

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: info@elections.ny.gov

November 8, 2013

New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, New York 12207-2729

ATT: John Conklin, FOIL/Records Access Officer

RE: FOIL REQUEST:

Documentarily-Establishing that the New York State Board of Elections is "Low-Hanging Fruit" for the Conflict-Ridden Commission to Investigate Public Corruption

Dear Mr. Conklin,

This follows up our phone conversation together on November 6, 2013, in which I briefly discussed with you that I consider the New York State Board of Elections – to which the Commission to Investigate Public Corruption has been giving such focus – to be "low hanging fruit".

Indeed, the Commission's focus on the Board of Elections is to give the appearance that it is being tough – when, in fact, it is covering up for the ten sitting district attorneys who are among its 25 Commissioners and for other public officers with whom it has personal, professional, and political relationships.

Enclosed is Ken Lovett's August 5, 2013 Daily News article "*Members of Cuomo's anti-corruption panel failed to pursue 1,500 criminal referrals from Board of Elections*". Such would surely have been the subject of inquiry by the Commission at its October 28th hearing – were it not riddled with conflicts of interest. Instead, the Commission raised not a word about any criminal referrals having been made by the Board to district attorneys, let alone to the ten district attorney Commissioners.

The article states that it is based on "stats compiled by the Board of Elections at the request of the Daily News".

Pursuant to FOIL, request is hereby made for a copy of the "stats" that the Board compiled for the Daily News as to its criminal referrals to the 10 district attorney Commissioners since 2006. For purposes of completeness, request is also made for "stats" as to the criminal referrals the Board made to New York's 52 other district attorneys since 2006.

Additionally, please advise as to whether the quote attributed to you, responding to the statements of spokesmen for District Attorney Soares and District Attorney Rice, applies to the other eight district attorney Commissioners and other 52 district attorneys. The portion of the article in which your quote appears is as follows:

“Reps for Soares and Rice say the referrals from the Board of Elections weren’t thorough enough to pursue.

‘The Board’s referrals come years late and include no evidence of intent or even knowledge of the rule by the donor,’ said Rice spokesman John Byrne. ‘These form letters are legally useless to prosecutors and provide yet another example of why the Moreland Commission’s work to examine and propose reform to the Board of Elections are so important.’

Soares spokesman Cecilia Logue said the board referrals included minimal information that would have made it time-consuming and costly for the cash-strapped office to launch full-scale investigations.

‘We are not an investigative arm of the Board of Elections,’ Logue said. ‘Our office cannot bear the cost of 62 counties for investigating these filings.’

But Conklin responded that ‘if the referrals were insufficient, we wish they would have told us. They never said, ‘You need to do these things in a different way.’”
(underlining added).

Are you saying that since 2006 none of the 10 district attorney Commissioners – or New York’s other 52 district attorneys – alerted the Board to deficiencies in its criminal referrals, or ascertained the reasons therefor, as for instance a lack of resources mirroring their own, or took steps to facilitate their resolution?

Perhaps the written testimony that the Board prepared for the Commission’s October 28th hearing addressed the criminal referrals that the Board had made to New York’s 62 district attorneys, most importantly to Albany County District Attorney Soares – and their outcome.

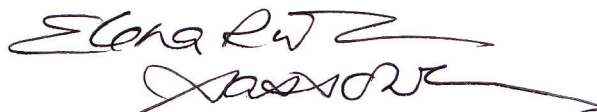
In any event, I reiterate my request for a copy of the written testimony, which, due to the Commission’s ten-minute time limitation on Board witnesses, Co-Executive Directors Valentine and Brehm and Deputy Enforcement Officer McCann were precluded from fully reading at the October 28th hearing. Although you stated to me that you would promptly provide me with the Board’s written testimony when we spoke together on November 6th, I have still not received it.

Pursuant to FOIL – and also reflecting some of what we discussed on November 6th – this is to additionally request:

- (1) All records of budget requests and “side letters” for increased funding that the State Board of Elections made to the Division of the Budget, the Governor, and the Legislature over the past 25 years;
- (2) All annual reports of the State Board of Elections over the past 25 years;
- (3) All records pertaining to oversight hearings of the State Board of Elections by the Senate Elections Committee and the Assembly Elections Law Committee over the past 25 years, including transcripts of the hearings and copies of written testimony;
- (4) All records pertaining to testimony by the State Board of Elections about its budget at the Senate and Assembly joint budget hearings over the past 25 years, including transcripts of the testimony and questioning;
- (5) All records of support of the State Board of Elections’ increased budget requests over the past 25 years, as, for instance, from the New York State League of Women Voters, whose support you identified to me.

Please advise as to when and where these records can be inspected and copied. Pursuant to FOIL (Public Officers Law §89.3), your response is required “within five business days” of your receipt of this request. Kindly e-mail it to me at elena@judgewatch.org.

Thank you.



Enclosure

cc: New York State Board of Elections:
Co-Executive Director Todd Valentine
Co-Executive Director Robert Brehm
Deputy Enforcement Counsel William McCann
Commission to Investigate Public Corruption
Co-Chair Onondaga County District Attorney William Fitzpatrick
Co-Chair Nassau District Attorney Kathleen Rice
Co-Chair Milton Williams, Jr.
Commissioner Albany County District Attorney P. David Soares
& his Public Integrity Bureau Chief Eric Galarneau
Ken Lovett, Daily News
The Public & The Press

DAILY NEWS

POLITICS

Members of Cuomo's anti-corruption panel failed to pursue 1,500 criminal referrals from Board of Elections



Kenneth Lovett

The nine members of Gov. Cuomo's anti-corruption commission who are also sitting district attorneys did not pursue about 1,500 criminal referrals from the board since 2006, the bulk of which were related to campaign finance filings.

NEW YORK DAILY NEWS

MONDAY, AUGUST 5, 2013, 1:53 AM



PHILIP KAMRASS/ALBANY TIMES UNION

Albany County District Attorney David Soares' office did not prosecute 1,356 referrals from the board since 2007.

ALBANY — Even as they investigate the state Board of Elections, nine members of Gov. Cuomo's anti-corruption commission who are also sitting district attorneys did not pursue about 1,500 criminal referrals from the board since 2006, statistics show.

The bulk of the complaints involved candidates who did not make their required campaign finance filings. The rest were for contributions that exceeded the legal limit.

Most of the referrals went to Albany County District Attorney David Soares, one of 25 people appointed last month by Cuomo to his anti-corruption commission, according to stats compiled by the Board of Elections at the request of the Daily News.

Soares' office did not prosecute any of the 1,356 referrals from the board since 2007 regarding candidates who did not submit their required filings.

Even though the bulk of complaints involve candidates from outside his jurisdiction, Soares' office is the landing ground for all such referrals because the info is required to be filed in Albany, elections board spokesman John Conklin said.

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Soares also received 26 over-contribution referrals but did not pursue them, either.

Commission co-chairwoman Kathleen Rice, the Nassau County district attorney, received the next most complaints — 72 from the Board of Elections since 2006 about over-contributions. She also didn't prosecute any.

Cuomo's Moreland Act commission is set to focus on the influence of campaign contributions on government

and compliance with election and lobbying laws.



MARCUS SANTOS FOR THE NEW YORK DAILY NEWS/ FOR THE NEW YORK DAILY NEWS

Nassau County District Attorney Kathleen Rice received 72 complaints, but didn't prosecute any.

Reps for Soares and Rice say the referrals from the Board of Elections weren't thorough enough to pursue.

"The board's referrals come years late and include no evidence of intent or even knowledge of the rule by the donor," said Rice spokesman John Byrne. "These form letters are legally useless to prosecutors and provide yet another example of why the Moreland Commission's work to examine and propose reform to the Board of Elections is so important."

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Soares spokeswoman Cecilia Logue said the board referrals included minimal information that would have made it time-consuming and costly for the cash-strapped office to launch full-scale investigations.

"We are not an investigative arm of the Board of Elections," Logue said. "Our office cannot bear the cost of 62 counties for investigating these filings."

But Conklin responded that "if the referrals were insufficient, we wish they would have told us. They never said, 'You need to do these things a different way.'"

The problem highlights the dysfunction within a system that critics say encourages candidates and donors to skirt the laws.

The Board of Elections currently has zero investigators and just four auditors — and no money in its budget to hire any.

Logue chastised the Legislature for rejecting Cuomo's call this year to create an independent investigative panel within the Board of Elections.