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June 11, 2013

The Honorable Sheldon Silver
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable Dean G. Skelos
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

The Honorable Jeffrey D. Klein
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 913
Albany, NY 12247

Re: Governor's Program Bill #3: Public Trust Act

Dear Speaker Silver, Majority Coalition Leader Skelos, and Majority Coalition Leader Klein:

On behalf of the District Attorneys Association of the State of New York (DAASNY), a voluntary organization comprised of the 62 elected District Attorneys in our State and the Special Narcotics Prosecutor of the City of New York, we write in support of Governor's Program Bill #3, which would enact provisions of the Public Trust Act (the "Act").

Public servants control funding streams, public works projects, health and safety, and myriad policies that impact the lives of every New Yorker. Taken together, the well-reasoned measures in the Act will hold individuals accountable for egregious violations of the public trust. If we cannot hold public servants accountable for their crimes or protect the integrity of the public, we lose the trust of the citizenry and the integrity of our democracy.

The Act addresses a number of areas where relatively weak state laws have allowed behavior that corrupts and defrauds our state and local governments to go unchecked. Strengthening our state laws in this area would send a clear message that this kind of criminality will not be tolerated at any level across the state. We highlight the most significant of the Act's several important improvements in existing law:

First, the Act improves the existing bribery and bribe receiving statutes in important ways. Although the current bribery laws purport to treat offers to bribe as seriously as completed bribes, the Court of Appeals has interpreted these statutes in a very stringent fashion, requir-

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ing either a mutual agreement between the parties or at least an understanding that the public servant will in fact be influenced. *People v. Tran*, 80 N.Y.2d 170, 176 (1992). This reality has made it more difficult to prosecute those who offer bribes to our public servants, and is in tension with the intent of the Legislature when the law was enacted. *See id.* at 181 (Simons, J., dissenting) (“The Legislature could hardly have intended that citizens are free to offer cash to public officials just so long as the officials do nothing to prompt the offer.”). In addition to transforming the bribery statutes into a strong tool, the Act also eliminates an obvious anomaly by making the intent necessary for public bribery statutes consistent with that for commercial bribery, sports bribery, and labor bribery, all of which simply require an intent to influence the individual involved. Additionally, the Act gradates bribery more strongly to punish larger bribes more seriously, beginning with a D felony and rising to a B felony for bribing or bribe receiving in excess of \$10,000.

Second, the Act strongly targets official misconduct by enhancing the penalty for violating the existing PL §195.00 (Official Misconduct) from an A misdemeanor to an E felony for violations of the statute that do not result in the actual obtaining or depriving of a benefit, or where the benefit is not capable of valuation. It also creates the new crimes of Official Misconduct in the Second Degree, a D felony, and Official Misconduct in the First Degree, a C felony, where the benefit gained from such misconduct is valued in excess of \$1,000 and \$3,000, respectively. By treating this kind of misconduct seriously for the first time, this aspect of the Act would greatly benefit anti-corruption efforts.

Third, the Act repeals the ineffectual PL §195.20, Defrauding the Government, and replaces it with the new crime of Corrupting the Government. This new charge would apply to ongoing, systematic schemes to defraud one or more government entities, regardless of whether the perpetrator is a public official. Four degrees of this crime, ranging from an E felony to a B felony, would apply based upon monetary gain. This provision is extremely important in treating frauds against the public seriously, and is a centerpiece of the legislation.

Fourth, the Act creates a new class of crimes called Public Corruption, which increases penalties by one degree for specific existing crimes – larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering – in cases where the victim is a public entity. Like the proposed Corrupting the Government statute, Public Corruption would apply regardless of whether the perpetrator was a public official or a person targeting a public entity.

Fifth, the Act rethinks the penalties attendant to certain violations. It increases the maximum level of fines that can be levied to three times the amount of the defendant’s gain for the crime of corrupting the government. It bars an individual convicted of any of the bribery, official misconduct, or public corruption crimes from registering as a lobbyist or serving in civil office. And it disqualifies individual and corporate offenders from bidding on and obtaining state contracts when convicted of crimes set forth in Public Trust Act.

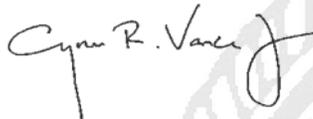
Sixth, the Act creates a class A misdemeanor for those who fail to report to a district attorney a bribe or attempted bribe. One of the difficulties with prosecuting public corruption is the paucity of witnesses willing to come forward to report these activities. This provision, which builds on the existing duty for certain state officials contained in Executive Law §55, is therefore a welcome addition to the law.

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Finally, the Act changes the standard from automatic transactional to automatic use immunity in narrow instances in which a witness testifies before a grand jury investigating government fraud or misconduct in public office. This means that the witness, who may or may not also be part of the criminal transaction under investigation or any other criminal transaction, could still be prosecuted for his or her role if prosecutors develop evidence that is neither derived directly nor indirectly from the evidence given by the witness. This is consistent with the Constitutional standard used in federal court and the overwhelming majority of other states for all crimes, although the change proposed in the Act would be much narrower in scope.

For all these reasons, DAASNY strongly supports the Public Trust Act and looks forward to seeing this bill enacted into law.

Sincerely,



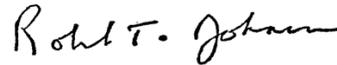
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President, DAASNY



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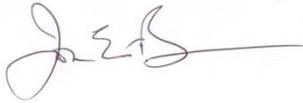
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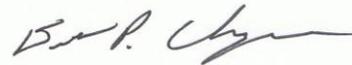
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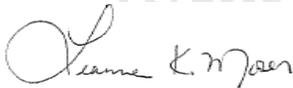
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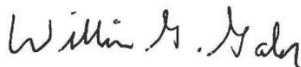
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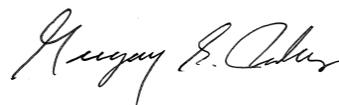
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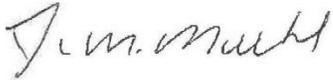


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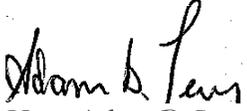
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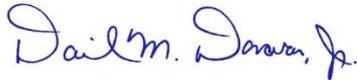
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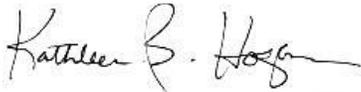
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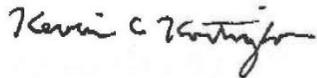
Hon. Gwen Wilkinson
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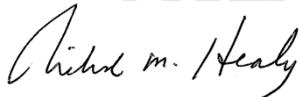
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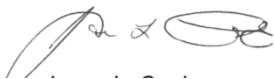
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cc: Governor Andrew M. Cuomo