sup> Rubin, Ben. “White Plains Dems vote, seek to oust Bradley.” LoHud.com, January 19, 2011. Available at: <http://www.lohud.com/article/20110119/NEWS02/101190339/-1/newsfront/White-Plains-Dems-vote--seek-to-oust-Bradley>

It is an understandable and common ambition of legislators to seek other elected offices, and, depending on when the legislator departs, a special election may be necessary to fill the resulting vacancy. While turnover due to legislators seeking another office is not inherently productive or unproductive, the manner in which the resulting vacancy is filled may not best serve voters. Since many vacancies occur mid-term, special elections are quite common, and 8 such elections occurred between 2009 and 2010. The current selection process for special election party candidates denies voters a real choice of candidates as party candidates are nominated by party committees, not through a primary election process in which registered party voters are able to choose who will be on the ballot. While a candidate may also petition to get on the ballot as an independent candidate under a newly-created party label, the petition process is often a difficult uphill battle without the backing of the major parties. Moreover, given that a special election can occur on an atypical election day resulting in lower voter turnout, it does not serve voters well to have a representative who was elected by a small segment of the population. Citizens Union Foundation in 2007 found that nearly a third of sitting legislators were first elected in a special election, as these legislators go on to be re-elected after having the advantages of incumbency.<sup>19</sup>

Given the prevalence of legislators leaving office mid-term and the resulting low turnout in special elections to fill their vacancies, reforms to the special election process are long overdue. For further information about potential reform options, please see Section VI.

#### **e. Other causes for turnover: Retirement, Death, and Work in the Private Sector**

While the Assembly and Senate have members that have served for decades, many at some point decide to seek work in the private sector, or retire. Citizens Union Foundation's research indicates that between 1999 and 2010, 45 legislators left office and did not seek re-election, and 8 have died while in office. Specifically for 2009-2010, 12 legislators did not seek re-election, and only one legislator died while in office – Senator Thomas Morahan (R-Rockland County).

Some legislators choose to use their connections and experience in the legislature to work in lobbying or governmental affairs for private corporations or advocacy organizations. While state law currently requires a “black out” period of two years during which former legislators are prohibited from lobbying their former colleagues, these legislators are not prohibited from acting as consultants for lobbying firms, before taking staff positions after the black out period has elapsed.

The black out period also does not prevent former legislators from lobbying other branches of government. Former Majority Leader Joseph Bruno (R-Rensselaer), as noted in our previous report, resigned his senate seat in 2008 to become chief executive officer of, and registered lobbyist for, CMA Consulting, an information technology company that has contracts with several state and national executive branch offices and agencies. For those who retired in 2009 or 2010, many have not yet revealed their plans for their next positions.

Others may retire not because of specific corruption charges, but because of milder rumors of misconduct, such as concerns over the incumbent's residency in the district, or attendance records. Ann-Margaret Carrozza (D, Queens), did not seek re-election ostensibly because she wanted to seek another career and spend more time with family, but many believed she was less likely to win an

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<sup>19</sup> Citizens Union Foundation, “Circumventing Democracy: The Flawed System for Filling Vacancies for Elected Office in New York,” April 2007. Available at:

[http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport\\_2007special\\_election.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_2007special_election.pdf)

election given questions about her past residency in the District and poor attendance record.<sup>20</sup> Similarly for Senator George Winner, he announced that he would not seek re-election at the same time that news reports indicated a possible conflict of interest between companies that seek gas drilling and his real estate firm.<sup>21</sup> Though it could be argued that both Carrozza and Winner chose not to run for re-election because of questionable activities, their cases are not included in our tally of ethics-related departures since there were no formal charges pressed or investigations conducted.

As legislators continue to resign and seek work in the private sector and lobbying, it is essential that laws regulating the employment of elected officials after leaving office are strengthened to increase accountability and limit corruption. Reforms to state ethics laws are needed to increase the public's confidence in the state government, especially as corruption continues to be a problem. Given that Governor Andrew Cuomo stressed the need for strong government oversight and ethics reform in his first State of the State address, the time is ripe to begin this process.

## **VI. Opportunities for Reform**

### **a. Ethics Reform**

Ethical misconduct among legislators remains a serious and accelerating problem which needs to be addressed by the Governor and Legislature in 2011. Given that a majority of state legislators, in both houses, have pledged to enact ethics reforms, including creating a new unitary ethics oversight body and comprehensive financial disclosure, we urge them to fulfill their promises and enact legislation this session.

New York's ethics laws and structures are in a state of major disrepair, and if left unattended threaten to lead to continued ethical lapses and opportunities for inappropriate conduct. Continuation of the current system would only further the public perception that too many elected officials in New York State are not only beholden to special interest groups but, even worse, are beyond the jurisdiction of the law's current enforcement authority. New York's ethics oversight structure is not properly and effectively organized and is in need of immediate and meaningful reform to curb misconduct. The current bifurcated system, where executive and legislative ethics are treated separately and the Legislative Ethics Committee is comprised of legislative appointees that oversee the legislative branch, is not only the minority approach in ethics oversight nationwide but has also proven to be an ineffective oversight model, as detailed in this report by the numerous instances in which legislators left office because of ethical shortcomings.

Ideally, Citizens Union believes that the existing approach should be replaced with a new, unified ethics oversight entity, the Commission on Governmental Ethics (Commission). This new Commission would have jurisdiction for monitoring and enforcing the state's ethics laws for both the legislative and executive branches, as well as jurisdiction over the lobbying law, Article 14 of the Election Law relating to campaign finance, financial disclosure rules and some portions of the open meetings laws. This unified approach, when vested in a truly independent body, will ensure that the

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<sup>20</sup> Mimoni, Victor G. "Carrozza in Violation of Residency Law." The Queens Courier, July 6, 2009, Available at: [http://www.queenscourier.com/articles/2009/07/06/news/top\\_stories/doc4a52588be5dac364332689.txt](http://www.queenscourier.com/articles/2009/07/06/news/top_stories/doc4a52588be5dac364332689.txt)

<sup>21</sup> Sickie, Alison. "Conflicts of Interest – New York Style." DC Bureau. June 1, 2010. Available at: <http://dcbureau.org/20100601496/Natural-Resources-News-Service/conflicts-of-interest-new-york-style-senator-george-winners-shale-play.html>

laws are interpreted and applied consistently to all subject to its jurisdiction, but also that the commissioners do not feel so indebted to their appointing authority that they make decisions contrary to the public interest.

Moreover, to ensure there are no conflicts of interest in the appointment of the new Commission on Governmental Ethics, Citizens Union strongly recommends that there be broad-based appointments that comply with the following guidelines:

1. No one elected official would control a majority of appointments, therefore more fairly balancing the interests of all parties subject to oversight by the Commission and reasonably addressing any separation of powers arguments put forth in opposition to this proposal;
2. No current legislator can serve on the commission;
3. No commissioner can be a registered lobbyist;
4. Depending on the size of the body, no more than two members may be from the same political party;
5. No commissioner can serve as a party official or seek a leadership position with a state or local political party;
6. No commissioner may hold any public office;
7. No commissioner may hold a paid position with a campaign for elective office; and
8. No commissioner may represent or be in business with either a member of the legislature or the administration that is overseen by the commission.

Ethical oversight and disclosure are critical components of an ethics reform package, yet there are other important issues that should be addressed, such as:

1. Instituting restrictions to avoid “pay-to-play” issues, which would be applicable to lobbyists, placement agents, state contractors, and certain business entities, as well as the senior managerial employees and immediate family of such persons or entities;
2. Restricting the personal use of campaign contributions;
3. Requiring candidates or political committees to dispose of their excess campaign contributions within a set period of time after an election;
4. Allowing for random audits of financial disclosure forms required to be filed by public officers;
5. Requiring public officers who retain, employ, designate or otherwise do business with a lobbyist to file a disclosure report with the ethics oversight body once the business begins; and
6. Empowering the Attorney General to investigate and prosecute cases involving public corruption, including serious election law malfeasance.

If enacted, Citizens Union believes that these reforms would be a tremendous step towards improving the ethical culture in the state and reducing the incidences of misconduct that have led to higher rates of unproductive turnover.

## **b. Redistricting Reform**

With the 2010 U.S. Census having been completed, New York State in 2011 will begin the process of redrawing legislative district lines, meaning that state government must act now to create a more independent process. A majority of legislators in both houses have pledged to create an independent citizens redistricting commission which would be guided by clear principles for the drawing of lines. Governor Andrew Cuomo has also pledged to veto any lines drawn by the state legislature that reflect partisan gerrymandering. Citizens Union now urges the Legislature and Governor to act this session to ensure that reforms are in place before the next redistricting cycle begins.

Under New York's current redistricting scheme, the majority party in each house is effectively responsible for drawing district lines due to their ability to appoint the members of the Joint Task Force on Demographic Research and Reapportionment (LATFOR). LATFOR since the 1980s has been responsible for assisting the legislature in drawing congressional and state legislative districts every ten years, after the census. In fact, legislators sit on the commission itself and have a direct hand in the process – the commission is made up of six members, including four legislators and two non-legislators.

The current redistricting method leaves too much control to legislators and the two-party system, both of which have an inherent conflict of interest in drawing legislative district lines to suit their political purposes. Citizens Union advocates for redistricting reform that guarantees that legislative district lines are drawn in a more independent and less partisan manner. Specifically, Citizens Union recommends:

1. Creating a new citizens redistricting commission that is independent, representative, and fairly chosen to draw congressional and legislative district lines that do not favor or oppose any incumbent or political party, using even-handed and sensible redistricting guidelines and criteria that provide for fair and effective representation of all New Yorkers, including racial and language minority groups.
2. Ensuring real disclosure of redistricting data and real opportunities for public input on redistricting proceedings.
3. Providing an effective mechanism for legislative approval of the independent citizens redistricting commission's plan.

## **c. Campaign Finance Reform**

With New York now holding the highest contribution limit in the nation (of states that have limits) at over \$100,000 for political party donations to candidates<sup>22</sup>, campaign finance reforms are needed to limit the undue influence and possible corruption that some private campaign contributions can have on candidates and government officials. While we recognize that candidates must have access to an appropriate level of funding in order to allow them to run effective campaigns for office, balancing restrictions with the public's right to give contributions will ensure that there is a healthy democracy.

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<sup>22</sup> New York Public Interest Research Group. "New York to Celebrate Citizens United Anniversary by Raising Contribution Limits." Press Release. January 24, 2011. Available at: [http://nypirg.org/goodgov/2011.01.24\\_ContributionLimits.pdf](http://nypirg.org/goodgov/2011.01.24_ContributionLimits.pdf)

Citizens Union strongly believes that New York's campaign finance laws, last substantially revised in 1975, are in need of significant reform to eliminate both the reality and the perception that elected officials in New York State may be beholden to special interest groups and the campaign contributions these individuals make, affecting the integrity of decision-making in Albany. Additionally, reforms to address the *Citizens United v. Federal Election Commission*<sup>23</sup> decision are needed to ensure that all independent expenditures are fully and clearly disclosed to the public.

We urge the State Legislature and Governor to enact the following reforms to New York's election and campaign finance laws:

1. Overhaul the state's lax campaign finance system by significantly lowering campaign contribution limits;
2. Ban the personal use of campaign contributions;
3. Enact pay-to-play restrictions for lobbyists and those who do business with the state;
4. Increase contribution and expenditure disclosure;
5. Increase fines for violations of election law;
6. Provide for complete and clear disclosure of independent expenditures by political committees, unions, corporations, non-profits and other organizations; and
7. Institute a public financing system to allow candidates to run competitive elections.

Reforming the campaign financing system to limit the size and scope of contributions, increase disclosure, as well as strengthen enforcement would likely reduce the propensity for inappropriate conduct. Further, it would substantially increase the opportunity for competitive elections.

#### **d. Election Reform**

Electoral reform offers various mechanisms to make elections more competitive, ranging from easing ballot access requirements to instituting measures to increase voter participation, which would result in increased accountability that comes with more competitive elections. With 96 percent of incumbents re-elected, it is important to ensure that challengers with sufficient support are able to be placed on the ballot, and that voters are afforded more convenience and ability to participate in the electoral process.

New York State's ballot access laws are some of the most arcane in the country and prevent many candidates, in particular less funded candidates, from appearing on the ballot, thereby limiting voter choice on Election Day. Critics of the state's current election law argue that the laws only serve to punish candidates for making mistakes on their ballot petitions and reduce competition. Further, ballot access laws become a tool for rival candidates to challenge the legitimacy of their opponents, when they often succeed in eliminating any opposition in their race, removing voters from the process of selecting the best candidate.

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<sup>23</sup> *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010)

In addition to making it easier for candidates to appear on the ballot, increasing voter participation is another way to foster greater competition. Such initiatives work to increase the electorate and their opportunities to cast a ballot, which increases the number of voters candidates need to reach out to and mobilize in order to win election. Increasing the number of active voters may also encourage incumbent candidates to be more inclusive and responsive to their constituents because they would have to work to secure support beyond their traditional base in order to win. Voter access initiatives may be particularly helpful in New York, where voter turnout is continually among the lowest in the nation, which results in very few incumbents losing elections. Lastly, increasing competition for seats may combat overall voter apathy and the sentiment that voting is of little value and encourage more voters to cast their ballots on Election Day.

We urge the State Legislature and Governor to enact the following reforms to New York's election laws:

1. Reform New York's draconian ballot access requirements to allow candidates easier access to the ballot and voters greater choice of candidates by:
  - a. Lowering the number of signatures needed to appear on the ballot; and
  - b. Simplifying the petition process to reduce error when completing a petition.
2. Implement reforms to modernize the voter registration process and increase voter participation, such as:
  - a. Easing registration deadlines;
  - b. Implementing Election Day voter registration (EDR);
  - c. Amending the state constitution to allow no-excuse absentee voting; and
  - d. Instituting early voting.

#### **e. Filling Vacancies Reform**

As mentioned previously, 8 of the 47 instances of turnover in 2009-2010 resulted in a special election, with all of these candidates going on to win their seats for a full term in November 2010. This process entails the governor calling a special election on a date he/she determines to fill a vacancy followed by nomination of candidates by party committees. A candidate may also petition to get on the special election ballot as an independent candidate under a newly created party label to compete with the party-backed candidates. The party nomination process replaces the usual public primary election with a few hundred party members who narrow the field of aspiring candidates down to one for each party line without any input from rank-and-file voters. Voters are given the opportunity to choose from these candidates at the special election, but with so many legislative districts dominated by a single political party in this state, due in part to the way in which legislative districts are gerrymandered to favor majority party incumbents, a candidate who wins the dominant party nod rarely faces challenging competition at the polls. In addition to the expense, special elections provide voters with little real choice.

Citizens Union Foundation's 2007 report, *Circumventing Democracy: The Flawed System for Filling Vacancies for Elected Office in New York State*,<sup>24</sup> outlined the various processes for filling vacancies throughout the state and offered a series of recommendations to reform these processes.

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<sup>24</sup> Available at: [http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport\\_2007special\\_election.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_2007special_election.pdf)

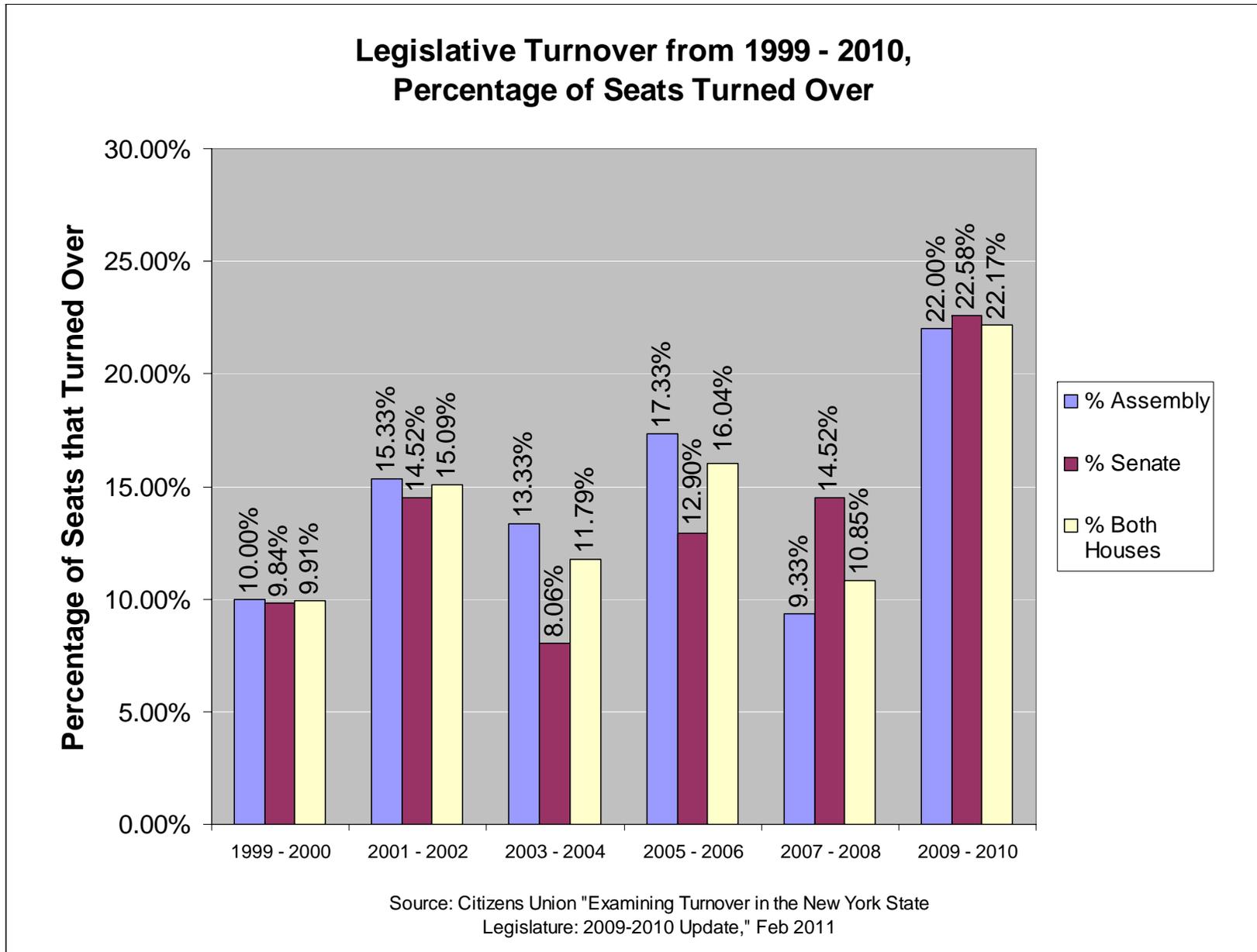
Specifically with respect to filling state legislative vacancies, Citizens Union recommends the process be modified in one of the following ways:

1. **Special Election with Primary:** Pass legislation to replace the current system of holding one special general election with a traditional set of primary and general elections on an abbreviated schedule at dates specified by the governor. This change would allow all party voters to select the nominees for their party as they do for regular state legislative primary elections.
2. **Nonpartisan Special Election:** Hold nonpartisan special elections similar to those conducted to fill a vacant New York City council seat where the mayor specifies a date for a special election and candidates petition to get on the ballot.
3. **Nonpartisan Election with a Separate Runoff Election or Instant Runoff Voting:** This variation of the above nonpartisan special election would include a runoff between the top two vote getters if no candidate secures a substantial share of the votes. This could be conducted through a separate runoff election, although this could be costly, or through an instant runoff voting process at the time of the first special election. A runoff would ensure that the winning candidate earns a majority of voters' support and a stronger mandate to represent the district.

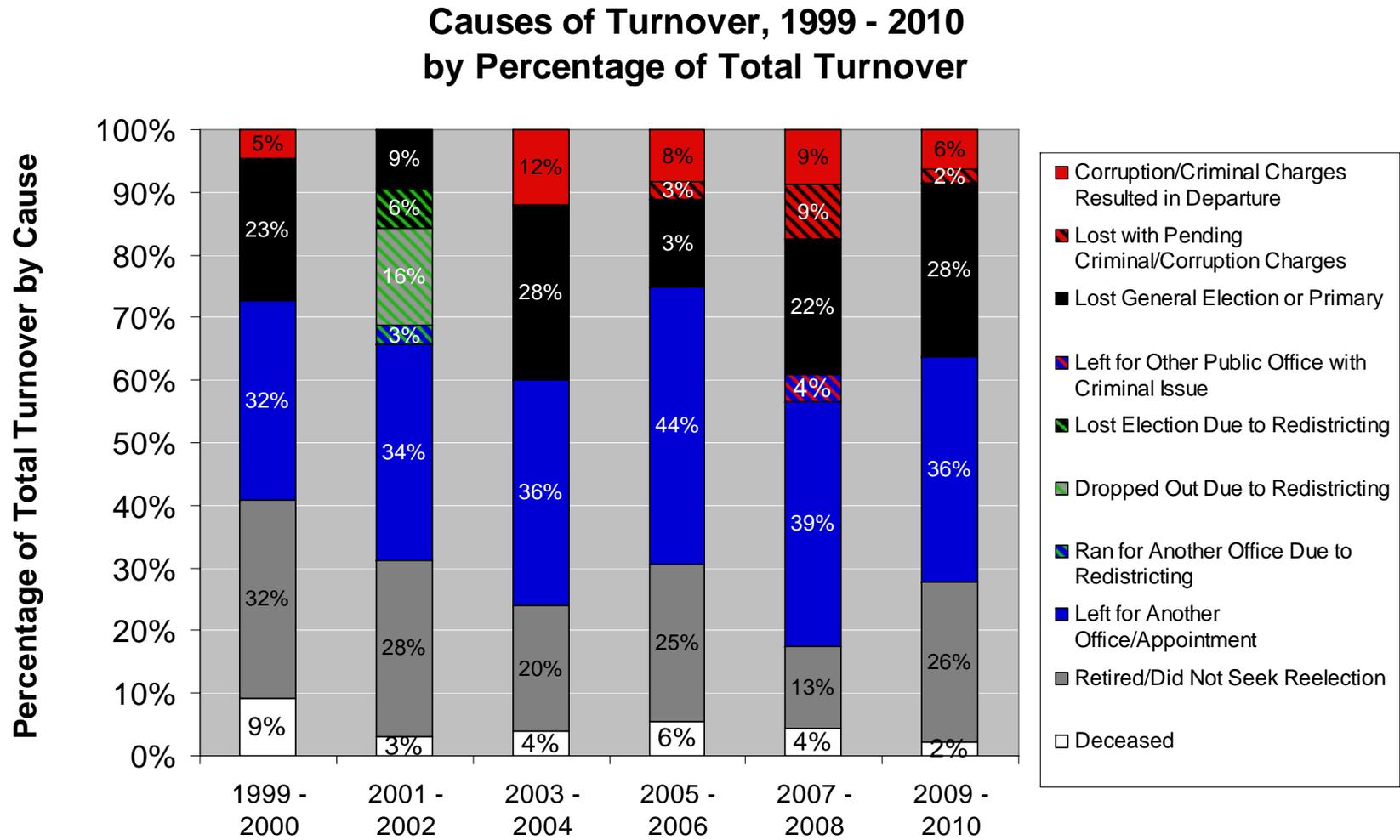
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Appendix A – Percentage of Seats Turned Over in New York State Legislature, 1999-2010



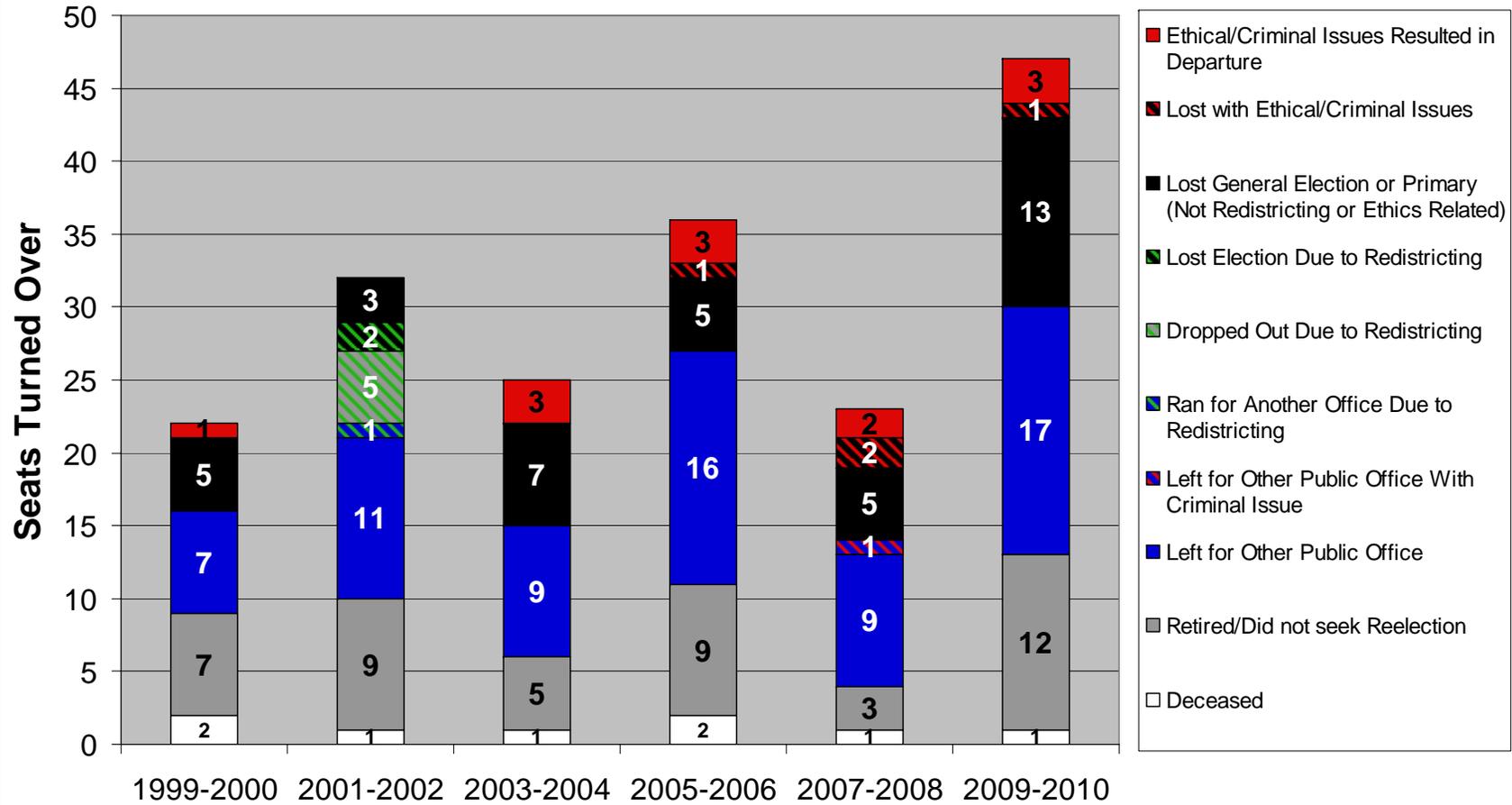
Appendix B – Causes of Turnover by Percentage of Total Turnover, 1999-2010



Source: Citizens Union "Examining Turnover in the New York State  
Legislature: 2009-2010 Update," Feb 2011

Appendix C – Total Causes of Turnover, 1999-2010

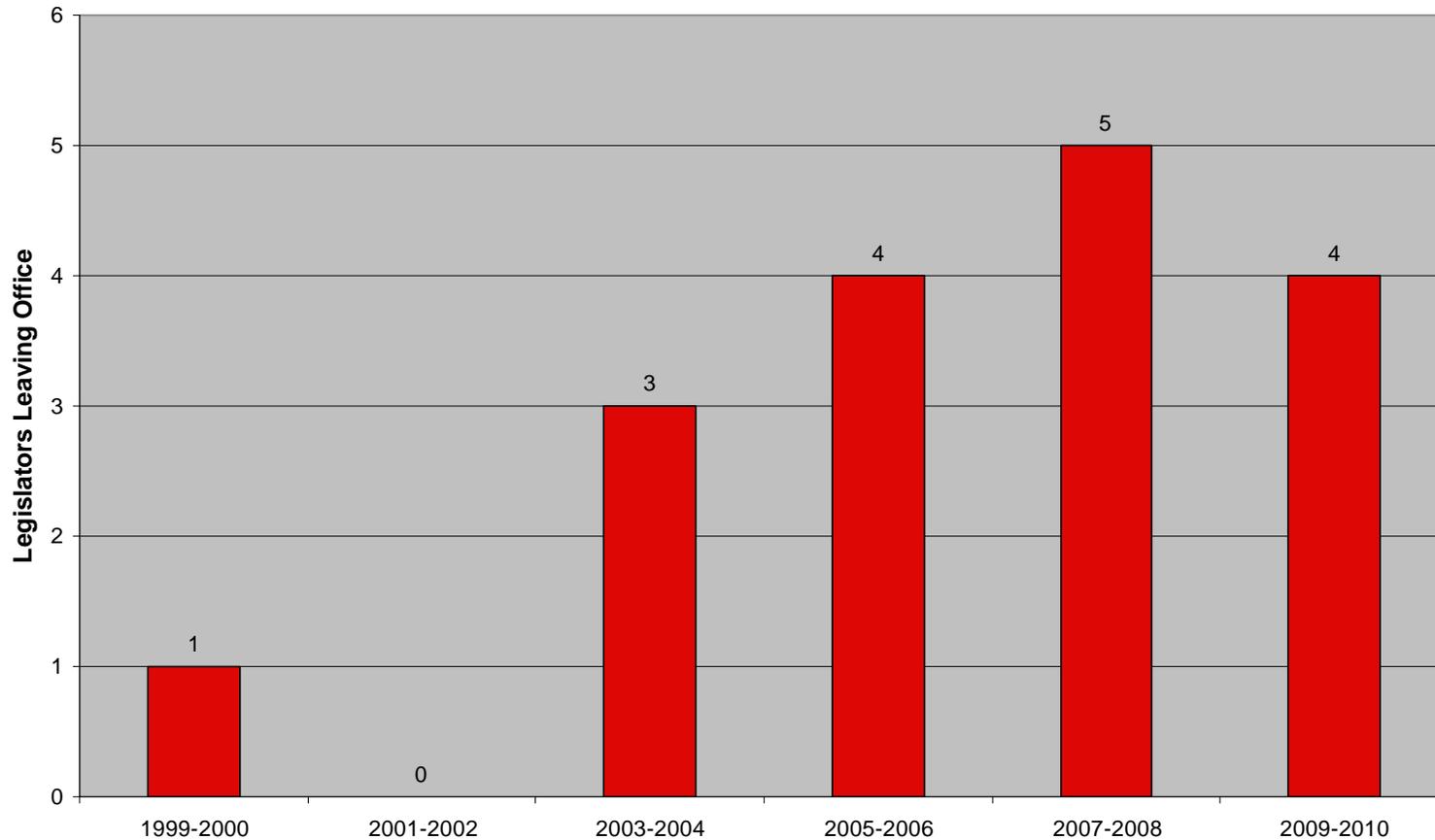
### Causes of Turnover in the New York State Legislature 1999 - 2010



Source: Citizens Union "Examining Turnover in the New York State Legislature: 2009-2010 Update," Feb 2011

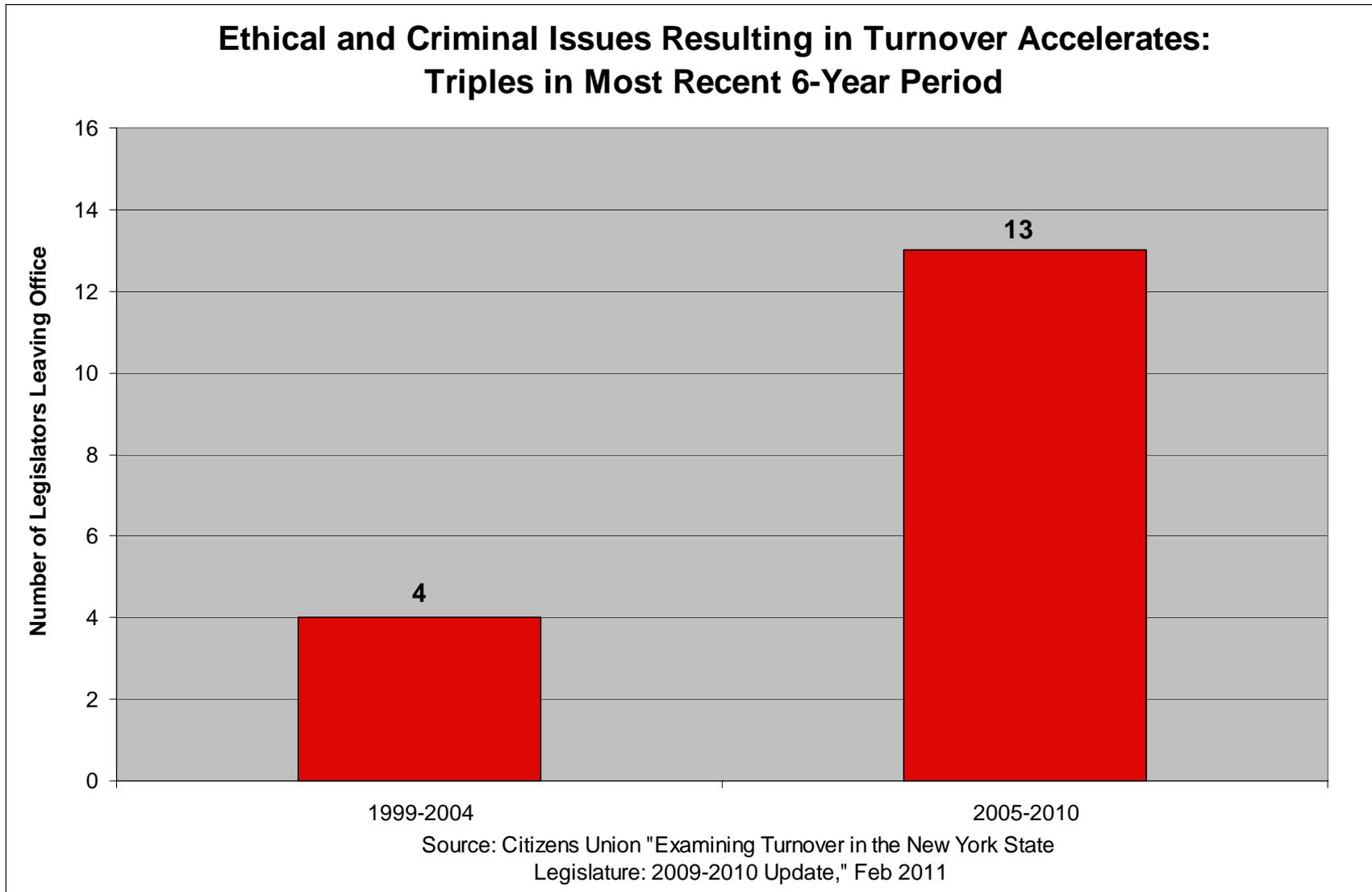
Appendix D – Ethical and Criminal Issues Resulting in Turnover, 1999-2010

### Ethical/Criminal Issues Resulting in Turnover: New York State Legislature from 1999 to 2010



Source: Citizens Union "Examining Turnover in the New York State Legislature: 2009-2010 Update," Feb 2011

Appendix E – Ethical and Criminal Issues Resulting in Turnover Accelerates: Triples in Most Recent 6-Year Period



## Appendix F – Table of Individual Legislators Who Have Left Due to Ethical or Criminal Issues, 1999-2010

<b>LEGISLATIVE TURNOVER DUE TO ETHICAL/CRIMINAL ISSUES BY DISTRICT: 1999-2010</b>					
<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
13	2010	Senate	Hiram Monserrate (D)	Expelled mid-term by vote of Senate due to misdemeanor assault charges. <sup>i</sup>	<b>Jose Peralta (D)</b> (special election)
33	2010	Senate	Pedro Espada (D)	Lost Primary Election due to corruption investigation and other ethical issues. Was later indicted on various corruption charges by the State Attorney General and F.B.I. <sup>ii</sup>	<b>Gustavo Rivera (D)</b>
40	2010	Senate	Vincent Leibell (R)	Resigned before end of Senate term due to pleading guilty to felony corruption charges stemming from federal investigation. Had also won General Election for Putnam County Executive, and resigned from that post. <sup>iii</sup>	<b>Gregory Ball (R)</b>
38	2009	Assembly	Tony Seminerio (D)	Resigned after federal indictment; pled guilty to single count of theft of honest services for acceptance of “consulting fees” from those promised inside access in Albany <sup>iv</sup>	<b>Michael Miller (D)</b> (special election)
13	2008	Senate	John Sabini (D)	Appointed head of the State Racing and Wagering Board due to concerns that he would not win re-election due to a guilty plea for a DWI earlier that year <sup>v</sup>	Hiram Monserrate (D)

<sup>i</sup> Rashbaum, William K. “Monserrate Indicted on Federal Corruption Charges” The New York Times, October 19, 2010. Available: <http://cityroom.blogs.nytimes.com/2010/10/19/monserrate-indicted-on-federal-corruption-charges/>

<sup>ii</sup> Confessore, Nicholas and Rashbaum, William K. “Pedro Espada Accused of Stealing from Healthcare Network” The New York Times, December 14, 2010. Available at: <http://www.nytimes.com/2010/12/15/nyregion/15espada.html?pagewanted=print>

<sup>iii</sup> Matthews, Cara. “Ball: ‘Deeply saddened’ about Leibell” Politics on the Hudson, December 3, 2010. Available at: <http://polhudson.lohudblogs.com/2010/12/03/ball-deeply-saddened-about-leibell/>

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<sup>v</sup> Liu, Irene Jay. “Sabini is appointed head of Racing and Wagering Board (updated).” Capitol Confidential, the Times Union. June 13, 2008. Available at: <http://blog.timesunion.com/capitol/archives/7729/> See also: Bertrand, Donald. “State Sen. John Sabini’s DWI guilty plea revs up call for ouster.” The Daily News. February 19, 2008. Available at: [http://www.nydailynews.com/ny\\_local/queens/2008/02/19/2008-02-19\\_state\\_sen\\_john\\_sabinis\\_dwi\\_guilty\\_plea\\_r.html](http://www.nydailynews.com/ny_local/queens/2008/02/19/2008-02-19_state_sen_john_sabinis_dwi_guilty_plea_r.html)

**LEGISLATIVE TURNOVER DUE TO ETHICAL/CRIMINAL ISSUES  
BY DISTRICT: 1999-2010**

<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
33	2008	Senate	Efrain Gonzalez (D)	Was indicted on federal mail fraud and lost election as result of federal investigation; he later pled guilty to two charges of mail fraud and two charges of conspiracy to commit mail fraud <sup>vi</sup>	Pedro Espada, Jr. (D)
43	2008	Senate	Joseph Bruno (R)	Retired with pending federal investigation; was later indicted on eight counts, including corruption and theft of honest services; shortly after resigning, he became the chief executive officer of CMA Consulting, an information technology company that has contracts with several executive branch offices and agencies and was registered as a lobbyist. <sup>vii</sup>	<b>Roy McDonald (R)</b>
40	2008	Assembly	Diane Gordon (D)	Found guilty of taking bribes; tried to steer city-owned land to a private developer in exchange for a house – result of Brooklyn District Attorney investigation <sup>viii</sup>	<b>Inez Barron (D)</b> (special election)
142	2008	Assembly	Michael Cole (R)	Lost Republican Primary Election after being censured by Assembly and stripped of committee posts due to his spending the night in the apartment of an Albany intern <sup>ix</sup>	<b>Jane Corwin (R)</b>

<sup>vi</sup> Confessore, Nicholas. "Efrain Gonzalez Jr. Pleads Guilty to Fraud Charges." The New York Times. May 8, 2009. Available at: <http://www.nytimes.com/2009/05/09/nyregion/09gonzalez.html>

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**LEGISLATIVE TURNOVER DUE TO ETHICAL/CRIMINAL ISSUES  
BY DISTRICT: 1999-2010**

<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
10	2006	Senate	Ada Smith (D)	Lost Primary Election after being found guilty of harassment; was accused of throwing coffee in a staffer's face at her Albany office. Was censured by then Senate Minority Leader Paterson for "a pattern of inappropriate, unprofessional and often abusive behavior." <sup>x</sup>	<b>Shirley Huntley (D)</b>
25	2006	Assembly	Brian McLaughlin (D)	Resigned amidst corruption indictment; pleaded guilty to racketeering after being arrested on charges of embezzling more than \$2 million in state and labor funds – result of federal investigation. <sup>xi</sup>	<b>Rory Lancman (D)</b>
95	2006	Assembly	Ryan S. Karben (D)	Resigned amidst charges of allegations of improper fraternization with interns <sup>xiii</sup>	<b>Ellen Jaffee (D)</b>
43	2005	Assembly	Clarence Norman (D)	Found guilty on three felony counts in 2005 including intentionally soliciting illegal campaign contributions, stealing \$5,000 donated to his reelection, and falsifying business records; was later sentenced to one to three years in prison for judicial extortion scheme – result of Brooklyn District Attorney investigation <sup>xiii</sup>	<b>Karim Camara (D)</b> (special election)

<sup>x</sup> "Senator Smith Guilty of harassment in coffee throwing incident." Capital News 9. August 27, 2006. Available at: <http://capitalnews9.com/content/headlines/?RegionCookie=12&ArID=96846&SecID=33>. See also: "A Donor and a Critic." The New York Times Empire Zone blog, July 20, 2006. Available at: <http://empirezone.blogs.nytimes.com/2006/07/20/a-donor-and-a-critic/>

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**LEGISLATIVE TURNOVER DUE TO ETHICAL/CRIMINAL ISSUES  
BY DISTRICT: 1999-2010**

<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
34	2004	Senate	Guy Velella (R)	Resigned after pleading guilty to bribery – result of Manhattan District Attorney investigation <sup>xiv</sup>	<b>Jeffrey Klein (D)</b>
57	2004	Assembly	Roger Green (D)	Pleaded guilty to two counts of petty larceny and one count of filing a false instrument (false billing of Albany County District Attorney investigation, then briefly resigned from office after being asked to resign by Speaker Silver. He ran for re-election, however, in November 2004 and won. In 2006, he unsuccessfully ran for Congress, leaving his seat open <sup>xv</sup>	<b>Hakeem Jeffries (D)</b>
79	2003	Assembly	Gloria Davis (D)	Resigned after pleading guilty to taking bribes – result of Manhattan District Attorney investigation <sup>xvi</sup>	Michael Benjamin (D) (special election)
136	2000	Assembly	Jerry Johnson (R)	Pleaded guilty to second degree attempted burglary; felony charge required resignation from office <sup>xvii</sup>	Joseph Errigo (R)

<sup>xiv</sup> Cooper, Michael. "Despite a Strong Showing for Incumbents, Both Parties Claim a Mandate for Reform." The New York Times. Nov 4, 2004. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9501E4DB173CF937A35752C1A9629C8B63&sec=&spon=&pagewanted=all>. See also: <http://www3.manhattanda.org/whatsnew/press/2002-05-09.shtml>

<sup>xv</sup> Hicks, Jonathan. "From Conviction to Re-election and Beyond." The New York Times. December 9, 2005. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9504E1D61031F93AA35751C1A9639C8B63> See also: Hicks, Jonathan. "In Brooklyn, a Fierce Contest to Be Assembly Successor." The New York Times. August 21, 2006. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9A07E3DE123EF932A1575BC0A9609C8B63>

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Appendix G – Table of Causes of Turnover in Individual Assembly and Senate Districts, 2009 – 2010

LEGISLATIVE TURNOVER BY DISTRICT: 2009-2010					
DISTRICT	YEAR LEFT OFFICE	HOUSE	LEGISLATOR	REASON LEAVING OFFICE	SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)
24	2009	Assembly	Mark Weprin (D)	Left mid-term; successfully ran for City Council. <sup>i</sup>	<b>David I. Weprin (D)</b> (special election)
38	2009	Assembly	Tony Seminerio (D)	Resigned mid-term after federal indictment; pled guilty to single count of theft of honest services for acceptance of “consulting fees” from those promised inside access in Albany <sup>ii</sup>	<b>Michael Miller (D)</b> (special election)
77	2009	Assembly	Aurelia Greene (D)	Left mid-term; appointed Deputy Bronx Borough President <sup>iii</sup>	<b>Vanessa Gibson (D)</b> (special election)
85	2009	Assembly	Ruben Diaz, Jr. (D)	Left mid-term; successfully ran for Bronx Borough President <sup>iv</sup>	<b>Marcos Crespo (D)</b> (special election)
1	2010	Assembly	Mark S. Alessi (D)	Lost General Election <sup>v</sup>	<b>Daniel P. Losquardo (D)</b>
3	2010	Assembly	Patricia Eddington (D)	Resigned mid-term to successfully run for Town Clerk of Brookhaven, NY <sup>vi</sup>	<b>Dean Murray (R)</b> (special election)
5	2010	Assembly	Ginny Fields (D)	Lost Primary and General Elections (remained on ballot under third party). <sup>vii</sup>	<b>Alfred Graf (R)</b>
14	2010	Assembly	Bob Barra (R)	Decided not to seek re-election. <sup>viii</sup>	<b>Brian Curran (R)</b>
15	2010	Assembly	Robert Walker (R)	Resigned mid-term to become Chief Deputy Nassau County Executive. <sup>ix</sup>	<b>Michael Montesano (R)</b> (special election)
21	2010	Assembly	Thomas Alfano (R)	Retired. <sup>x</sup>	<b>Edward P. Ra (R)</b>
26	2010	Assembly	Ann M. Carrozza (D)	Decided not to seek re-election. Concerns were also raised that she did not live in the district. <sup>xi</sup>	<b>Edward C. Braunstein (D)</b>
36	2010	Assembly	Michael Gianaris (D)	Successfully ran for State Senate. <sup>xii</sup>	<b>Aravella Simotas (D)</b>
39	2010	Assembly	Jose Peralta (D)	Successfully ran for State Senate in special election. <sup>xiii</sup>	<b>Francisco P. Moya (D)</b>
60	2010	Assembly	Janele Hyer-Spencer (D)	Lost General Election. <sup>xiv</sup>	<b>Nicole Malliotakis (R)</b>
68	2010	Assembly	Adam Clayton-Powell IV (D)	Unsuccessfully ran for U.S. Congress. <sup>xv</sup>	<b>Robert J. Rodriguez (D)</b>
72	2010	Assembly	Adriano Espaillat (D)	Successfully ran for State Senate. <sup>xvi</sup>	<b>Guillermo Linares (D)</b>

**LEGISLATIVE TURNOVER BY DISTRICT: 2009-2010**

<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
79	2010	Assembly	Michael Benjamin (D)	Did not seek re-election, possibly to prepare a run for U.S. Congress in 2012. <sup>xvii</sup>	<b>Eric Stevenson (D)</b>
89	2010	Assembly	Adam Bradley (D)	Left mid-term; successfully ran for mayor of White Plains. While serving as Mayor, he was found guilty of attempted third degree assault in a domestic violence case involving his wife. <sup>xviii</sup>	<b>Robert Castelli (R)</b> (special election)
92	2010	Assembly	Richard Brodsky (D)	Unsuccessfully ran for NYS Attorney General. <sup>xix</sup>	<b>Tom Abinanti (D)</b>
99	2010	Assembly	Greg Ball (R)	Successfully ran for State Senate. <sup>xx</sup>	<b>Steve Katz (R)</b>
108	2010	Assembly	Tim Gordon (I)	Lost General Election.	<b>Steve McLaughlin (R)</b>
115	2010	Assembly	David Townsend (R)	Unsuccessfully ran for Oneida County Sheriff. <sup>xxi</sup>	<b>Claudia Tenney (R)</b>
119	2010	Assembly	Joan Christensen (D)	Retired. <sup>xxii</sup>	<b>Sam Roberts (D)</b>
121	2010	Assembly	Albert Stirpe (D)	Lost General Election. <sup>xxiii</sup>	<b>Donald Miller (R)</b>
122	2010	Assembly	Dede Scozzafava (R)	Did not seek re-election. <sup>xxiv</sup>	<b>Kenneth D. Blankenbus (R)</b>
130	2010	Assembly	Joseph Errigo (R)	Did not seek re-election. <sup>xxv</sup>	<b>Sean Hanna (R)</b>
131	2010	Assembly	Susan John (D)	Did not seek re-election. <sup>xxvi</sup>	<b>Harry Bronson (D)</b>
135	2010	Assembly	David Koon (D)	Lost General Election. <sup>xxvii</sup>	<b>Marc C. Johns (R)</b>
136	2010	Assembly	James Bacalles (R)	Unsuccessfully ran for State Senate. <sup>xxviii</sup>	<b>Phillip Palmesano (R)</b>
137	2010	Assembly	Thomas O'Mara (R)	Successfully ran for State Senate. <sup>xxix</sup>	<b>Christopher Friend (R)</b>
138	2010	Assembly	Francine Delmonte (D)	Lost General Election. <sup>xxx</sup>	<b>John Cerretto (R)</b>
146	2010	Assembly	Jack Quinn (R)	Unsuccessfully ran for State Senate. <sup>xxxii</sup>	<b>Kevin Smardz (R)</b>
150	2010	Assembly	William Parment (D)	Retired. <sup>xxxiii</sup>	<b>Andrew Goodell (R)</b>
3	2010	Senate	Brian Foley (D)	Lost General Election. <sup>xxxiiii</sup>	<b>Lee Zeldin (R)</b>
7	2010	Senate	Craig Johnson (D)	Lost General Election. <sup>xxxv</sup>	<b>Jack Martins (R)</b>
11	2010	Senate	Frank Padavan (R)	Lost General Election. <sup>xxxvi</sup>	<b>Tony Avella (D)</b>
12	2010	Senate	George Onorato (D)	Retired. <sup>xxxvii</sup>	<b>Michael Gianaris (D)</b>

**LEGISLATIVE TURNOVER BY DISTRICT: 2009-2010**

<b>DISTRICT</b>	<b>YEAR LEFT OFFICE</b>	<b>HOUSE</b>	<b>LEGISLATOR</b>	<b>REASON LEAVING OFFICE</b>	<b>SUCCEEDED BY (CURRENT INCUMBENTS IN BOLD)</b>
13	2010	Senate	Hiram Monserrate (D)	Expelled mid-term from the Senate due to misdemeanor assault charges. <sup>xxxvii</sup>	<b>Jose Peralta (D)</b> (special election)
31	2010	Senate	Eric Schneiderman (D)	Successfully ran for Attorney General. <sup>xxxviii</sup>	<b>Adriano Espaillat (D)</b>
33	2010	Senate	Pedro Espada (D)	Lost Primary Election due to corruption investigation and other ethical issues. Was later indicted on various corruption charges. <sup>xxxix</sup>	<b>Gustavo Rivera (D)</b>
38	2010	Senate	Thomas Morahan (R)	Deceased. <sup>xl</sup>	<b>Frank Carlucci (D)</b>
40	2010	Senate	Vincent Leibell (R)	Resigned before end of Senate term due to pleading guilty to felony corruption charges. Had also won General Election for Putnam County Executive, and resigned from that post. <sup>xli</sup>	<b>Gregory Ball (R)</b>
48	2010	Senate	Darrel Aubertine (D)	Lost General Election. <sup>xlii</sup>	<b>Patty Ritchie (R)</b>
53	2010	Senate	George Winner (R)	Retired. <sup>xliii</sup>	<b>Thomas O'Mara (R)</b>
58	2010	Senate	William Stachowski (D)	Lost Primary Election and General Election (remained on as third party candidate). <sup>xliv</sup>	<b>Timothy Kennedy (D)</b>
59	2010	Senate	Dale Volker (R)	Retired. <sup>xlv</sup>	<b>Patrick Gallivan (R)</b>
60	2010	Senate	Antoine Thompson (D)	Lost General Election. <sup>xlvi</sup>	<b>Mark Grisanti (R)</b>

<sup>i</sup> “2009 General Election Results.” Gotham Gazette. November 4, 2009. Available at: <http://www.gothamgazette.com/article//20091103/255/3090>

<sup>ii</sup> Zambito, Thomas. “Anthony Seminerio’s 30 years in office ends with 11 to 14 in prison.” The Daily News. June 24, 2009. Available at: [http://www.nydailynews.com/news/ny\\_crime/2009/06/25/2009-06-25\\_anthony\\_seminerios\\_30\\_years\\_in\\_office\\_ends\\_with\\_11\\_to\\_14\\_in\\_prison.html](http://www.nydailynews.com/news/ny_crime/2009/06/25/2009-06-25_anthony_seminerios_30_years_in_office_ends_with_11_to_14_in_prison.html)

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