



ALBANY LAW SCHOOL

Institute of Legal Studies

**Can a NYS Constitutional
Convention Strengthen
Government Ethics?**

March 25, 2016

80 NEW SCOTLAND AVENUE
ALBANY, NEW YORK 12208-3494
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Can a NYS Constitutional Convention Strengthen Government Ethics?

March 25, 2016

1:30pm – 4:30pm

1:30pm – 1:35pm

Welcome

Alicia Ouellette, Dean, Albany Law School

1:35pm – 2:00pm

Introductory Remarks

H. Carl McCall, Chair, SUNY Board of Trustees

2:00pm – 2:05pm

Overview of Program

Henry M. Greenberg, Greenberg Traurig LLP

2:05pm – 2:25pm

Keynote

Richard Briffault, Columbia Law School

2:25pm – 3:15pm

Panel 1 - Should Ethics Reform Be in the NYS Constitution?

Moderator:

Henry M. Greenberg, Greenberg Traurig, LLP

John Dunne, Esq., Whiteman Osterman & Hanna

Richard Brodsky, Demos and the Wagner Graduate School of Public Service at NYU

Karl Sleight, Esq., Harris Beach PLLC

Richard Rifkin, Esq., New York State Bar Association

3:15pm – 4:05pm

Panel 2 - The Issues

Moderator:

Henry M. Greenberg, Greenberg Traurig, LLP

Larry Norden, Brennan Center's Democracy Program

Barbara Bartoletti, League of Women Voters of NYS

Blair Horner, New York Public Interest Research Group

4:05pm – 4:30pm

Panel 3 - Summary Discussion

Closing Remarks

Henry M. Greenberg, Greenberg Traurig LLP

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SPEAKER BIOGRAPHIES

BARBARA BARTOLETTI has been a member of the League of Women Voters since 1978 and the Legislative Director for the League of Women Voters of New York State since 1988. Bartoletti oversees all legislation of interest to the League in the State Legislature. She lectures statewide on advocacy, and issues and topics such as informed and active participation in government. Bartoletti offers political commentary for local television outlets in the Capital District. She advocates on good government issues, as well as other League issues, to statewide editorial boards. Bartoletti has worked extensively in central Asia, where she has presented at conferences and led workshop training in advocacy, media relations, and coalition building in Russia and Armenia. She also gives numerous workshops for not-for-profit advocacy organizations to help them impact state government. She is a member of the Regents Advisory Commission for Accreditation of Proprietary Colleges and the Federal Election Assistance Commission in Washington, DC. In July 2013, Bartoletti was appointed by Governor Andrew Cuomo as a special adviser to New York State's Moreland Act Commission to Investigate Public Corruption.

PROF. RICHARD BRIFFAULT is the Joseph P. Chamberlain Professor of Legislation at Columbia Law School. His research, writing and teaching focus on state and local government law, legislation, the law of the political process, government ethics, and property. Professor Briffault is co-author of the textbook *STATE AND LOCAL GOVERNMENT LAW* (7th ed. 2009) and principal author of *DOLLARS AND DEMOCRACY: A BLUEPRINT FOR CAMPAIGN FINANCE REFORM* (the Report of the Commission on Campaign Finance Reform of The Association of the Bar of the City of New York 2000). His recent articles and works in progress include: "Of Constituents and Contributors" (*University of Chicago Legal Forum*, forthcoming 2015); "The Uncertain Future of the Corporate Contribution Ban" (*Valparaiso Law Review*, forthcoming 2015); and "The Anxiety of Influence: The Evolving Regulation of Lobbying" (*Election Law Journal* 2014). In 2014, Professor Briffault was appointed Chair of the Conflicts of Interest Board of the City of New York. He was a member of New York State's Moreland Act Commission to Investigate Public Corruption (2013-14), and served as a member of or consultant to several New York City and State commissions dealing with state and local governance, including the New York State Commission on Local Government Efficiency &

Competitiveness (2007-08). He is currently the Reporter for the American Law Institute's project on Principles of Government Ethics. He is also Vice-Chair of Citizens Union of the City of New York. Professor Briffault joined the Columbia faculty in 1983. He was law clerk to the Honorable Shirley M. Hufstедler of the US Court of Appeals for the Ninth Circuit, and served as Assistant Counsel to New York Governor Hugh L. Carey. Professor Briffault received a B.A., *summa cum laude*, from Columbia University and a J.D., *magna cum laude*, from Harvard University.

HON. RICHARD BRODSKY is a former 14-term New York State Assemblyman from Westchester and a Senior Fellow at Demos. In the New York State Assembly, Brodsky chaired the Committee on Environmental Conservation creating New York's Environmental Protection Fund which has disbursed billions to preserve and restore the environment statewide. He successfully challenged Indian Point Nuclear Plant on a range of issues including polluting the Hudson River, faulty evacuation planning, and hazardous radioactive leaks. As Chairman of the Assembly Committee on Corporations, Authorities and Commissions, he authored the historic 2009 Public Authorities Reform Act, a sweeping reform of all of New York's 700 authorities, the most significant reform of New York State government in decades. He has appeared on CNN, MSNBC, and Fox Business News, among many other national and statewide TV stations. He has been featured on dozens of radio stations including NPR, WNYC, WCBS and WINS. His op-eds have appeared in the *New York Times*, *New York Daily News* and other major publications. Brodsky attended Brandeis University, where he earned a bachelor's degree in Politics, and Harvard Law School, where he received a J.D.

JOHN R. DUNNE, ESQ., is Senior Counsel at Whiteman Osterman & Hanna. His areas of practice include: Environmental, Government Relations, Insurance, Litigation, and Arbitration and Mediation. Prior to joining Whiteman Osterman & Hanna as counsel, Dunne had served in a variety of federal, state and local government positions for 30 years. From 1990 to 1993, he was the Assistant Attorney General for Civil Rights at the US Department of Justice. From 1966 to 1989, he was a member of the New York State Senate. Throughout his local and state service, Dunne actively practiced law on Long Island, as a partner in the national law firm of Rivkin, Radler, Dunne & Bayh. As Assistant Attorney General from 1990 until 1993, he headed up the enforcement of all federal civil rights laws, where he argued cases in federal appeals courts and in the US Supreme Court. Dunne was awarded both the Edmund Randolph and the John Marshall awards for distinguished service. During 24 years as a state senator, he served at various times as Deputy Majority Leader and chair of the judiciary, environmental protection, insurance and prisons committees. He has authored a number of articles for various law school journals including Hofstra, Fordham and St. Louis, and for the op-ed

pages of *The New York Times*, *The Washington Post*, *USA Today* and the *New York Law Journal*. Dunne is a graduate of Georgetown University and Yale Law School.

HENRY M. GREENBERG, ESQ., is a shareholder at Greenberg Traurig, LLP. As former Counsel to the New York State Attorney General, General Counsel to a major New York State agency, and federal prosecutor, he has handled numerous high-profile matters. He concentrates his practice on civil litigation, criminal and civil investigations, health law matters, and regulatory and administrative law. From 2007 to 2010, Greenberg served as Counsel to former New York State Attorney General Andrew M. Cuomo. In that capacity, he worked on some of the agency's most significant litigation and public policy initiatives. He also served as General Counsel for the New York State Department of Health (1995 to 2000), where he was the chief legal advisor to the Commissioner of Health and administered an office of more than 100 attorneys engaged in virtually all aspects of administrative law. Greenberg has also served as Counsel to the Lieutenant Governor of New York State (1995), an Assistant US Attorney (AUSA) for the Northern District of New York (1990 to 1995) and law clerk to then-Judge (later Chief Judge) Judith S. Kaye of the New York Court of Appeals (1988-1990). As an AUSA, he prosecuted numerous federal criminal cases, including white collar crime and public corruption. Presently, he chairs the Third Department Judicial Screening Committee and the New York State Fair Advisory Board, and is a member of the State Judicial Screening Committee. Greenberg is a frequent lecturer and has been published several times on a wide range of legal subjects, including health law, administrative law, constitutional law, criminal procedure, trial practice, appellate practice, legal history and judicial philosophy. He graduated, *cum laude*, from the Syracuse University College of Law.

BLAIR HORNER is currently Executive Director of the New York Public Interest Research Group (NYPIRG). In his more than 30 years of work with NYPIRG, he has overseen community organizing activities and directed statewide issue campaigns. He has lobbied on a wide range of issues, including energy policy, political reform, government openness and accountability, tobacco control, health care, and financial services. He has written scores of reports examining issues including redistricting, campaign finance, political ethics, bank fees, auto insurance, health care, tobacco use, lead poisoning and higher education funding. From 2007 through early 2008, Horner was a Special Advisor on Policy and Public Integrity to the New York State Attorney General. Among his responsibilities was the creation of the "Project Sunlight" website, which allows New Yorkers to simultaneously search governmental databases for information on campaign contributions, lobbying, contracts, and legislation, among other topics. Starting in early 2008, he returned to NYPIRG as its Legislative Director. From 2011 until late 2013, Horner was the Vice President for Advocacy for the American

Cancer Society, a non-partisan, national health organization. In that capacity, he oversaw the lobbying, community organizing and statewide issue campaigns in New Jersey and New York, as well as its federal advocacy efforts. Horner's comments have been widely reported by the media. He has been interviewed on the *Today Show*, *World News Tonight*, *Al Jazeera America*, on A&E's *Investigative Reports*, and profiled in the *New York Times*. Horner's opinion pieces have been published in the *Albany Times Union*, *Buffalo News*, *Rochester Democrat & Chronicle*, *New York Daily News*, *Newsday* and other New York dailies. He is a regular commentator on WAMC public radio and its affiliates. Horner has received numerous awards, including awards from the AARP, Common Cause, the League of Women Voters, the New York Attorney General, the New York State Trial Lawyers Association, and the New York City Asthma Partnership. In fall of 1999, *Empire State Reports* magazine named Horner as one of the 25 most influential New Yorkers in the previous 25 years. In spring of 2014, he was named one of The Albany Power 100 by *City & State Magazine*.

HON. H. CARL MCCALL was appointed Chairman of the State University of New York Board of Trustees on October 17, 2011. He first joined the Board as a member on October 22, 2007. McCall served as Comptroller of the State of New York from May 1993 to December 2002. As Chief Fiscal Officer of the State, he was responsible for governmental and financial oversight and pension fund management. As sole Trustee of the 880,000-member State and Local Retirement Systems, McCall was responsible for investing a pension fund valued at \$120 billion. McCall has had a distinguished career as a public servant. He served three terms as a New York State Senator representing the upper Manhattan district of New York City; as an Ambassador to the United Nations; as a Commissioner of the Port Authority of New York and New Jersey; and as the Commissioner of the New York State Division of Human Rights. McCall has been a passionate advocate for public education. He served as President of the New York City Board of Education from 1991–1993, where he set policy for the largest school system in the nation, and as the Chairman of the Public Higher Education Conference Board, a coalition of 14 member organization which supports a strong and vibrant public higher education system in New York State. He has also been active in the private sector, serving as a Vice President of Citibank and as Corporate Director of the New York Stock Exchange, Tyco International, New Plan Realty Corporation, and, presently, Ariel Investment. McCall was educated at Dartmouth College, Andover Newton Theological Seminary, and the University of Edinburgh. He is the recipient of nine honorary degrees.

LAWRENCE NORDEN, ESQ., is Deputy Director of the Democracy Program at the Brennan Center for Justice at the New York University School of Law. He works on a variety of issues, such as money in politics, voting, and government dysfunction. During his time at the Brennan Center, Norden has authored several nationally recognized

reports and articles related to law and democracy, including “Better Design, Better Elections” (July 2012) and “Voting Law Changes in 2012” (October 2011). His work has been featured in media outlets across the country, including *The New York Times*, *The Wall Street Journal*, Fox News, CNN, MSNBC, and National Public Radio. He has testified before Congress and several state legislatures on numerous occasions. In 2009, Norden served as Chair of the Ohio Secretary of State's bipartisan Election Summit and Conference, authoring a report to the State of Ohio for the purpose of improving that state's election laws. The report was endorsed by the bipartisan Ohio Association of Election Officials and the *Columbus Dispatch*, which praised him for “following an independent path” in developing the report and recommendations. Norden was the Keynote Speaker at the Sixth Annual Votobit International Conference on Electronic Voting (Buenos Aires 2008), and the 2009 Electronic Voting Technology Workshop/Workshop on Trustworthy Elections (Montreal 2009). In June 2009, he received the Usability Professional Association's Usability In Civic Life Award for his “pioneering work to improve elections.” Norden is the lead author of the book *THE MACHINERY OF DEMOCRACY: PROTECTING ELECTIONS IN AN ELECTRONIC WORLD* (Academy Chicago Press 2006) and a contributor to the *ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES* (Routledge 2007). For the last several years, Norden has managed and written for the Brennan Center's blog on New York State, *ReformNY*.

RICHARD RIFKIN, ESQ., is Special Counsel to the New York State Bar Association, former Counsel to Governors David Paterson and Eliot Spitzer, and former Executive Director of the New York State Ethics Commission. Rifkin was admitted to the Bar and entered into the private practice of law in 1966. From 1970 to 1973, he served during the Session as Staff Counsel to Assemblyman Leonard Stavinsky. He was appointed Counsel to the Bronx Borough President in 1973. In 1979, Attorney General Abrams appointed Mr. Rifkin Deputy First Assistant Attorney General; and in 1984, Counsel to the Attorney General; and in 1991, First Assistant Attorney General. From 1994 to 1999, Rifkin served as Executive Director of the State Ethics Commission. He was appointed in 1999 by Attorney General Spitzer as Deputy Attorney General for the Office's State Counsel Division. In 2007, he was appointed Special Counsel to the Governor, where he remained until June 2008, when he assumed his current position of Special Counsel to the New York State Bar Association. Since 1984, Mr. Rifkin has served as a member of the Chief Administrative Judge's Advisory Committee on Civil Practice. He has served on various committees of the New York City Bar Association and New York State Bar Association, and was, for two terms, a member of the House of Delegates of the latter. Rifkin received a B.A. degree, *magna cum laude*, from Washington and Jefferson College, having been elected to Phi Beta Kappa, and was awarded an LL.B. degree by Yale Law School.

KARL SLEIGHT, ESQ., is a member of the Harris Beach PLLC law firm and co-leader of the Government Compliance and Investigations Practice Group. He also practices in the Business and Commercial Litigation Practice Group. Sleight advises clients on matters related to corporate compliance and government investigations, and federal and state regulatory actions. He has represented numerous Fortune 500 companies involved in government inquiries and serves as Special Counsel for Major League Baseball. Since leaving government service, Sleight has testified before the New York State Legislature on ethics reform and, at the request of the New York State Bar Association President, chaired the Due Process and Investigations Subcommittee for the Association's 2011 Task Force on Government Ethics. Sleight served as the Executive Director of the New York State Ethics Commission from 2001-2007, where he was responsible for conducting investigations of high-ranking government officials and private sector entities that interact with government officials. He previously served as an Assistant Attorney General under former Attorneys General Dennis Vacco and Eliot Spitzer, where he was primarily responsible for prosecuting complex narcotics organizations, government corruption, and homicide cases. Sleight also served as Deputy Inspector General with the Office of the State Inspector General. In 1997, he received the Attorney General's Louis J. Lefkowitz award for exceptional effort in prosecution of a narcotics cartel operating throughout the eastern US, and, in 1999, he received an award from the New York State Police for exceptional public service in a high-profile homicide prosecution.

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Discussion Materials:

New York State Constitution

<https://www.dos.ny.gov/info/pdfs/Constitution.pdf>

The Ethical Dimension Undergirding Provisions of the Constitution

Article I section 9. Right to assemble and petition; divorce; lotteries; pool-selling and gambling; laws to prevent; pari-mutuel betting on horse races permitted; games of chance, bingo or lotto authorized under certain restrictions.

Article II section 3. Persons excluded from the right of suffrage.

Article II section 8. Bi-partisan registration and election board.

Article II section 9. Presidential elections; special voting procedures authorized.

Article III section 7. Qualifications of members; prohibitions on certain civil appointments; acceptance to vacate seat.

Article VI section 2(c). Court of appeals; organization; designations; vacancies, how filled; commission on judicial nomination.

Article VI section 22. Commission on judicial conduct; composition; organization and procedure; review by court of appeals; discipline of judges or justices.

Article VI section 24. Court for trial of impeachments; judgment.

Article XIII section 5. Removal from office for misconduct.

Article XIII section 13(a) (b). Law enforcement and other officers.

NYSBA Task Force on Government Ethics published by the New York State Bar Association - January 28, 2011

<https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26662>

Moreland Commission

1. Executive Order Creating the Moreland Commission to Investigate Public Corruption:

Exec. Order No. 106, Designation Pursuant to Section 6 and Subdivision 8 of Section 63 of the Executive Law (2013), <https://www.governor.ny.gov/news/no-106-designation-pursuant-section-6-and-subdivision-8-section-63-executive-law>.

2. Press Release from the Moreland Commission Announcing the Release of the Report:

Press Release, Moreland Commission to Investigate Public Corruption, Moreland Commission to Investigate Public Corruption Releases Report (Dec. 2, 2013), <http://publiccorruption.moreland.ny.gov/press-release/moreland-commission-investigate-public-corruption-releases-report.html>.

3. Press Release from Schniederman Announcing AG Program Bill:

Press Release, N.Y.S. Att’y Gen., A.G. Schneiderman Proposes Sweeping Legislation to Reform New York State Government, (May 27, 2015), <http://www.ag.ny.gov/press-release/ag-schneiderman-proposes-sweeping-legislation-reform-new-york-state-government>. (Introduced in the Assembly as A. 7870 (Lentol) (2015)).

4. Assembly Member Lentol Introduces AGs Program Bill (Senate did not introduce the AG Program Bill)

A. 7870, 201st Leg., 1st Sess. (N.Y. 2015).

5. 2016–17 Executive Budget Article VII- Ethics Reform

N.Y.S. DIV. OF BUDGET, 2016–17 FREESTANDING ARTICLE VII BILLS: GOOD GOVERNMENT & ETHICS REFORM, (last visited Mar. 21, 2016), <https://www.budget.ny.gov/pubs/executive/eBudget1617/fy1617artVIIbills/GGER.pdf>.

6. Senate and Assembly One-House Budget Bills 2016–17 (Executive’s Ethics Reform Bill)

S. 4611, 201st Leg., 2d. Sess. (N.Y. 2016) (Same as A. 9011).

7. In response to the Executive’s Ethics Reform Bill in budget, the Assembly passes their version of ethics reform as a stand alone bill (outside of budget) on March 15, 2016.

A.9535, 201st Leg., 2d. Sess. (N.Y. 2016).

8. Misc. Member Bills Regarding Ethics Reform

A.9504, 201st Leg., 2d. Sess. (N.Y. 2016) (Same as S.324).

A.4643A, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture).

A.377A, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

A.4641, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

A.6722, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

S.125A, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

S.126A, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

S.2660, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

S.6326, 201st Leg., 1st Sess. (N.Y. 2015) (Pension Forfeiture)

S.4307, 201st Leg., 1st Sess. (N.Y. 2015) (Same as A.6078A) (Relating to Record Retention)

S.2505, 201st Leg., 1st Sess. (N.Y. 2015) (Additional Disclosure Requirements for Lobbyists)

[The Participation of New York State Governors in Moreland Act Commissions](#)

Albany Law School Research Paper No. 13

Bennett Liebman

[The Case Law Under the Moreland Act](#)

Bennett Liebman

Albany Law School

Date posted:

25 Aug 2015

"Ethics and Lobbying Reform in State Government (Again)"

By Karl J. Sleight and Joan P. Sullivan

December 6, 2011 / Authored Article

<http://www.harrisbeach.com/media-news/9215>

"Public Integrity Reform Act of 2011"

September 16, 2011/Legal Alert

<http://www.harrisbeach.com/media-news/9150>

"Ethics and the Constitution"

By Karl J. Sleight and John A. Mancuso

July 6, 2010 / Authored Article

<http://www.harrisbeach.com/files/2010/20100629111344107.PDF>

"Ethics Law and the Public Authorities of New York State"

By Karl J. Sleight and Joan P. Sullivan

February 4, 2010 / Authored Article

<http://www.harrisbeach.com/files/2010/GovtLawPolicyJournalSleightSullivanFall2009.pdf>

"Unending Quest for Ethical Government"

By Karl J. Sleight

May 31, 2009 / Authored Article

<http://www.harrisbeach.com/media-news/9077>

"Update on Ethics, Lobbying Reform in New York State Government"

By Karl Sleight and Joan P. Sullivan

May 29, 2009 / Authored Article

<http://www.harrisbeach.com/files/2011/NYLJSleightandSullivan5-20-09.pdf>

"Ethics, Lobbying and Public Integrity in New York State Government"

By Karl J. Sleight and Thomas DeSimon

May 15, 2007 / Authored Article

<http://www.harrisbeach.com/files/2011/NYLJEthicsArticle%20-SleightandDeSimon.pdf>

"Quitting Time"

By Karl J. sleight

June 5, 2005 / Authored Article

<http://www.harrisbeach.com/media-news/9078>