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Convicted, but Still With a Pension

By David Buchwald

IN New York State, both the former Assembly speaker Sheldon Silver and the former Senate majority leader Dean Skelos have recently been tried and convicted on numerous federal charges of corruption. They share another distinction: Since their trials, they have both applied for their state pensions. Sadly, they have every right to do so.

Under current law in New York, a former public official sitting in prison for a felony conviction for misconduct in office can still receive his or her pension checks. In the cases of Mr. Silver and Mr. Skelos, those payouts could easily total millions of dollars each.

And they will join a host of other former public officials, including but not limited to elected lawmakers who have been convicted of crimes related to their jobs but who are nonetheless receiving pensions. This is not only a waste of taxpayer money, but it also conveys the message that Albany tolerates — and is even willing to bankroll — those proved beyond any reasonable doubt to be corrupt.

Changing this situation for state and local officials requires an amendment to the New York State Constitution, which at present mandates that pension benefits not be diminished once someone enters the state pension system. (In 2011, a statutory change fixed this problem for new public employees, but it has no effect on a vast majority of New York's public officials, who served in some state or local capacity before the end of that year.)

While the constitutional provision protects those who serve honorably, those who dishonor their office by criminal conduct deserve no such protection. More than half of all states have passed some form of pension forfeiture for convicted public officials.

A constitutional amendment allowing the forfeiture of a pension following a felony conviction, with a judge allowed to weigh mitigating circumstances, would cause potential lawbreakers to think twice before committing the crime. Furthermore, it would at least begin to repay New Yorkers for the harm that befalls all of us when the public's trust is eroded by corruption.

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In his most recent State of the State address, Gov. Andrew M. Cuomo reiterated his support for a broad pension-forfeiture constitutional amendment. His remarks follow encouraging statements from Assembly Speaker Carl E. Heastie and the Senate majority leader, John Flanagan, in their legislative session opening remarks. Last year, both the State Assembly and the Senate passed

every player in Albany shares my belief that it is the right thing to do.

Some deny that corruption is a serious problem that can be addressed through legislation. Others refuse to support the amendment based on the mistaken premise that pension forfeiture harms the families of the convicted public officials; of course, it is the corrupt officials who harm their families when they violate the law.

Some public sector unions have also resisted this reform on the grounds that any reduction in pension rights will lead to broader pension reductions. I believe that, while perhaps well intentioned, they have things backward — the real threat to public pensions is the erosion of public support for them that occurs every time there is another headline about a corrupt official heading to prison who will continue to collect a full pension.

They have also expressed concerns that the law could be used unfairly against low-level employees. But the reform is specifically designed to target people convicted of felonies in connection with their office.

All of these objections can be taken up and resolved during negotiations. Ultimately, however, cynicism about New York State politics is the real barrier that needs to be overcome. Public support in polls for stripping pensions from corrupt officials is clear: For example, a Quinnipiac University poll last March found that voters supported pension forfeiture for elected officials by a margin of 76 percent to 18 percent. However, far too many of

my colleagues believe that the public doesn't care enough about this issue to demand action.

If our state is to make real progress on our pressing needs, like improving education and growing our economy, there must be a base of public trust in our government. Pension payouts to convicted officials undermine that confidence.

If passed by two successive Legislatures (as required in New York), the pension-forfeiture constitutional amendment could be put before the voters for a referendum as early as November 2017. If not, New Yorkers may instead turn to another question on that November Election Day ballot — because every 20 years voters are asked whether a New York State constitutional convention should be called.

The Legislature's actions in 2016 will shed significant light on whether a constitutional convention is needed to clean up Albany and to honor our pledge of honest government. I hope we don't have to wait that long. □



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bills to amend the Constitution in this fashion.

While the pension-forfeiture bills differ in their scope and detail, both would be a significant improvement over the status quo. In theory, this should mean that this real reform can be achieved for New Yorkers in the very near future.

However, numerous obstacles lie ahead before this constitutional amendment can become law. I have served as the principal Assembly sponsor of this proposal for all three of my years in the State Assembly, so I am aware that not