

Skelos decision shows need for a constitutional convention, reformers say

Good-government advocates: changes necessary to curb corruption

By WILL BREDDERMAN

Ethics advocates said a court decision wiping out a landmark corruption conviction in New York bolsters their case for revising New York state's constitution.

A federal appeals panel in Manhattan Tuesday vacated the 2015 guilty verdict that cost former Senate Majority Leader Dean Skelos his seat, just months after a court threw out a similar conviction of ex-Assembly Speaker Sheldon Silver.

Juries had found Silver and Skelos used their power to extort private entities for personal favors. Both cases got overturned after appellate panels determined that, based on a subsequent U.S. Supreme Court ruling in a different case, judges had given jurors too broad a description of what constitutes a crime.

Federal prosecutors have vowed to put both men on trial once again. But reform experts argue that only revising the state constitution can end the endless recrudescence of pay-for-play politics.

"It's not an easy solution, but in my opinion it's the only way to clean up the state Legislature," said Seymour Lachman, a former five-term state senator from Brooklyn and now a professor at Hugh L. Carey Institute for Government Reform at Wagner College. "A constitutional convention could make certain things that are glaringly unethical and immoral are illegal as well."

Every 20 years, New Yorkers get to decide whether to hold a constitutional convention. The issue will appear on the ballot this November, and if a majority votes "yes," elected delegates will have the opportunity to reshape the state's charter document. The amendments would go before voters in the subsequent election, allowing one more round of public input.

Kenneth Sherrill, professor emeritus of political science at Hunter College, traces Albany's recurring corruption problems to constitutional amendments passed during the 1920s tenure of late former Gov. Alfred E. Smith.

The Smith amendments enshrined the rights of organized labor and numerous social reforms which present-day opponents of a convention fear losing. The revisions also established the modern budget system, in which the executive branch single-handedly defines spending priorities, and centralized the then-diffuse branches of state government under the governor's thumb.

It also empowered the governor to create and control public benefit corporations, like the Thruway Authority, which derive revenue by selling bonds and collecting tolls instead of taxes — and which thus operate outside the state Legislature's purview. It was such entities that landed several of Gov. Andrew Cuomo's top aides and donors under indictment on bid-rigging and bribery charges last year.

To act as a counterweight to the new, quasi-imperial powers of the executive branch, lawmakers in both legislative chambers decided to invest all their authority in a single individual:

the speaker in the Assembly and the majority leader in the Senate. Thus was born Albany's infamous "three men in a room."

In wiretapped phone calls played at his trial in 2015, Skelos boasted to his son Adam — whose conviction was also overturned Tuesday — that he could "control everything" in the Senate. That was certainly Lachman's experience when he served in the upper chamber's minority party a decade earlier.

A former member of the Senate's Committee on Finance, Lachman recalled being handed a budget "thick as a phone book" in 2005 and being told to vote for it without reading it. He realized his committee — like all of Albany's legislative committees — was largely ceremonial.

Three men — the governor, speaker and majority leader — made all the decisions, although the Assembly and Senate leaders typically represented the consensus of their chamber's majority members.

"No bill was ever able to pass without the approval of the majority leader of the Senate or the speaker of the Assembly. No bill, not one," Lachman remembered. "No man becomes a chairman of a committee in the state Senate without the approval of one man: the majority leader. No one becomes a chairman of a committee in the Assembly without the approval of one man: the speaker."

Bill Samuels, founder of the reform group EffectiveNY, argued that delegates could change the state constitution to weaken the speaker and majority leader and empower rank-and-file lawmakers. For instance, they could insert a mandate banning outside income, eliminating the subterfuge Silver used to enrich himself by encouraging a doctor to send his mesothelioma patients to a law firm that paid Silver millions of dollars in referral fees.

They could also limit the legislative leaders' sway by eliminating the stipends bestowed upon committee chairs. And the delegates could "professionalize" the legislature by having it convene year-round instead of just in the first six months of the year. Reformers have proposed limiting legislators' outside income as well.

The process could also set up a state analogue to the city's Independent Budget Office and the federal Congressional Budget Office, to analyze the impact of laws and budgets, free from political pressure.

"When you get to Albany, there aren't committee hearings, even though you're on a committee. And it's only part-time. And if you're nice to the leader, you get extra money," Samuels said. "You are asking for trouble. All of those would be addressed" at a convention.

Sherrill suggested going even further: abolishing the bicameral state Legislature and instating a one-house body, with small legislative districts drawn by an independent body to prevent gerrymandering. Not only could this body have a constitutionally mandated committee and public-hearing system, but it could have a built-in "discharge" mechanism that would force a floor vote even if the legislative leader opposed one.

The professor also asserted that the constitutional amendments must similarly disempower the governor by altering the executive budget system to allow greater input by legislators, and by ending his unilateral control over public benefit corporations.

In a case of strange bedfellows, groups from the right and left wings of the political spectrum, fearing an amended constitution could be slanted against them, have coalesced to encourage New Yorkers to vote against allowing a convention. But this, Sherrill argued, is a product of the state's backwards and sclerotic culture of governance.

“In New York, the way in which you exercise power is by stopping things,” he said, noting that the Assembly speaker and Senate majority leader bargain with the governor by threatening to block his favored legislation. “They’re putting all their time and money into thinking about losing this or that, and not into thinking up their own agenda.”

It was for these reasons that Citizens Union, one of the oldest good-government groups in the state, used the appellate panel’s decision to reiterate its calls for a convention.

“The time has come for New Yorkers to vote ‘yes’ for a state constitutional convention focused on ethics reform and cracking down on public corruption to prevent misuse of public funds and ensure those entrusted to hold office serve the public interest, not their own selfish ends,” Chairman Randy Mastro said in a statement.

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