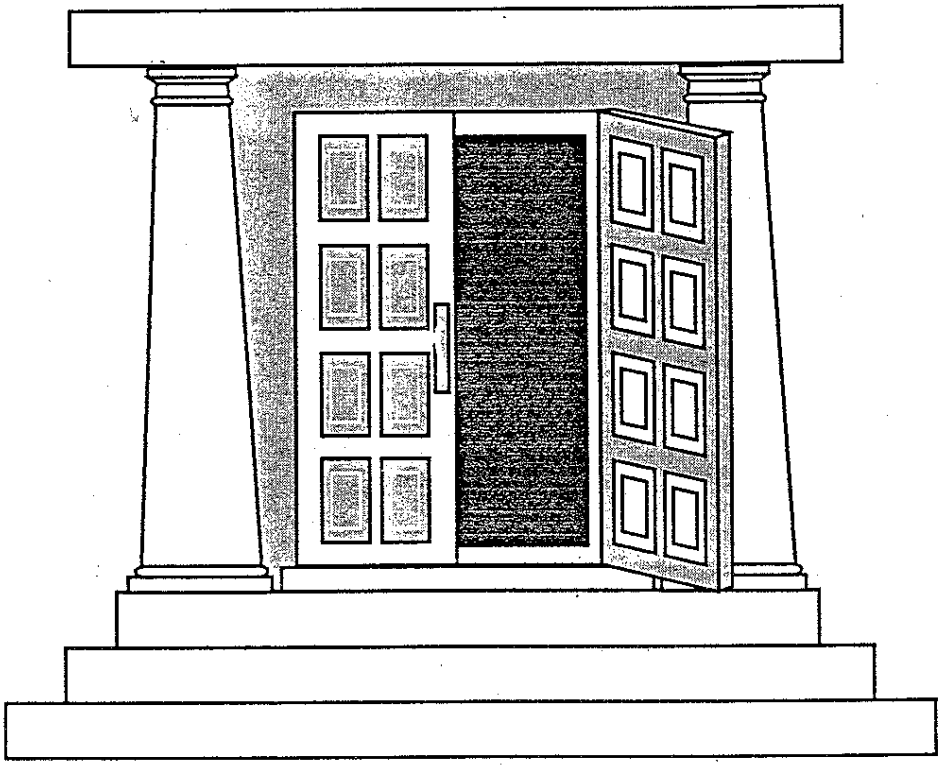
Commonwealth of Virginia

PUBLIC SERVICE, PUBLIC TRUST



Governor's Commission
on Campaign Finance Reform,
Government Accountability, and Ethics

December 1992

Commonwealth of Virginia

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December 1992

COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Lawrence Douglas Wilder
Governor

EXECUTIVE ORDER NUMBER FORTY-SIX (92) (REVISED)

GOVERNOR'S COMMISSION ON CAMPAIGN FINANCE REFORM, GOVERNMENT ACCOUNTABILITY, AND ETHICS

Whereas, it is a sound practice to provide periodic review of the process used to elect our public officials as well as the laws and rules defining and governing their conduct, and

Whereas, this review should not be restricted to actions carried out solely in the conduct of their official capacity but should also include a review of the conduct of their business or professional practice, if those areas are impacted by their official duties, and

Whereas, such periodic review of these processes, laws and rules will serve to demonstrate to the citizens of the Commonwealth that their government is always prepared to make positive changes that will enhance the Commonwealth's reputation for integrity; and

Whereas, such a review, if done now, can lead to any necessary improvements in time for the 1993 elections,

Now, therefore, by virtue of the authority vested in me as the Governor under Article V of the Constitution of Virginia and Chapter 5.8, Title 2.1 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters, I hereby create the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics.

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.1-51.35 and 9-6.25 of the Code of Virginia.

The general responsibility of the Commission shall be to determine whether reforms are needed in the Constitution, statutes, or regulations of this Commonwealth, or any other official action of any branch of the government of Virginia that addresses the areas of the conduct and financing of political campaigns. It shall also be the Commission's responsibility to review the accountability of public officials, both in terms of how they exercise their official duties and how their official obligations might affect the way they exercise their responsibilities in certain aspects of their private sector involvement.

The Commission shall also determine whether there is a need to expand the types of activities which may not be adequately covered at the present time.

Such funding as is necessary for the fulfillment of the Commission's business during the term of its existence will be provided by the Office of the Governor. Total expenditures to support the Commission's work are estimated to be $25,000.

Such staff support as is necessary for the conduct of the Commission's business during the term of its existence will be provided by the Governor's Policy Office and such other executive branch agencies as the Governor may from time to time designate. An estimated 5,000 hours of staff support will be required to assist the Commission.

The Commission shall be comprised of no more than 15 members, appointed by the Governor and shall serve at his will. The chairman and vice-chairman, likewise, shall be appointed by the Governor and shall serve at his will.

Members of the Commission shall serve without compensation, but shall receive actual expenses incurred in the discharge of their official duties.

The Commission shall hold such public hearings as are necessary to assure the general public has an opportunity to provide its suggestions and recommendations on the subjects under review.

The Commission shall complete its examination, research and study and report its recommendations to the Governor no later than December 1, 1992.

This executive order will become effective upon its signing and will remain in full force and effect until May 4, 1993, unless amended or rescinded by further executive order.

This Executive Order rescinds Executive Order Forty-Six (92) issued the 5th day of May, nineteen hundred and ninety-two.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 2nd day of June, 1992.

Governor

Attested:

Secretary of the Commonwealth

Commonwealth of Virginia

GOVERNOR'S COMMISSION ON CAMPAIGN FINANCE REFORM, GOVERNMENT ACCOUNTABILITY, & ETHICS

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Commonwealth of Virginia

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ACKNOWLEDGMENTS

Our Commission's charge from Governor Wilder could not have been accomplished in six months were it not for outstanding contributions from many people across state government.

We are indebted to Professor Robert Roberts of James Madison University who served as senior consultant on this project. Author of *White House Ethics: The Politics of Conflict of Interest Regulation*, his experience and knowledge of federal and state government public ethics was invaluable. His volunteering of weeks of effort was a true public service to the Commonwealth.

Our Commission expresses its deepest appreciation to Barbara Allen, Joyce Walton, and Rhonda Jones of the Office of the Governor for their gracious and efficient service, especially in making the public hearings and meetings so successful. The Commission would like to thank Michael Brown and Audrey Piatt of the State Board of Elections, Roger Wiley of the state Attorney General's Office, and Sheila Evans and Patrise Sandford of the Secretary of the Commonwealth's Office for their contributions. We thank the people at Old Dominion University, Virginia Tech University, and Northern Virginia Community College for extending their hospitality for the public hearings.

Our Commission received excellent staff support from the University of Virginia's Center for Public Service. We especially want to thank Carl Stenberg, Deborah Roberts, and Paul Jacobson for their staff expertise in working with the Commission's subcommittees. Deborah Roberts also served as the report's editor. The report's design and publication was done by Sandra Wiley, Director of Information Services, Jayne Finkelstein, Art Director, and Jennifer Kleine.

Linda Noakes, administrative assistant to Mr. A. E. Dick Howard at the University of Virginia Law School and Nancy Rae of the University's Department of Government & Foreign Affairs also were deeply involved with the project.

Finally, we express our sincere appreciation to the citizens and public officials who cared enough to share their concerns and views on how to reform campaign finance, lobbying regulation, and government accountability for the betterment of the Commonwealth.

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Executive Summary

The Challenge

Today extraordinary world events, like the fall of communism, vindicate and renew democracy and the rule of law. Similarly, our task is to support a vibrant, open democracy and to ensure that public officials serve the people. Our Commission has one goal—restoring public confidence in the integrity of our government and our officeholders.

The Constitutional Founders gave us a particular type of democracy—a republic based on representative government and open participation. We invest our elected representatives with significant powers to exercise their best judgment and make decisions on our behalf. This is true whether the officeholder is president, governor, state lawmaker, or the local city council member. In turn, elected officials delegate authority to appointed officials and career civil servants.

In exchange, we demand that public office be a public trust, as President Grover Cleveland once said, and that every officeholder be held accountable for their actions and meet higher expectations than we place on ordinary citizens. The open nature of democracy means that these public officials will be constantly surrounded by diverse factions demanding to be heard. Occasionally this will lead to temptations to put one's self and other private interests ahead of the public interest.

Public opinion about government integrity is shaped by events beyond our state's borders. The memory of Watergate, with a sitting president and vice president driven from office, and the succeeding scandals in every administration and in Congress have made people more cynical. People complain of Washington insider gridlock, brought about by too effective lobbying by special interest groups and escalating campaign costs. Surveys by the U.S. Advisory Commission on Intergovernmental Relations show a marked decline in the public trust and confidence in all three levels of government in the last five years.

In the 1980s a record number of state and local legislators and executive officials were indicted and convicted for violating state and federal ethics statutes. Scandals have erupted in many states, including South Carolina, Kentucky, Arizona, Florida, Texas, Alabama, Missouri, New Jersey, New York, and Pennsylvania. A former governor of West Virginia is serving prison time for extortion, mail fraud, tax fraud, and obstruction of justice while in office. A 1991 Rhode Island Governor's Task Force condemned a thoroughly corrupt state subculture dependent on the "largesse bestowed" by state government through the "currency of favors, jobs, state contracts, campaign contributions, or in more subtle ways—the relaxing of regulatory oversight of a person, a project or a business."

Nurturing Virginia's Honor System

The members of our Commission take pride in Virginia's heritage of clean government. But we cannot be certain about the future, given the increasing complexity of governance

and public programs. One question that repeatedly arose in our deliberations was "What evil are we correcting?" The evil is not lax standards or common abuses. The evil is complacency in thinking that it cannot happen to us.

Like physicians who advocate the benefits of preventive medicine and healthy habits, our Commission urges our lawmakers to take early, realistic, positive action to safeguard the integrity of our government. We support the advances made by our legislators in twice addressing the difficult question of conflict of interest in the last 10 years.

Barbara Jordan, an author of the new Texas ethics law, concedes that it is a difficult time for lawmakers "because your judges—the people—have raised the bar of approval to a higher level of acceptability." In Virginia, over 65 people testified at our four public hearings across the state, and we received over 1,600 pages of written testimony. We listened and searched their words for the next steps that citizens feel should be taken.

GOALS OF OUR RECOMMENDATIONS

One way to view our recommendations is to look first at the electoral process of campaigning, followed by the governance process of officeholding.

We concur with the favorite phrase of one of our members—"politics is a good thing." But Virginia politics needs campaign finance reform before most citizens will agree with that statement. Our electoral recommendations favor more open and fair disclosure so that the voting public can make better-informed choices. We argue for measures like ceilings on candidate contributions from individuals and organized givers, and random audits of campaigns to avoid even the suspicion of impropriety and undue influence. We want to increase participation by encouraging more candidates to run, freeing up grassroots volunteers, and making it easier for citizens to contribute to the political party of their choice.

For the governance process, we looked at the ethical standards concerning personal conflicts of interest by which over 370,000 Virginia state and local government officials and employees are expected to abide.

Our first focus is on education. Questionable situations can be prevented, and people spared pain, if public officials know ahead of time exactly what is expected of them, and they can get guidance whenever they feel uncertain about what they should do.

Our second focus is on meaningful, full public disclosure, so that if someone does have a substantial personal conflict of interest, the information will be in the public domain. Somewhere between 15,000 and 20,000 public officials in "positions of trust" file financial disclosure statements every year. We suggest ways to make both filing by officials and information access by interested citizens easier.

Our third focus is on prohibiting certain behavior. For example, we seek to limit honoraria and gift acceptance when an appearance of impropriety is raised. We also propose new limits on situations where executive and legislative officials are paid to represent some interest other than their official duties before state government. We also think that post-employment limits—"switching sides provisions" and "no contact provisions"—should guard against "revolving door" high-level executive officials who could benefit from inside connections immediately after leaving government service.

Our fourth focus concerning governance is the inevitable and necessary lobbying relationship between public officials and organized groups and constituencies seeking to influence public policy and administration. Our approach is to have public disclosure mirror the important aspects of modern-day, sophisticated lobbying. Our

recommendations place the burden on lobbyists for year-round and more complete disclosure of their activities. We believe it is critical to require disclosure of lobbying directed at both the executive branch and independent regulatory agencies. We suggest that many volunteer lobbyists be excused from reporting, while public agencies and localities be required to disclose their advocacy of policy issues in which they have an interest.

Finally, throughout our deliberations, our Commission was concerned not just with law and policy on matters of ethics and accountability, but also with the day-to-day practice. For instance, can a citizen get information without spending a day or travelling to Richmond? Is there any "bite" to enforcement and monitoring to ensure compliance? Is campaign information available before election day? We concluded that one of the major barriers to effective practice is the fragmentation in agencies responsible for implementing ethics provisions. Therefore, we recommend that an independent, nonpartisan State Ethics Commission be established with a small permanent staff to centralize responsibility for education, guidance, and a computerized disclosure system.

Our reccommendations are divided into five principal areas:

1. Campaign Finance Reform
2. Lobbying Reform
3. Government Accountabilility
4. Establishment of a State Ethics Commission
5. Ehics Law and Education

This report, with its 37 recommendations, represents a consensus reached after long and spirited debate. Any particular Commission member acting on his or her own might have recommended different changes to existing law and practice. When considered as a whole, this report represents the Commission's best diagnosis for preventive medicine and healthy habits in the ethical practice of Virginia's government.■

SUMMARY OF RECOMMENDATIONS

Recommendation 1

■ BROADENING CAMPAIGN DISCLOSURE

State election disclosure laws should be fully applied to all district and local parties as well as to legislative caucuses, except that district and local parties collecting or expending less than $10,000 per year should be exempt from disclosure requirements. (The $10,000 figure should be adjusted for inflation annually, to the nearest $100.) Local party committees should report to their local board of elections, who should report to the State Board.

Recommendation 2

■ PUBLIC DISCLOSURE

Candidates for public office and political committees should either use the state disclosure forms or, if they generate their own reporting form, be required to supply a data tape, floppy disk, or the like to the State Board of Elections. Just as with the regular disclosure forms, these tapes and disks would be made available for press and public inspection. The State Board of Elections should be given the additional resources necessary to accommodate this service.

Recommendation 3

■ PAC DISCLOSURE

Non-party political committees should file disclosure reports to the State Board of Elections on the same schedule as candidates.

Recommendation 4

■ DISCLOSURE ADJUSTMENTS

The state disclosure deadlines for parties and candidates should be rearranged to coincide with the federal deadlines, where feasible, so that unnecessary work for the candidates and parties will be eliminated. [See schedule of reporting date changes in the Appendix.]

Party committees should *not* have to file a December 2 report (but all non-party committees should do so).

A local party committee should *not* have to file for any reporting period in which it has not collected or expended any additional money over the $10,000 reporting threshold *and* has not contributed to any candidate.

The reporting threshold for state contributions should be raised from $100 to $200 to align state law with federal law. A $200 contribution carries no threat of undue influence. At the same time, this change enables us to recommend *lowering* the threshold from $250 to $200 for full reporting of the occupation and principal place of business of contributors.

Recommendation 5

■ RANDOM AUDITS

Every four years the state should conduct audits of all three statewide races and random audits of 10 percent of the races for the legislative bodies: four state Senate races and ten House of Delegates races. (Ten additional House races should be audited after the off-year midterm election.) The audits should include an examination of the candidates' books and receipts, in such detail as required either by statute or by regulations established by a body designated by the General Assembly.

The state should contract with an independent, certified public accounting (CPA) firm to conduct the audits. The targeted races will be selected by lot shortly after the November general election. The lottery should be conducted in public by the independent CPA firm. All candidates on the general election ballot in each targeted race will be audited. Irregularities discovered by the audits will be reported to the appropriate commonwealth's attorney, and a schedule of civil penalties should apply.

Recommendation 6

■ CONTRIBUTION CAPS

Contributions to candidates for statewide and legislative offices should be subject to maximum limits, applied equally to contributions received by candidates from individuals, PACs, and other non-party sources. There should be no limitation on a party's contribution to its candidates, nor any limitation on an individual's contribution to a party committee (except for a contribution designated for a particular candidate, which must be fully reported under current law, and which would come under the caps proposed here). There would be no limits on an individual's contribution to his or her own campaign.

The maximum contributions would be $5,000 per election for a statewide campaign, $2,000 per election for a state Senate campaign, and $1,000 per election for a state House of Delegates candidate, with these amounts indexed for inflation (to the nearest $100) every two years for House candidates and every four years for statewide and state Senate candidates. A primary or convention and the general election count as two *separate* elections under this proposal. In practice then, the effective maximum limit for an election cycle would be $10,000 for a statewide campaign, $4,000 for a state Senate campaign, and $2,000 for a state delegate campaign.

Recommendation 7

■ INCOME TAX REFUNDS

The state individual income tax Form 760 should be revised to permit a taxpayer to contribute an unlimited sum from his or her refund to a political party (not only to the Democratic or Republican party, but to any party as defined under the provisions of the Code of Virginia).

Recommendation 8

■ TAX CREDITS

A state tax credit for small contributions to the *state* political parties (and their *local* and *district* affiliates) should be established. The credit would be at the 50 percent level for contributions up to $50 for an individual and $100 for a joint return. This tax credit is narrowly focused on political parties both to strengthen the parties and to minimize the revenue drain from the state's coffers.

Recommendation 9

■ LOBBYING: WHAT QUALIFIES

Lobbying activity should be defined as:

1. Any effort at influencing or attempting to influence, through personal oral or written communication with any legislative or executive official, either (a) state legislative action or (b) action of the governor in approving or vetoing any bill or resolution, or promulgating a rule, a regulation, or any action of a quasi-legislative nature by a state official in the executive branch;
2. Providing a legislative or executive official something of value not available to the general public (not including political campaign contributions), other than providing *bona fide* educational expenses not exceeding $500 in actual or in-kind expenses during any 12 month period.

Recommendation 10

■ LOBBYIST: WHO QUALIFIES

Anyone who engages in a lobbying activity on behalf of an individual, private organization, or other non-governmental group, and receives compensation for that activity, expends the funds of such individual, organization, or group, and/or is reimbursed for expenses incurred as a result of such activity should be considered a lobbyist who is required to register and report, if the total amount for compensation, expenditures, and reimbursements is more than $500 in any calendar year, excluding personal living and travel expenses. ("Compensation" shall be defined as anything of value, including an agreement by the other party to provide lobbying activity).

Recommendation 11

■ VOLUNTEER LOBBYISTS

Lobbyists who are not paid for their efforts and spend and receive less than $500 in a year for their activities, excluding their personal living and travel expenses, should not be required to register and report.

Recommendation 12

■ PUBLIC EMPLOYEE LOBBYISTS

Requirements to register and report should apply to any public official or public employee who (a) as a normal employment duty engages in a lobbying activity, or (b) spends more than $500 per calendar year while engaging in lobbying activity, or (c) is reimbursed more than $500 per calendar year from public funds for expenses incurred while lobbying.

Registration and disclosure reporting forms about the lobbying activities of these officials and employees should be filed by the employing board, department, institution, agency, political subdivision, district, or authority, not by the individuals themselves.

Recommendation 13

■ PERSONS EXEMPTED FROM REGISTERING AS LOBBYISTS

The following persons should be exempt from the definition of lobbyist and should not be required to register and report:

1. The governor, lieutenant governor, attorney general and their immediate staffs, and all cabinet secretaries and their immediate staffs.
2. Persons testifying before committees of the General Assembly or agencies, boards, or commissions of state government and providing information requested by legislators or executive officials.
3. Any legislative official acting in an official capacity who does not receive compensation from a non-state source for his or her appearance.
4. Any employee of the state executive branch who engages in advocacy directed at any other state executive official.
5. A duly elected or appointed official or employee of the United States acting solely in connection with matters relating to that person's office or public duties.
6. News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action.

Recommendation 14

■ YEAR-ROUND LOBBYIST REPORTING

Lobbyists should report all their activities at fixed dates throughout the year, by reporting quarterly on these dates:

April 30	(for January through March)
July 31	(for April through June)
October 31	(for July through September)
January 31	(for October through December) This report also should include a cumulative total for the entire previous calendar year.

(If dates fall on a weekend or holiday, the report should be due the next business day).

Recommendation 15

■ LOBBYIST REGISTRATION PERIOD

To prevent inadvertent violations, a person who lobbies entirely outside the City of Richmond should be given fifteen days, after first engaging in lobbying, to register and obtain a card. The existing law only allows five days.

Recommendation 16

■ ADDED REGISTRATION REQUIREMENTS

In addition to all information currently required, lobbyists should disclose:

1. The position held by the lobbyist, if he or she is an employee of the principal.
2. Statement of principal's type of business.
3. Location and telephone number of the place where the records of the lobbyist's financial information will be kept.
4. Name, address, and telephone number of any legislative or executive official who is employed by the registering lobbyist.
5. Name, address, and telephone number of any member of the immediate family of a legislative or executive official who is employed by the registering lobbyist.
6. Name, address, and telephone number of any legislative or executive official with which the lobbyist or lobbyist's principal has a substantial business association that meets the definition of a "personal interest" under the State and Local Government Conflict of Interests Act (Code of Virginia, section 2.1-639.2) of $10,000 a year in income or liabilities, or 3 percent ownership interest in a business.

Recommendation 17

■ ADDED REPORTING INFORMATION

In addition to present requirements, the following information should be required in reporting by those who qualify as lobbyists engaged in lobbying:

1. Each activities report should contain the total expenditures made for each client to communicate directly with a member of the legislature or executive branch to influence legislation or administrative action. Expenditures for public officials in the following categories should be reported:
   - transportation and lodging
   - food and beverages
   - entertainment
   - gifts, other than awards and mementos
   - awards and mementos
2. Each activities report for each client should also list the total expenditures made by the lobbyist or by others on the lobbyist's behalf, with the lobbyist's consent or ratification, for advertisements or mailings that support or oppose pending legislative or administrative action.
3. Each activities report should include the name of any legislative or executive official who was the beneficiary of actual or in-kind expenditures exceeding in the aggregate $100 during any calendar year, including goodwill education-related expenditures of more than $500 per calendar year. The activities report for each such official should state:
   - name of official
   - name and government address of person receiving the payment
   - name of person making the payment
   - amount or value of actual or in-kind payment
   - date of payment or receipt of in-kind payment

Recommendation 18

■ PUBLIC DISCLOSURE COMPUTERIZED SYSTEM

The Commonwealth should adopt a computerized financial disclosure system where all public information would be available to any person with access to a modem.

Recommendation 19

■ SIMPLIFIED DISCLOSURE FORMS AND PROCESS

Simplified disclosure forms that officials could complete on personal computers should be developed. These forms could be accompanied by sample statements to demonstrate how to fill out the forms.

Recommendation 20

■ DISCLOSURE BY SMALL TOWN OFFICIALS

Public officials of towns with a population of fewer than 3,500 should not be excluded from filing financial disclosure statements. At present, 140 towns are exempted from any reporting of financial interests and possible conflicts of their officials (Code of Virginia, section 2.1-639.14). Members of the governing body and those in appointed positions of trust with delegated authority for administration of town affairs should report.

Recommendation 21

■ DEFINITION OF GIFT

The Conflict of Interests Acts should contain a clear and detailed gift definition such as the following federal standard (5 CFR 2635.202.): "Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred."

Public officials could continue to accept gifts offered as a goodwill gesture; gifts totalling over $200 per year from the same source would be reported in their financial disclosure.

Recommendation 22

■ EXCEPTIONS TO GIFT ACCEPTANCE RULES

To avoid confusion, the law should contain a list of opportunities and benefits that do *not* qualify as gifts. Examples include awards and honorary degrees; reasonable food, travel, and lodging expenses for participating at a function; tickets to attend an event as a courtesy or ceremony customarily extended to the office; gifts from relatives; and gifts that are purely private and personal in nature.

Recommendation 23

■ GIFT ACCEPTANCE FROM INTERESTED SOURCE

No public official of Virginia state or local government should accept a gift from a person who has interests that may be substantially affected by the performance of the person's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the official's impartiality in the matter affecting that person.

Recommendation 24

■ FREQUENT GIFT ACCEPTANCE

Officials should not accept gifts from sources on a basis so frequent as to raise an appearance of use of public office for private gain.

Recommendation 25

■ STRONGER TEST FOR CONFLICTING OUTSIDE ACTIVITIES

The Code of Virginia should be amended to state that "A public official may not accept any business or professional opportunity when he or she knows *or reasonably should know* that there is a reasonable likelihood that the opportunity is being afforded to influence him or her in the performance of official duties."

Recommendation 26

■ BAN ON CERTAIN HONORARIA

Statewide elected officials, members of the General Assembly, and individuals occupying policymaking positions should not accept any honoraria for speaking at or attending proceedings or events where the official is attending primarily to provide expertise or opinions related to the performance of official duties.

Recommendation 27

■ BAN ON COMPENSATED REPRESENTATION BY EXECUTIVE AND LEGISLATIVE OFFICIALS BEFORE A STATE ENTITY

Executive and legislative officials, other than special government employees, should be prohibited from rendering compensated service to a client or constituent before a state entity, when that entity is acting in a capacity other than as a court or quasi-judicial body. The ban would also include the official's company or firm.

Recommendation 28

■ BAN ON COMPENSATED, NON-COMPETITIVE REPRESENTATION OF A STATE ENTITY

No state executive agency shall hire by non-competitive procedures executive officials, legislators, or their firms to represent the agency's interests.

Recommendation 29

■ POST-EMPLOYMENT LIMITS

Post-employment limits should be established for executive, legislative, and independent regulatory agencies. Post-employment representation should be limited as follows:

1. "Switching Sides Provision." A former executive official should not represent a person in a matter before a governmental entity, including an independent regulatory agency, in which matter the former official participated personally and substantially while an official. The term "executive official" means an upper-level executive official or employee who is appointed or serves directly under one who is appointed to his or her position.
2. "No Contact Provision." A former official should not represent a person in a matter or lobby on behalf of a person before the governmental entity in which the former official served for a period of one year after the former official's employment with that governmental entity has ceased. The term "official" includes an executive official as defined above, as well as an upper-level legislative employee, defined on the basis of salary or government service grade. No limits would apply to legislators' post-employment, given the nature of the part-time citizen legislature.

Recommendation 30

■ USE OF CONFIDENTIAL INFORMATION

A public employee or official should not use or allow the improper use of confidential information to further his or her own private interest or that of another. In this context, confidential information is that which the person gains by reason of government employment or which he or she knows or reasonably should know has not been made available to the general public.

Recommendation 31

■ LAW PROTECTING WHISTLE-BLOWERS

The General Assembly should pass a whistle-blower statute that would protect public employees who disclose wrongdoing or waste, provide remedies should a violation be proven, and impose civil penalties on the violators.

Recommendation 32

■ STATE ETHICS COMMISSION

An independent and nonpartisan State Ethics Commission should be established. The powers and duties of the Ethics Commission should include the following:

1. Establish and maintain a computerized system for receiving and retrieving financial disclosure statements, campaign finance information, and lobbyist registration and reporting information.
2. Issue regulations as provided by statute.
3. Issue advisory opinions interpreting campaign finance, ethics, conflict of interest, and lobbying statutes and regulations.
4. Provide consultation and advice to the network of designated ethics officers throughout state and local government.
5. Educate public officials, candidates for elected office, lobbyists, and the public about ethics rules.

Recommendation 33

■ UNIFIED STATE ETHICS LAW

All legal provisions related to conflict of interest, financial disclosure, lobbying, procurement, and other public ethics issues should be included in one separate Ethics Title of the Code of Virginia.

Recommendation 34

■ STATE LAW AS MINIMUM LEGAL STANDARD

Nothing in the Code of Virginia should preclude agencies and local governments from adopting additional ethical standards and guidance. Agencies and local governments should be authorized to adopt their own ethics codes, as long as they adhere to the minimum standards set forth in the Code.

Recommendation 35

■ ETHICS EDUCATION

The statewide office with lead responsibility in ethics should emphasize education and training. Explanatory materials on public ethics, written in plain English, should be developed and broadly distributed to candidates for public office and public officials covered by the provisions. A consistent curriculum and outreach approach to ethics should replace *ad hoc* guidance and presentations.

Recommendation 36

■ CONTINUING EDUCATION SESSIONS

All newly elected officials should receive orientation sessions on statutes and regulations governing public ethics. All newly appointed board and commission members and new public employees should receive clearly written materials detailing their ethical responsibilities. These sessions and materials could be coordinated with organizations that already offer orientation training for these officials and employees to ensure that the most relevant and pressing issues are covered.

Recommendation 37

■ NETWORK OF DESIGNATED ETHICS OFFICERS

State agencies and local governments should appoint Designated Ethics Officers (DEOs), along the lines of the Equal Employment Opportunity Officers (EEO) model, to provide a focal point and liaison for ethics concerns. ■

INTRODUCTION

PREAMBLE

In the last three years we have witnessed some of the most extraordinary world events of the 20th century. Stunning pictures of the fall of the Berlin Wall, China's Tienanmen Square, citizens defying Soviet tanks, and Nelson Mandela's release from a South African prison are indelibly imprinted in our minds. Communist regimes have collapsed. New countries have joined the family of nations and are creating their own constitutions. All of these world events are vindicating and renewing democracy and the rule of law.

At the same time we face the ultimate irony—these newcomers seem more excited about democratic ideals than Americans, with our 200-year legacy of democracy, are about the practice of our democratic institutions. In 1992, public apathy seems transformed into disgust over a government that many feel has gotten away from the people. Record numbers turned out for the 1992 elections, indicating that citizens are giving public officials greater scrutiny.

The U.S. Advisory Commission on Intergovernmental Relations (ACIR) reports that the public's trust and confidence in all governments has declined since 1987. The federal government has fallen the most in public esteem: in 1992 only 4 percent had a "great deal" of trust and confidence and 38 percent had "a fair amount," compared to 9 percent and 59 percent in 1987. The 1992 survey responses also revealed that local government is the most trusted (60 percent), state government has slipped somewhat to 51 percent, and the federal government is the least trusted (42 percent).

Public cynicism over corrupt officials and political systems that favor insiders and special interests is one reason for declining public faith. The corruption of a small minority taints to some degree the image of all public officials, as the media zeroes in on the petty greed of a few. The vast majority of public officials who are ethical do not attract the public eye.

Our public officials must be entrusted with significant power that can do either great good or ill. The Constitutional Founders gave us a particular type of democracy—a republic based on representative government. We invest our elected representatives with significant powers and discretion to exercise their best judgment and make decisions on our behalf. This is true whether the officeholder is the president, governor, state lawmaker, or a local city council member.

In turn, our elected representatives delegate authority to appointed public officials to act in their stead. From cabinet secretaries to the local town manager, these appointees are charged to use the powers of their offices only for legitimate reasons. Finally, we establish civil service systems based on partisan neutrality and technical competence. From the Internal Revenue Service examiner to a city procurement officer, these career administrators are also charged with an oath of office to uphold democratic principles and not abuse their office.

But we demand something in exchange for these investitures of public power. We demand that public office be a public trust, as President Grover Cleveland once said, and that every officeholder be held accountable for every action and meet higher expectations than we place on ordinary citizens.

By its very nature democracy is an open process, constantly surrounding public officials with diverse factions demanding to be heard. In crafting the Constitution, James Madison knew that special interests would inevitably flourish. The constitutional design encourages participation by all interests, with the expectation that the process itself will check and police undue influence by individual private interests. With time we have come to see that we can enhance that process with reasonable ethical regulation of the relationship between public officials, lobbyists, and campaign contributors.

THE PUBLIC ENVIRONMENT

Our Commission does not see a crisis of public confidence in the Commonwealth, but we know that it is inevitable that citizens' opinions are shaped by events beyond our state borders that we cannot control and cannot excuse.

Many might trace the long slide of public confidence to the trauma of the Watergate scandal in the early 1970s, with both a sitting president and vice president driven from office. Scandal is no respecter of political party or institution. Each national administration has had its scandals, with Iran-Contra and HUD's diversion of millions as some of the latest. The Congress itself has not escaped public condemnation for the savings and loan debacle of the "Keating Five," ABSCAM, or the bad checks drawn on the now disbanded House bank.

Declining public resources, increasingly polarized political viewpoints, divergent economic interests, and the ever-increasing costs of campaigns help to produce a less than virtuous political culture. Our national government is perceived by many to be in gridlock, and one of the culprits may be too-effective lobbying by too-powerful special interest groups.

Public disillusionment does not stop with the Washington, D.C. beltway. In the 1980s a record number of state and local legislators and executive officials were indicted and convicted for violating state and federal ethics statutes nationwide. More than fifteen South Carolina legislators were convicted of bribery and drug possession charges. A former governor of West Virginia is serving time in prison for extortion, mail fraud, tax fraud, and obstruction of justice while in office.

In Arizona four legislators pled guilty to bribery charges and five legislators were forced to resign. The Louisiana state insurance commissioner was convicted of money laundering. In Kentucky, state lawmakers and lobbyists pled guilty to bribery. Scandals have erupted in many other states including Alabama, California, Florida, Missouri, New Jersey, New York, and Pennsylvania.

In 1991, the Rhode Island Governor's Ethics Task Force issued a sober, stinging indictment of its failed system:

> An atmosphere of greed and an environment of indulgence among the corrupt and "connected" that accepts, excuses, and participates in unethical behavior as part of the "price of doing business" in Rhode Island has diminished the people's bond of trust.

The Rhode Island Task Force went on to condemn the rise of a state subculture dependent on the "largesse bestowed" by state government through the "currency of favors, jobs, state contracts, campaign contributions, or in more subtle ways—the relaxing of regulatory oversight of a person, a project or a business."

In Virginia, the situation is very different from the sad tale of Rhode Island, making our task immeasurably easier. Virginia has not had scandals like those of neighboring states. The isolated instances, like the sheriff of Bristol who committed suicide after embezzling $684,000 in jail funds, are shocking because they are so far from the normal state of affairs.

Political scandals leave lasting scars, hurting the perpetrators, the victims, and the bystanders. Unfortunately, ethics reforms and far-reaching codes of ethics usually do not make it to the public agenda until it is too late. Once a scandal is well publicized by the media, lawmakers feel compelled to pass almost any bill to prove to irate constituents that something has been done. Even the most draconian ethics laws enacted cannot be expected to restore public confidence completely, and they may even have unanticipated negative effects. Scandal leads to ever greater public cynicism about public officials and the integrity of the political system.

While we certainly hope that Virginia never has to have its political institutions dragged through the mud because of the wrongdoing of a few, we cannot be certain that this will not occur in the future, especially given the increasing complexities of governance and public programs.

OUR COMMISSION'S RESPONSE

Like physicians who advocate the benefits of preventive medicine and healthy habits, our Commission urges that our lawmakers take early, realistic, positive action to safeguard the integrity of our government and its public officials. We also encourage all Virginia's public officials and public employees to travel the ethical high road whenever they have private misgivings about what they should do. Virtue cannot be legislated. The law says what is legally permissible, but it can have many gray areas in its interpretation.

Finally, we ask citizens of the Commonwealth to expect and demand much from public officials. We encourage citizens to voice their concerns to their elected representatives, attend meetings, and avail themselves of public information and avenues of recourse if they have any suspicion about official wrongdoing. We are convinced that, in the overwhelming majority of cases, they will conclude that the system does work.

Our Commission does not see a crisis of corruption or impropriety that directly jeopardizes Virginia government. But we do see that citizens have less faith and confidence that public officials will do the right thing all the time. One question that repeatedly arose in our deliberations was "What evil are we correcting?" The evil is not lax standards or common abuses. The evil is complacency in thinking that it cannot happen to us.

The Commission believes that realistic and reasonable preventive approaches need to be considered, and that genuine progress can be made by emphasizing education and openness. We do not want to add to bureaucracy or compliance burdens. When acted upon, our recommendations will strengthen the electoral process, sharpen the ethical senses of government officials, and bring out the best in our public servants.

COMMISSION GOALS

This Commission has one overarching goal—enhancing public confidence in the integrity of our government and our officeholders. We agreed upon these strategies for assuring the public of the fairness, integrity, and openness of government:

1. Encourage all public officials to hold themselves to high ethical standards, recognizing that legal standards specify the minimum for acceptable behavior, not the norm for expected behavior.
2. Expose and punish corruption in government and prevent any public officials from abusing public office for private gain.
3. Eliminate the appearance of impropriety.
4. Strengthen the electoral process by increasing competitiveness, building political parties, and decreasing campaign costs.
5. Increase public participation in politics, and encourage citizens to engage in public service.
6. Encourage the free flow of ideas between citizens and their public officials.
7. Help prevent any attempt to exercise undue influence over public officials and inform the public of the nature and extent of lobbyists' activities.
8. Increase the accountability of public officials to the citizens they serve by ensuring that information on campaigns, official business, and the private holdings of officials are reasonably available and accessible to all.

COMMISSION'S SCOPE

The Institutional Branches. Our Commission addresses both the executive and legislative branches in our recommendations. We uphold the traditional right of parliamentary bodies to self-governance. We agree with the General Assembly's approach of disqualification when a member has a conflict of interest, as covered by House of Delegates Rule 69 and State Senate Rule 36.

The Commission is aware that the "speech or debate" clause of the Constitution of Virginia grants certain protections to legislative activities that are integral to General Assembly business. This has led to controversy over whether a legislator can be prosecuted for influence-trading related to his or her legislative votes.[1] We felt that inquiry into this issue was beyond our mission. Reasonable ethics regulations that extend to legislators are entirely proper.

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[1] The "speech or debate" clause in Article IV, Section 9 of the Constitution of Virginia grants certain protections to legislative activities which are integral to General Assembly business. This immunity has historically been viewed as fundamental to our constitutional system of separation of powers, with its checks and balances on each of the three branches of government. The Virginia clause is similar in wording to the speech or debate clause found in the Constitution of the United States. A United States District Court has noted that both clauses "appear to be based upon the same historical and public policy considerations." *Greenburg v. Collier*, 482 F. Supp. 200, 202 (1979).

Although the speech or debate clause prevents inquiry into a legislator's motivation in discharging his or her responsibilities, it does not protect all conduct relating to the legislative process. Thus the speech or debate clause of the United States Constitution does not bar the prosecution of a United States senator for bribery because the acceptance of money is not a legislative act. *United States* v. *Brewster*, 408 U.S. 501 (1972).

Our Commission endorses the steps that the General Assembly has taken to make progress in these sensitive areas. The General Assembly has been diligent in twice addressing the controversial issue of conflict of interest in the last 10 years. Virginia's lawmakers subject themselves to the same standards that they apply to others in the state executive branch and to local governments.

In our deliberations, we decided that there are some areas where legislators should be freer to act than executive officials. For example, we recommend post-employment restrictions only on executive officials who may use the "revolving door" to capitalize on their agency expertise and connections. But we rejected as unfair any limits on representation by or employment of a legislator after he or she leaves office. Unlike the "narrow turf" of the agency official, a legislator's domain is all of state government, deciding on every policy issue and voting on every state expenditure.

We seek to affirm one of Virginia's most cherished political institutions—a citizen legislature drawn from all walks of life. Our Commission is keenly aware that the posts of state senators, delegates, and local elected officials (except for the constitutional officers) are not full-time jobs. Citizen legislative bodies are essential to democracy. These elected officials must have other professions and occupations to support themselves and their families. Public servants cannot and should not be without all personal and economic interests in the decisions of government. Even full-time paid public employees, especially in an age of two-earner families, will find themselves with outside financial and professional activities.

Ethics regulations must distinguish between relatively minor economic personal conflicts that are always a part of a free society, and those conflicts that are substantial and pose a risk of displacing the public interest. In addition, our Commission recognizes that limited public financial resources and attention are best spent concentrating on major areas of concern rather than situations with little potential for abuse of the public trust.

Barbara Jordan, an author of the new Texas ethics law, concedes that it is a difficult time for lawmakers "because your judges—the people—have raised the bar of approval to a higher level of acceptability."[2] Requiring officials in positions of trust to make public their private financial affairs would have been labeled an invasion of privacy years ago. Today it is simply an accepted fact of public life. Behavior that once might have been openly socially acceptable, shifted to being informally condoned, and now is seen as unacceptable.

Our Commission listened carefully to citizens as they testified about their expectations. We hope our report will make some contribution to informing and enlightening the public debate on these issues of ethics and integrity. It is in this light that our Commission breaks new ground in ethics and campaign finance reform by suggesting that the General Assembly consider some recommendations for the future health of the Commonwealth.

Our Commission did not address the third branch of government, the judiciary. Judges in Virginia are already subject to the Canons of Judicial Conduct, adopted by the Virginia Supreme Court. Under those Canons, for example, a judge is not permitted to participate in private interviews, arguments, or communications designed to influence judicial action unless the law provides for *ex parte* application.

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[2] Barbara Jordan, "A Time-honored Creed for the 21st Century," *State Legislatures*, October 1992, pp. 12-13.

A judge is prohibited from practicing law or serving as an officer, director, manager, advisor, or employee of a non-family business and is admonished to refuse gifts other than customary social amenities. Judges are required to file public reports of compensation received for allowed outside income activities and are prohibited from receiving unreasonable amounts for such activity. Judges are already governed by strict ethics regulations, which are in some respects more limiting than the standard for executive and legislative officials.

Topics Beyond Our Scope. There are, of course, limits to the scope of the Commission's recommendations. First, we did not consider topics that fell outside the range of our assignment. For example, we were charged with suggestions for campaign *finance* reform, and so we did not consider proposals regarding other aspects of campaigns such as term limits, negative campaigning, or short campaign seasons.

Second, the Commission was not a fact-finding or investigatory body. During our public hearings, some speakers spoke of alleged actions of candidates or public officials that the speaker deemed to be unethical. The Commission did not investigate these allegations but considered instead whether such complaints suggested the need for change in general rules governing the behavior of public officials. Finally, a more general constraint on the scope of our undertaking was the time limitation within which we worked. We had six months to organize, to solicit public input, and to discuss, deliberate, and craft recommendations aimed at having the most direct impact on the quality and integrity of campaigns and ethical governance.

COMMISSION'S PROCESS FOR DELIBERATION

Unlike counterparts in other states, our Commission has been fortunate in being able to perform its work in the absence of pressures that arise in the wake of public scandal. Commission members have tried to bring objectivity and sensitivity to their task, and to be practical and realistic in their recommendations.

Public Outreach. Our Commission received invaluable help from the public. Four public hearings were held around the State (in Richmond, Norfolk, Blacksburg, and Annandale) to receive both oral and written testimony. The hearings were aggressively advertised. Commercial advertising (not fine print legal notices) publicizing the purpose, places, dates, and times of the hearings was purchased in over 20 newspapers around the state. The hearings were also publicized in press releases from the Office of the Governor and the University of Virginia, and public service announcements were sent to radio and television stations throughout the state. Commission staff placed telephone calls to every member of the General Assembly and many local government officials to inform them of the date, time, and place of the hearing nearest to them.

Over 65 people testified at these public hearings, and over 1,600 pages of written testimony and information were received from interested citizens. Written testimony and recordings of the oral testimony are available to the public for review.

When reports of the Commission's three subcommittees were in draft form, copies were sent to members of the General Assembly for review. A number of legislators responded with comments and suggestions. The Commission also received letters from representatives of various interest groups.

Our Commission also considered various research materials, including newspaper reports, statutes from other states, and articles in scholarly and practitioner journals. Resource materials such as *The Law Review* published by the Attorney General of Virginia,

the Council of State Governments' *Blue Book on Campaign Finance, Ethics, and Lobby Law,* and the federal conflicts-of-interest regulations were very helpful.

A Consensus Report. Our Commission's report represents a consensus reached after protracted discussion and compromise. Many issues were the subject of spirited debate. Any particular Commission member acting on his or her own might have made different final recommendations, or might have recommended that more or less be done to change existing law and practice. When considered as a whole, this report represents the best collective judgment of the Commission. ■

RECOMMENDATIONS

A. CAMPAIGN FINANCE

Few fields have attracted more reform proposals than campaign finance. In its work, the Commission weeded through dozens of such proposals to separate the bad from the good. There are no perfect solutions to many of the problems of campaign funding, and both the First Amendment and the Supreme Court's decision in *Buckley* v. *Valeo* (1976)[3] necessarily limit what can be done. However, we offer here some practical and reasonable reforms that can improve Virginia's political system. Even those who advocate more sweeping campaign reform are likely to agree that our proposals will bring welcome changes in current practice.

Our Commission is well aware of Virginia's long tradition of integrity in government. We view our recommendations as a means to bolster public confidence in the state's elected officials. Adoption of these proposals can help to dispel suspicion and public cynicism, enabling officeholders to go about their work with renewed support from the citizens they seek to serve.

We have focused our attention and recommendations on elections for *state* office (governor, lieutenant governor, attorney general, and General Assembly). Many of the comments made at our public hearings concerned government at the local level. However, the Commission believes that some of our proposals may not be appropriate at the local level, while others that might be applied to local government should first be tested and fine-tuned in state campaigns before being applied more broadly. As to federal officers, federal law, of course, controls the conditions of election to the U.S. Presidency, and the U.S. Senate and House.

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[3] As with any legislation, campaign reform regulations must comply with the Constitution of the United States and the Constitution of the Commonwealth of Virginia. Rights protected by the federal Constitution are analyzed in the United States Supreme Court decision of *Buckley* v. *Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976) concerning federal post-Watergate election reform statutes. Briefly, the *Buckley* case held the following concerning regulation of campaign finances:

1. Limitations on spending by individuals and groups in a political campaign violate First Amendment rights of freedom of association and freedom of expression, unless limitations are voluntary and contingent on the acceptance by the candidate or group of public funds.
2. Limitations upon the amount that any one person or group may contribute to a candidate or political committee do not unconstitutionally restrict the contributor's ability to communicate and can be justified by the government's strong interest in limiting the actuality and appearance of corruption resulting from large individual financial contributions.
3. Required disclosure by candidates and political committees of campaign contributions and expenditures does not unconstitutionally infringe freedom of association and belief, but are justified by the government's interest in informing the electorate, deterring actual corruption, and avoiding the appearance of corruption and of gathering the data necessary to detect violations of contribution limitations.

CURRENT SYSTEM

Just about everyone agrees that there are problems with Virginia's system of campaign finance. But there is no consensus about what the most important problems actually are, much less what should be done about them. Six concerns emerged as the most likely targets for our Commission's work:

1. The decline of party politics and, in its stead, the growth of personality politics and interest group politics.
2. The drop in financing politics through grassroots, small-donor participation, and the surge in big-dollar giving by individuals and special interests.
3. Soaring campaign costs that price many potential candidates out of the market, reducing competition and deterring qualified people from even thinking about running for office. Escalating costs force candidates, whether incumbents or challengers, to spend increasingly more time raising money.
4. The absence of any auditing procedures to ensure accuracy in the campaign reports submitted to the state.
5. Loopholes in the disclosure requirements for political contributions and expenditures. Some of the campaign money being raised and spent is not currently disclosed. In politics, hidden money is dangerous money.
6. Growing public cynicism about politics, partly as a consequence of these problems in campaign finance.

COMMISSION GOALS

At the outset, the Commission set six goals for positive change in Virginia's campaign finance laws:

1. Eliminate the appearance of impropriety wherever it might be perceived to exist, thus bolstering public confidence in the political system.
2. Decrease campaign costs without decreasing communications between candidates and voters.
3. Build up the political parties—the vital stabilizing institutions of our democracy.
4. Reduce special interest influence without infringing on personal freedoms.
5. Increase competitiveness in campaigns.
6. Increase public participation in politics.

In addition, the Commission wanted to focus more on big contributors, less on small donors. While regulation should increase where it counts, we also ought to reduce the regulatory burden and paperwork where no potential for corruption exists and where local volunteer activity should be encouraged.

With these goals in mind, the Commission recommends eight reform proposals.

Recommendation 1

BROADER CAMPAIGN DISCLOSURE

State election disclosure laws should be fully applied to all district and local parties as well as to legislative caucuses, except that district and local parties collecting or expending less than $10,000 per year should be exempt from disclosure requirements. (The $10,000 figure should be adjusted for inflation annually, to the nearest $100.) Local party committees should report to their local board of elections, who should report to the State Board.

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At present, the state's Fair Elections Practices Act requires regular disclosure of contributions and expenditures from candidates and political committees. Disclosure includes the names and addresses of all contributors who have given in the aggregate $101 to $250. For donors who have given more then $250, the occupation and principal place of business must be added. Contributors of $100 or less are not named, but the total amount of such money is reported. Disbursements (including purpose of expenditure and name and address of person paid) must also be reported. See Code of Virginia, sections 24.1-251 through 24.1-263.

Currently, local divisions of the political parties, as well as the parties' well-funded legislative caucuses, are exempt from disclosure requirements (except for gifts specifically designated to candidates). These exemptions create major loopholes in the disclosure system.

Recommendation 2

PUBLIC DISCLOSURE

Candidates for public office and political committees should either use the state disclosure forms or, if they generate their own reporting form, be required to supply a data tape, floppy disk, or the like to the State Board of Elections. Just as with the regular disclosure forms, these tapes and disks would be made available for press and public inspection. The State Board of Elections should be given the additional resources necessary to accommodate this service.

★

Currently, some candidates and committees submit their own computer-generated disclosure forms to the State Board of Elections. While legal, these forms cannot be read by the scanners used by some news organizations, thus thwarting timely disclosure to the public.

Recommendation 3
PAC DISCLOSURE

Non-party political committees should file disclosure reports to the State Board of Elections on the same schedule as candidates.

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Currently, non-party political committees file disclosure reports in early June and then not again until a few days prior to the general election. Thus it is difficult for the press and public to have time before the election to analyze the filings of these political committees.

Recommendation 4
DISCLOSURE ADJUSTMENTS

The state disclosure deadlines for parties and candidates should be rearranged to coincide with the federal deadlines, where feasible, so that unnecessary work for the candidates and parties will be eliminated. [See schedule of reporting date changes in the Appendix.]

Party committees should *not* have to file a December 2 report (but all non-party committees should do so).

A local party committee should *not* have to file for any reporting period in which it has not collected or expended any additional money over the $10,000 reporting threshold *and* has not contributed to any candidate.

The reporting threshold for state contributions should be raised from $100 to $200 to align state law with federal law. A $200 contribution carries no threat of undue influence. At the same time, this change enables us to recommend *lowering* the threshold from $250 to $200 for full reporting of the occupation and principal place of business of contributors.

★

Probably the most universally supported and certainly the most successful provision of the campaign finance law is disclosure, whereby committees and candidates are required at various intervals to reveal their contributions and contributors, as well as their expenditures. Not only do these disclosure provisions illuminate the decisions of donors and politicians, they also alert competing interests to the need for mobilization.

Currently, the disclosure law includes a few anomalies that cause extra paperwork without serving any substantial public purpose. Our proposed changes will help to strengthen disclosure by enabling both the press and the public to gain important

information in a timely fashion. We urge all registrars and boards of election to provide copies of disclosure forms at the lowest possible cost to news organizations and interested citizens.

Recommendation 5

RANDOM AUDITS

Every four years the state should conduct audits of all three statewide races and random audits of 10 percent of the races for the legislative bodies: four state Senate races and ten House of Delegates races. (Ten additional House races should be audited after the off-year midterm election.) The audits should include an examination of the candidates' books and receipts, in such detail as required either by statute or by regulations established by a body designated by the General Assembly.

The state should contract with an independent, certified public accounting (CPA) firm to conduct the audits. The targeted races will be selected by lot shortly after the November general election. The lottery should be conducted in public by the independent CPA firm. All candidates on the general election ballot in each targeted race will be audited. Irregularities discovered by the audits will be reported to the appropriate commonwealth's attorney, and a schedule of civil penalties should apply.

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Currently, no campaign finance auditing of any kind is conducted by the state. No other measure proposed by our Commission will do more to ensure compliance with the election laws than will the proposal for random audits. This proposal is carefully constructed to prevent unfair influence or partisanship in the auditing process. The Commission considered the question of how much random audits would cost. The costs of auditing could be contained by auditing a random sample of expenditures and contributions for each race selected, especially the statewide races.

Recommendation 6

CONTRIBUTION CAPS

Contributions to candidates for statewide and legislative offices should be subject to maximum limits, applied equally to contributions received by candidates from individuals, PACs, and other non-party sources. There should be no limitation on a party's contribution to its candidates, nor any limitation on an individual's contribution to a party committee (except for a contribution designated for a particular candidate, which must be fully reported under current law, and which would come under the caps proposed

here). There would be no limits on an individual's contribution to his or her own campaign.

The maximum contributions would be $5,000 per election for a statewide campaign, $2,000 per election for a state Senate campaign, and $1,000 per election for a state House of Delegates candidate, with these amounts indexed for inflation (to the nearest $100) every two years for House candidates and every four years for statewide and state Senate candidates. A primary or convention and the general election count as two *separate* elections under this proposal. In practice then, the effective maximum limit for an election cycle would be $10,000 for a statewide campaign, $4,000 for a state Senate campaign, and $2,000 for a state delegate campaign.

★

Since the early 1970s some candidates for statewide office have received contributions of hundreds of thousands of dollars from individual donors. Even the most virtuous officeholder would have great difficulty refusing a request from one of these benefactors, and without question the public believes special favors are granted to these contributors. The suggested limits are generous and take into account the huge costs of the modern media campaign. Yet they are a great improvement over current practice and are within the general framework of federal campaign limits ($5,000 per election for PACs and $1,000 per election for individuals).

Should the General Assembly accept this recommendation and establish contribution caps, the problem of exceeding the maximum limits by making contributions through a subsidiary corporation and the like should be addressed in the legislation. As to a candidate's contribution to his or her own campaign, the Supreme Court ruled in *Buckley* v. *Valeo* that such contributions cannot be limited.

Recommendation 7

INCOME TAX REFUNDS

The state individual income tax Form 760 should be revised to permit a taxpayer to contribute an unlimited sum from his or her refund to a political party (not only to the Democratic or Republican party, but to any party as defined under the provisions of the Code of Virginia).

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Recommendation 8

TAX CREDITS

A state tax credit for small contributions to the *state* political parties (and their *local* and *district* affiliates) should be established. The credit would be

at the 50 percent level for contributions up to $50 for an individual and $100 for a joint return. This tax credit is narrowly focused on political parties both to strengthen the parties and to minimize the revenue drain from the state's coffers.

★

Under current law, an individual receiving a state income tax refund is permitted to designate $2 of it to either the Democratic or Republican state party. At present, no Virginia tax credit for political contributions of any kind exists, although other states have created these tax credits.

Most people who have looked at the rise of special interest group politics and the corresponding public disillusion with politics and politicians see a direct relationship between the decline of political parties and the rise of narrowly focused special interest groups. This is because individuals and PACs represent particular interests, while political parties encompass more general concerns.

Parties are often unfairly maligned as the repositories of corrupt bosses and smoke-filled rooms, but parties perform essential electoral functions. Not only do they operate (in part) the machinery for nomination to most public offices, parties also help counteract the powerful centrifugal forces in a country teeming with hundreds of identifiable racial, economic, social, religious, and political groups.

Parties are often accused of "dividing" us; to the contrary, they assist in uniting us as few other institutions do. They permit elected executives, leaders, and managers to be successful by marshaling citizens around a common standard that can be used to create and implement a public agenda. Indeed, it may be argued that an "independent" candidate, even if initially successful, would have to form a long-term organization of like-minded people (in other words, a political party) if that "independent" desired to bring lasting change or to elect others who agreed with his or her political views.

The recent decline of parties is a disturbing trend that can and must be arrested. These proposed measures will make a contribution toward the goal of strengthening political parties in Virginia.

Other Campaign Finance Issues

Some observers have proposed a system of full public financing of elections, but such a far-reaching solution is clearly not feasible at present. Any substantial system of public funding for statewide and General Assembly elections would require an outlay of tens of millions of dollars each election cycle—a considerable expenditure to propose in tough economic times. The Commission's members discussed the notion of a proposal limiting or prohibiting contributions from individuals who do substantial business with the state. This idea, however, was thought to raise serious constitutional questions.

The Commission also opposes spending limits. Superficially appealing, they would have unfortunate and unintended consequences. Spending limits favor incumbents and hurt challengers (and thus reduce competitiveness). Spending limits strengthen well-organized, wealthy groups that can give early; they lessen the influence of poorer, later-organizing groups. Spending limits damage the ability of candidates to communicate with their large

constituencies since media advertising is enormously expensive. As the Supreme Court made clear in *Buckley* v. *Valeo*, any such limits would have to be voluntary, not mandatory. As an inducement for candidates to participate, various incentives, such as taxpayer-financed mailings or other forms of public funding, would have to be established. ■

RECOMMENDATIONS

B. LOBBYING REFORM

Two of the most cherished features of our democracy are the right of citizens to petition the government for the redress of grievances and the opportunity for citizens freely to express their opinions. The Virginia General Assembly has recognized this proposition in the clearest possible terms (Code of Virginia, section 30-28.01). The General Assembly has also stated, however, that the public's confidence in its government is encouraged and sustained by the regular public disclosure of information about the identity, expenditures, and activities of lobbyists. This policy was echoed in the four public hearings held by our Commission, where many citizens expressed their support for an even more open governmental process.

Lobbying benefits the governmental process by informing officials of citizens' concerns, making information and technical data available, and helping to build consensus. By its very nature, the democratic process involves advocacy of differing viewpoints by various constituents, organizations, and groups. However, a healthy democracy also requires that citizens be informed of the actions of public officials, and that public officials not abuse—or be perceived as abusing—public power.

CURRENT SYSTEM

During the 1992 session of the General Assembly, 675 organizations and groups used lobbyists who spent $5,013,437 promoting, advocating, and opposing issues before the legislature. While 1,112 separate lobbyist registrations were filed, the actual number of people lobbying is fewer (perhaps close to 700), since one lobbyist may register several times to represent multiple clients. The 1991 legislative session (a shorter session, as it fell in an odd-numbered year) saw $3.9 million expended and 986 lobbyist registrations. The 1990 legislative session involved lobbying expenditures of $4 million spread across 1,026 lobbyist registrations. (data from the Secretary of the Commonwealth)

Clearly, lobbying of the statehouse is a significant enterprise, with many special interests seeking to be heard by lawmakers. Some lobbyists—corporate government-relations officers or association officers, for example,—represent only the one interest that employs them. Many will be from outside Virginia, representing firms with multistate operations. Other lobbyists, from consulting and law firms, are retained by one or several different interests. Volunteer lobbyists, who are not professionals but are interested in a particular bill, must register if they spend more than $100 on lobbying. All are held to the same standards.

Lobbyists begin filing for the legislative session on November 15. They indicate the "matters and purposes" on which they expect to lobby. They pay a filing fee of $30 (per lobbyist, per principal). Each is issued an identification card, which legislators are increasingly asking to see before hearing them state their case. All General Assembly

members receive a list of all registered lobbyists at the start of the session, updates every two weeks, and a comprehensive list at the end of the session (Code of Virginia, sections 30-28.01 through 30-28.10).

Within 60 days after the session's end, every lobbyist must file activity reports for each party he or she represented; late filers are assessed late fees. They must disclose expenditures for their own compensation, entertainment, gifts, political contributions, office costs, communications, personal living and travel expenses, honoraria, and registration. They are asked to identify their activities. The responses vary. Some include a list of bill numbers, topics, specific activities, and number of legislators contacted. Others are much more vague. All are advised by the Secretary of the Commonwealth's office that they should, "when in doubt, over-disclose."

In summary, Virginia's lobbying regulations cover many different lobbyists. Lobbyists need report only what they do while the General Assembly is in session, and they file only once a year. The specificity of information reported varies by respondent, and critical information on expenses and events are not public information until two months after the legislature adjourns.

COMMISSION GOALS

Our Commission thinks that practical improvements in the present approach to lobbying are possible and should be made. The Commission's approach is to build on present Virginia law, not to write a new statute. Compared to other states' laws and practices (some of which do very little and some of which attempt to do too much), our recommendations fall in between. Our philosophy is to prefer disclosure to prohibition, so as not to have a chilling effect on free exchange and participation.

Our approach is to have public disclosure mirror the important aspects of lobbying as it occurs in modern Virginia. Our recommendations call for year-round and more complete disclosure of lobbying activities. The very act of lobbying—with lobbyists roaming the state capitol, talking to busy legislators in the halls—is somewhat public since many observers see their comings and goings. But when the General Assembly adjourns, the lobbyists follow the legislators home. Lobbying activity that happens across the state the remainder of the year, in hundreds of different settings, is less public. If there is no public reporting, there is little hope that such activity will become public knowledge.

We believe it is critical to require disclosure of lobbying of the executive branch and independent state commissions and agencies, as well as the legislative branch. Lobbyists can have substantial influence on these institutions, and the public rarely knows about it. The burden would be on lobbyists to report, not on those officials who listen to them.

We also believe, however, that it is not equitable totally to excuse public officials and public institutions from reporting their lobbying activities as they advocate favored positions before state policymakers. We recommend that some former officials be restricted from lobbying for a limited time after leaving public service, to avoid any appearance of personal profit from inside connections.

Our Commission has also suggested ways to make the law clearer and more understandable to avoid inadvertent violation by well-meaning citizens. Finally, it is our intent that the vast majority of citizens, who contact their legislators either to ask for assistance or to advocate a certain position, not be covered and inconvenienced by reporting. We suggest the law covering lobbying activities be restricted to those who lobby for a living and to those who accept $500 or more for expenses incurred while lobbying.

IMPORTANT NOTE: As you read the following recommendations, bear in mind that to be required to register and report, a person must *both* engage in activities that qualify as *lobbying* and also qualify as a *lobbyist*. In other words, Recommendations 9 and 10 should be considered as working in tandem; neither is complete without the other.

Recommendation 9

LOBBYING: WHAT QUALIFIES

Lobbying activity should be defined as:

1. Any effort at influencing or attempting to influence, through personal oral or written communication with any legislative or executive official, either (a) state legislative action or (b) action of the governor in approving or vetoing any bill or resolution, or promulgating a rule, a regulation, or any action of a quasi-legislative nature by a state official in the executive branch;
2. Providing a legislative or executive official something of value not available to the general public (not including political campaign contributions), other than providing *bona fide* educational expenses not exceeding $500 in actual or in-kind expenses during any 12-month period.

★

Under the current state law, "lobbying" is defined as "promoting, advocating or opposing any matter by an individual for or on behalf of another," not including testimony before a legislatively created committee or agency (Code of Virginia, section 30-28.1(c)). Although the statutes governing lobbying do not explicitly so state, the legislation as a whole clearly applies only to the General Assembly.

The Commission's recommendation breaks new ground by including the executive branch. Lobbyists do not confine their efforts to the General Assembly when it convenes in Mr. Jefferson's state capitol. They lobby the governor's office. They seek appointments with members of the governor's cabinet. They put their case before agency heads and those in key line and staff positions. Why do they do so? Because they know that the executive branch has an important role in public policy throughout all its stages, from the earliest steps of putting an issue on the public agenda to the final steps of implementing the law via thousands of concrete actions.

Lawmakers consult with agency people and seek counsel from cabinet members when bills come before them. Once a law is passed, the lawmakers delegate authority to these agencies both to carry out their intent and to make all the decisions that lawmakers cannot and should not make. But all these "smaller" decisions are significant to interest groups with stakes in the public program. For the public to know who is trying to influence the policymakers and the policy process, the public must know who is lobbying executive officials and to what extent.

Regulatory agencies make decisions with tremendous impact on vying special interest groups. Therefore, in this recommendation, the term "executive official" should include not only persons employed by agencies, departments, boards, commissions, and councils designated by statute as being within the executive branch, but also "independent" governmental entities like the State Corporation Commission and State Lottery Department.

This recommendation also includes in the definition of lobbying any attempt to obtain "goodwill." The public often perceives goodwill gifts as efforts by special interest groups to gain preferential treatment. Our Commission recognizes that many citizens make gifts to public officials as sincere tokens of appreciation for public service, and not for the purpose of receiving anything in return. All gifts should be reported by lobbyists who engage in lobbying activity, and such information should be readily available to the general public. Easy and inexpensive access to lobbyist registration and reporting data is critical.

The term "something of value not available to the general public" should not include gifts from relatives or motivated by long-standing personal relationships (birthday and holiday gifts, for example: see Recommendation 22 on exempt gift acceptance). The term "*bona fide* educational expenses" also will need to be carefully defined, so that payment of travel expenses and lodging for what is in essence a pleasure trip cannot escape disclosure merely by being labeled "educational" in nature.

We want to encourage citizen participation. We applaud those who write letters or make calls to public officials or organize others to support their cause. Citizens who work without compensation and do not spend group funds to influence public policy will not be affected or burdened in any way by this recommendation. (See definition of "lobbyist" below).

Recommendation 10

LOBBYIST: WHO QUALIFIES

Anyone who engages in a lobbying activity on behalf of an individual, private organization, or other non-governmental group, and receives compensation for that activity, expends the funds of such individual, organization, or group, and/or is reimbursed for expenses incurred as a result of such activity should be considered a lobbyist who is required to register and report, if the total amount for compensation, expenditures, and reimbursements is more than $500 in any calendar year, excluding personal living and travel expenses. ("Compensation" shall be defined as anything of value, including an agreement by the other party to provide lobbying activity.)

★

Current state law defines a "lobbyist" as "An individual who engages in lobbying." Lobbyists must register and report if they either (1) are employed or retained for compensation to lobby and their normal duties include lobbying or (2) they expend or

direct expenditures in excess of $100, exclusive of personal living or travel expenses, in connection with such activity (Code of Virginia, section 30-28.1(d) and 30-28.2).

This recommended definition includes people who lobby on behalf of others as lobbyists only if they are compensated for their activity, spend the money of those on whose behalf they are lobbying, and/or are reimbursed for their expenses incurred in lobbying. The term "compensation" should be broadly defined.

Many people who are involved in policy advocacy would not be burdened with filing. For example, groups of teachers carpooling to go to the state capitol to talk with legislators or the Secretary of Education about teacher pay would not qualify as lobbyists. The owner of a small factory who repeatedly talks to many legislators about ambiguities he sees in discharge permit regulations is not a lobbyist. The nurse practitioner, who serves as an officer in her voluntary professional association and promotes midwifery as she talks with many legislators and Health Department officials, is not a lobbyist.

Even people participating in more affluent and organized economic interests often will not qualify as lobbyists. For example, association members or company employees may pay over $500 to attend their trade association's meetings in Richmond, and during the meetings they may speak to legislators about an issue that might require legislation. These people would not have to report and file as lobbyists for this activity. However, if one attendee also invited all the legislators serving on a specific committee to accompany him to dinner as his paid guests so that he could better present his views on pending legislation, and the dinner total came to more than $500, then that person would have to file as a lobbyist.

Recommendation 11

VOLUNTEER LOBBYISTS

Lobbyists who are not paid for their efforts and spend and receive less than $500 in a year for their activities, excluding their personal living and travel expenses, should not be required to register and report.

★

This recommendation would raise the threshold from the present law's $100 level, so that some citizens will be freed from the burden of registering and reporting.

Recommendation 12

PUBLIC EMPLOYEE LOBBYISTS

Requirements to register and report should apply to any public official or public employee who (a) as a normal employment duty engages in a lobbying activity, or (b) spends more than $500 per calendar year while engaging in lobbying activity, or (c) is reimbursed more than $500 per calendar year from public funds for expenses incurred while lobbying.

Registration and disclosure reporting forms about the lobbying activities of these officials and employees should be filed by the employing board, department, institution, agency, political subdivision, district, or authority, not by the individuals themselves.

★

Public officials are currently exempt from reporting as lobbyists, even though, when compared to private-sector lobbyists, they may pursue similar goals with similar activities. Officers, boards, departments, institutions, or agencies of the Commonwealth or political subdivision, or employees thereof, are exempt from the definition of "person" under current law (Code of Virginia, section 30-28.1(a)).

A current example would be officials and employees of public universities, mental health agencies, and environmental agencies who successfully advocated passage of three bond referenda that will result in capital funding for those agencies. We do not mean to imply that such activity is in any way improper, only that it should be public information.

This recommendation also expressly includes certain persons who regularly lobby the legislature on behalf of units of state government or local government as lobbyists, whereas present law provides a blanket exception for state and local government officials.

The definition of a public employee lobbyist parallels the definition of a private lobbyist, in that the person must be a "professional" lobbyist or must expend public funds over and above usual salary, benefits, and minimal "expenses" like the use of government phone or stationery. For example, a member of a county board of supervisors who visits legislators would not be a lobbyist, but the county's legislative liaison person who contacts legislators on legislative bills or funding affecting that county would be considered a lobbyist. Our Commission is not concerned with minimal expenses incurred in the ordinary course of business, but rather with any substantial expenditure of public funds connected with attempts to influence policy or garner goodwill.

Recommendation 13

PERSONS EXEMPTED FROM REGISTERING AS LOBBYISTS

The following persons should be exempt from the definition of lobbyist and should not be required to register and report:

1. The governor, lieutenant governor, attorney general and their immediate staffs, and all cabinet secretaries and their immediate staffs.
2. Persons testifying before either committees of the General Assembly or agencies, boards, or commissions of state government and providing information requested by legislators or executive officials.
3. Any legislative official acting in an official capacity who does not receive compensation from a non-state source for his or her appearance.

4. Any employee of the state executive branch who engages in advocacy directed at any other state executive official.
5. A duly elected or appointed official or employee of the United States acting solely in connection with matters related to that person's office or public duties.
6. News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action.

★

Legislative and executive officials are exempt in their dealings with one another because these persons are charged with the responsibility of making public policy for the state. They are the persons who are being lobbied by others and should not be viewed as lobbyists themselves.

Persons testifying before legislative or executive committees are not lobbyists for that purpose. Such proceedings are already public, so the need for reporting is reduced. Also, without this exemption, someone called to testify would become an "involuntary lobbyist." If a person falling under this exemption were classified as a lobbyist due to other activity, then he or she would be required to register as a lobbyist and report the financial aspects of such other activity.

The exemption for U.S. officials is included because such officials are already subject to federal regulations. Indeed, such regulations may have pre-empted whatever power Virginia might have to regulate federal officials.

Although media reporting and editorializing is definitely communication that may tend to influence legislative or executive behavior, it is not traditionally viewed as "lobbying" because it is primarily directed at the general public.

Recommendation 14

YEAR-ROUND LOBBYIST REPORTING

Lobbyists should report all their activities at fixed dates throughout the year, by reporting quarterly on these dates:

April 30	(for January through March)
July 31	(for April through June)
October 31	(for July through September)
January 31	(for October through December) This report also should include a cumulative total for the entire previous calendar year.

(If dates fall on a weekend or holiday, the report should be due the next business day.)

★

Under current state law, lobbyists must file only once, within 60 days after the adjournment *sine die* of a session of the General Assembly. However, lobbying activities continue throughout the year. Citizens at all four public hearings repeatedly stressed the need for year-round reporting.

Recommendation 15

LOBBYIST REGISTRATION PERIOD

To prevent inadvertent violations, a person who lobbies entirely outside the City of Richmond should be given fifteen days, after first engaging in lobbying, to register and obtain a card. The existing law only allows five days.

★

Under current law, before lobbying in the City of Richmond, lobbyists must first register with the Secretary of the Commonwealth and receive an identification card. Lobbyists must register anew after the adjournment of each session of the General Assembly (Code of Virginia, section 30-28.2).

Recommendation 16

ADDED REGISTRATION REQUIREMENTS

In addition to all information currently required, lobbyists should disclose:

1. The position held by the lobbyist, if he or she is an employee of the principal.
2. Statement of principal's type of business.
3. Location and telephone number of the place where the records of the lobbyist's financial information will be kept.
4. Name, address, and telephone number of any legislative or executive official who is employed by the registering lobbyist.
5. Name, address, and telephone number of any member of the immediate family of a legislative or executive official who is employed by the registering lobbyist.
6. Name, address, and telephone number of any legislative or executive official with which the lobbyist or lobbyist's principal has a substantial business association that meets the definition of a "personal interest"

under the State and Local Government Conflict of Interests Act (Code of Virginia, section 2.1-639.2) of $10,000 a year in income or liabilities, or 3 percent ownership interest in a business.

★

This proposal would expand the current state law, which requires registration statements to contain the following information:

1. Full name, residence, and business address of the lobbyist.
2. Description of matters and purposes for which the person expects to be lobbying.
3. Name, address, and principal occupation of each person by whom the lobbyist is employed or retained. If the lobbyist is an employee, name of employer must be stated.
4. For each principal, statement of whether the lobbyist is employed or retained, and whether employment or retainer is exclusively for purpose of lobbying.
5. Name and address of person who will keep custody of records of lobbyist's financial information required to be reported. (Code of Virginia, section 30-28.2.)

Although this recommendation calls for the reporting of more information, the additional information in most cases should already be kept for tax and business purposes and therefore be readily available.

Many units of government have legislative liaisons who spend a great deal of their time acting as lobbyists. Mayors, members of city councils and boards of supervisors, university presidents, and other government employees at times seek to influence state policy as part of their normal employment activity. However, they do not spend anywhere near the majority of their time in such activity and should not be burdened with having to report individually. Therefore, we recommend that for all public employees, reporting and registration be performed by the agency or unit of government for which they work.

Recommendation 17

ADDED REPORTING INFORMATION

In addition to present requirements, the following information should be required in reporting by those who qualify as lobbyists engaged in lobbying:

1. Each activities report should contain the total expenditures made for each client to communicate directly with a member of the legislature or executive branch to influence legislation or administrative action. Expenditures for public officials in the following categories should be reported:
   - transportation and lodging

- food and beverages
- entertainment
- gifts, other than awards and mementos
- awards and mementos

2. Each activities report for each client should also list the total expenditures made by the lobbyist or by others on the lobbyist's behalf, with the lobbyist's consent or ratification, for advertisements or mailings that support or oppose pending legislative or administrative action.

3. Each activities report should include the name of any legislative or executive official who was the beneficiary of actual or in-kind expenditures exceeding in the aggregate $100 during any calendar year, including goodwill education-related expenditures of more than $500 per calendar year. The activities report for each such official should state:
   - name of official
   - name and government address of person receiving the payment
   - name of person making the payment
   - amount or value of actual or in-kind payment
   - date of payment or receipt of in-kind payment

★

Under present law, every lobbyist files a separate form for each principal and submits a statement under oath showing:

1. All expenses, retainers, and salaries paid or incurred by the principal in connection with a particular person's lobbying, showing the matters and purposes for which the person lobbied.

2. All expenses, retainers, and salaries received by the lobbyist in connection with lobbying, and all expenses, retainers, and annual salaries incurred or paid by the lobbyist in connection with lobbying (Code of Virginia, section 30-28.5:1).

Lobbying occurs year-round, and therefore the present "gaps" in disclosure requirements prevent the public from being fully informed of the nature and extent of lobbying activities. Once again, the additional disclosures recommended should present no significant burden complying, as the information requested in large part must already be kept for bookkeeping, tax, and business purposes.

Under these recommendations, "who" is required to file would remain the same, except that public officials and employees would be covered by one comprehensive filing submitted by their employer. Public officials and employees should not be required to file individual reporting forms. Instead, the entity they represent should be required to file for all of its employees, disclosing the information listed above. ■

RECOMMENDATIONS

C. GOVERNMENT ACCOUNTABILITY

Recent years have seen a record number of state and local legislators and executive officials nationwide indicted and convicted for violating state and federal ethics rules. Well-publicized corruption scandals have led to substantive changes in ethics laws in Rhode Island, South Carolina, West Virginia, and other states.

In Virginia, the General Assembly has twice addressed this issue in the last decade. The 1983 Comprehensive Conflicts of Interest Act developed standards and updated rules that apply to everyone in state and local government. But the 1986 case of a state senator who was acquitted by a circuit court on charges of using his office to protect a law client's business interests dramatized that even Virginia's lawmakers had difficulty understanding this new law and how it should be applied to their own work. In 1987 the legislature passed a separate State and Local Government Conflict of Interests Act.

Since 1983 very few Virginia officials have been prosecuted for violations. But even a single allegation of unethical behavior case can be devastating to the individual and divisive to the institution.

CURRENT SYSTEM

Who is Covered? The Conflict of Interest laws apply to everyone in Virginia government—142,952 state employees, 223,882 local employees, and thousands of citizen members of boards and commissions at both the state and local level (1990 U.S. Census). The Act covers at least 370,000 people. But not everyone must file financial disclosure forms.

During the week of January 15 each year, over 10,000 disclosure forms arrive at the Secretary of Commonwealth's Office. At least 8,000 state employees file each year. Virtually every agency of state government is covered (the Public Defenders Commission is the lone exception). The offices of the governor, lieutenant governor, and attorney general, as well as independent agencies like the State Corporation Commission, are covered. About 800 judges and substitute judges also file. (See Code of Virginia, section 2.1-639.13) In addition, candidates for elected public office must also file, but with the State Board of Elections.

The filing criteria called for by the Code of Virginia and Executive Order #13 encompass all people occupying "positions of trust," which would include people in leadership and sensitive positions, and all those handling money, contracting, and procurement. For example, 600 people file in the Health Department alone. The Joint Rules Committee designates which legislative officials must file with the Secretary of the Commonwealth. The 140 members of the General Assembly file a separate form kept by the Clerks of the Senate and House of Delegates.

About 2,200 members of state boards and commissions also file as a condition of assuming office and then report yearly. These entities range from the highly visible university boards of visitors to the Sweet Potato Commission and other commodity boards. Filing requirements are designated either by the governor or by statutory language establishing the body.

Meanwhile, the Secretary of the Commonwealth sends out over 10,000 forms to all 95 counties, 41 cities, and the 28 towns with populations over 3,500. Officials of the 160 towns with populations under 3,500 are exempted from filing. Completed forms are filed with each jurisdiction's clerk of the circuit court.

Filing covers all members of local governing boards; about 650 elected constitutional officers; all appointed officials; those holding "positions of trust"; specific positions designated by local ordinance; and local board, commission, and council members (Code of Virginia, section 2.1-639.14). An extra real estate attachment is required of members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city, and town managers or executive officers. In 1992, Fairfax County alone requested 1,000 long forms, 500 short forms, and 30 real estate forms.

What Must Individuals Disclose? Those who are under obligation to file must report their own and their immediate family's offices and directorships; personal liabilities; securities; salary and wages; business ownership and interests; payments for representation; close business associations; real estate holdings; payments for talks, meetings, and publications; and gifts, travel, and business entertainment. To give individuals some privacy, for most areas only broad categories are disclosed—more than $1,000, less than $10,000, between $10,001 to $50,000, and more than $50,000.

Most board and commission members file the 4-page short form. But all covered paid public employees, starting with the governor, file the 22-page long form. Long forms are also required for specific boards like the Commonwealth Transportation Board, Parole Board, Lottery Board, Alcohol Beverage Control Board, State Corporation Commission, and Worker's Compensation Commission.

When does an individual have a conflict of interest? Generally one is presumed to have a financial "personal interest" that poses a conflict if the amount involved is over $10,000 annually or constitutes 3 percent of the business (Code of Virginia, section 2.1-639.2 through 2.1-639.6). As a general rule, no public officer or employee can have a personal interest in a contract with his governmental agency, other than his own employment. Similarly, public officials cannot have a contract with any other governmental agency unless the contract is awarded by competitive bid or competitive negotiation, or is awarded after the agency head finds that competitive bidding and negotiation are contrary to the public interest.

Any person with a "personal interest" in any matter considered by the agency on which official action is taken or contemplated must disqualify himself from participating in the transaction, and the disqualification is recorded in the agency's public records. There is a general exception if the person is not affected differently than others. For example, the legislative standard specifies that:

> ....if the legislator or a member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally

> recognizable class or group of which he or the individual or business he represents is a member (Code of Virginia, section 2.1-639-31).

The Code also contains exceptions for specific circumstances, such as if the contract for goods and services does not exceed $500. Another exception applies to:

> An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of $10,000 per year; provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm, and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving of the contract (Code of Virginia, section 2.1-639.9.4).

In summary, the present laws seek to prevent officials from having conflicting loyalties between their official duties and their private self-interest. The laws cover broad areas like a person's outside activities, financial affairs, and participation in official decision making. Corrupt acts like bribery and abuse of one's office are clearly outlawed. The centerpiece of the law is a reliance on public disclosure to ensure that secret influence peddling and private consideration do not displace the public interest.

COMMISSION GOALS

Our Commission has one goal: to enhance public confidence in government. We believe that Virginia's conflict of interest laws provide a sound ethical foundation for local and state officials without deterring individuals from entering public service.

In a democracy, true public financial disclosure will be the most effective means of accountability. As Justice Louis Brandeis once said, "Sunlight is the best disinfectant." The strongest deterrent to questionable behavior is the sure knowledge that one's actions will become public to anyone interested in finding out—and will be reported in the media if an official's impartiality and objectivity seems in doubt.

A necessary companion that precedes full and free disclosure is education. We believe that many questionable situations can be prevented, and people spared great personal pain, if public officials know ahead of time exactly what is expected of them—and if they can get guidance in a non-threatening way when they feel uncertain about what they should do. Specific recommendations addressing a coordinated educational approach are addressed in Recommendations 35, 36, and 37.

The Commission offers 14 recommendations to improve accountability of public officials and to prevent conflicts of interest in their decision making.

Recommendation 18

PUBLIC DISCLOSURE COMPUTERIZED SYSTEM

The Commonwealth should adopt a computerized financial disclosure system where all public information would be available to any person with access to a modem.

★

Currently, state executive and legislative officials must file their financial disclosure statements with the Secretary of the Commonwealth. Local officials file their statements with the appropriate circuit court clerk. Candidates for public office file with the State Board of Elections and the local registrars. Legislators file with the Clerks of the House and Senate. The forms are public information; in reality, however, the present system achieves very little public access, because interested parties encounter many barriers to getting and interpreting useful information.

The proposed computerized system would be accessible 24 hours a day and could be reached with any computer, as long as the user has a modem. The new Texas ethics statute calls for development of an electronic data base to be established by January 1, 1993. The Texas law even specifies that this system should allow for cross-referencing of entries on multiple reports, and that a reasonable user fee should be charged to cover the costs of electronic access.

Disclosure information from local government officials could be added later. This step would require that the local clerks of the circuit court be responsible for forwarding their officials' disclosure information to the Secretary of the Commonwealth's Office or to the agency responsible for central ethics data collection.

The Commission's proposal would shift the emphasis from the rule-bound compliance of filing the forms, to holding the public official genuinely accountable to the electorate, media, and public opinion for the content on each form. A computerized system would contribute to better monitoring and enforcement of ethical violations. Under the present manual system, it would be extremely expensive to hire enough paid staff to review all statements, or even a sample of them, to assure they are completely and accurately filled out. The proposed system relies on *volunteers*, such as journalists or individual citizens who are motivated to check out the information, to do the initial monitoring. A computerized system also would facilitate their search for answers.

Recommendation 19

SIMPLIFIED DISCLOSURE FORMS AND PROCESS

Simplified disclosure forms that officials could complete on personal computers should be developed. These forms could be accompanied by sample statements to demonstrate how to fill out the forms.

★

Currently, state and local government officials file cumbersome, confusing financial disclosure statements. Filing requirements extend to the thousands of citizen volunteers who serve on part-time boards and commissions. Not only do many questions come up about how and what information must be reported, but the resulting data are often baffling to the media and to interested citizens trying to interpret the data.

Recommendation 20

DISCLOSURE BY SMALL TOWN OFFICIALS

Public officials of towns with a population of fewer than 3,500 should not be excluded from filing financial disclosure statements. At present, 140 towns are exempted from any reporting of financial interests and possible conflicts of their officials (Code of Virginia, section 2.1-639.14). Members of the governing body and those in appointed positions of trust with delegated authority for administration of town affairs should report.

★

In small jurisdictions fewer people are involved in the government's day-to-day operations and business dealings, and these people may have overlapping self-interests due to friendships, business associations, and blood relations.

Disclosure is a requirement that falls on the individual, not the jurisdiction. The potential for personal conflicts does not neatly correlate with the size of the jurisdiction. Wealthy individuals serve on small town boards, and citizens of modest means serve on public bodies of large jurisdictions.

The issue of local government accountability surfaced repeatedly in the four public hearings. The Commission considered whether making a recommendation regarding small towns would impose such a burden that fewer people would be willing to serve in public office in those localities. We concluded that all public officers, especially those who are elected or in positions of trust, should be accountable and held to the same standard.

Recommendation 21

DEFINITION OF GIFT

The Conflict of Interests Acts should contain a clear and detailed gift definition such as the following federal standard (5 CFR 2635.202.): "Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred."

Public officials could continue to accept gifts offered as a goodwill gesture; gifts totalling more than $200 per year from the same source would be reported in their financial disclosure.

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Recommendation 22

EXCEPTIONS TO GIFT ACCEPTANCE RULES

To avoid confusion, the state law should contain a list of opportunities and benefits that do *not* qualify as gifts. Examples include awards and honorary degrees; reasonable food, travel, and lodging expenses for participating at a function; tickets to attend an event as a courtesy or ceremony customarily extended to the office; gifts from relatives; and gifts that are purely private and personal in nature.

★

Recommendation 23

GIFT ACCEPTANCE FROM INTERESTED SOURCE

No public official of Virginia state or local government should accept a gift from a person who has interests that may be substantially affected by the performance of the official's duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the official's impartiality in the matter affecting that person.

★

Recommendation 24

FREQUENT GIFT ACCEPTANCE

Officials should not accept gifts from sources on a basis so frequent as to raise an appearance of use of public office for private gain.

★

Under current law, no legislator or state or local government official is allowed to accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him or her in the performance of official duties. The two Conflict of Interest laws specify four quid pro quo prohibitions to take money or anything of value for the following actions:

1. performing services within the scope of official duties;

2. obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. obtaining any governmental contract for any person or business; and
4. being influenced in the performance of official duties, excepting any political contribution to legislators used for campaign or constituent service purposes.

However, even where an official is not engaged in any quid pro quo exchange of favors, there may be a public perception of impropriety. Therefore, the law should incorporate language strongly discouraging the practice of taking gifts from persons who have an interest in specific legislative or policy changes. A pattern of repeated gift-acceptance also can raise the appearance of a too-cozy relationship.

These two new civil prohibitions (versus the four existing criminal quid pro quo prohibitions) for interested-source and frequent-gift acceptances (Recommendations 23 and 24) would significantly expand the scope of the law, declaring as undesirable many practices that are informally condoned today. These provisions would place a substantial burden on public officials, whenever they are approached by individuals, to determine the interest that person or group has in matters pending before the public official. This could be addressed by agency ethics codes that deal with more concerns than the state legal standards. See Recommendations 34, 35, 36, and 37.

Recommendation 25

STRONGER TEST FOR CONFLICTING OUTSIDE ACTIVITIES

The Virginia Code should be amended to state that "A public official may not accept any business or professional opportunity when he or she knows *or reasonably should know* that there is a reasonable likelihood that the opportunity is being afforded to influence him or her in the performance of official duties."

★

The test for conflicting activities should not be dependent upon the person knowing and admitting that a conflict exists ("when he knows that there is a reasonable likelihood"), a standard that is very hard to prove. This test would apply to all public officials, including both full-time paid employees and part-time public officials such as members of boards and commissions.

Recommendation 26

BAN ON CERTAIN HONORARIA

Statewide elected officials, members of the General Assembly, and individuals occupying policymaking positions should not accept any honoraria for speaking at or attending proceedings or events where the official is attending primarily to provide expertise or opinions related to the performance of official duties.

★

This ban on honoraria would apply to the governor, lieutenant governor, attorney general, all members of the General Assembly, and cabinet officers. It would apply also to all officials in executive, legislative, or regulatory positions that are defined as "policymaking positions" by statute, executive order, or legislative rules. For example, it would be up to the House and Senate to decide which senior legislative staff would be covered.

A broad ban on honoraria is controversial, with both strong supporters and opponents. Our Commission believes that a ban can be crafted that does not interfere with the legitimate outside employment activities of Virginia's top officials, but would help allay the public perception that some officials profit by using their public position to generate income above and beyond the public salary they receive.

The ban would not limit officials in policymaking positions from practicing their professional expertise. For example, a high-level Health Department official, who is a medical doctor with public health specialities such as radiology or toxicology, could accept an honorarium for rendering expert testimony apart from his official duties or for speaking at a professional association's national meeting. But if the same doctor is directly responsible for the state's radiological health program and in that capacity attends a public forum discussing the state's approach to problems in radiology, he may not accept an honorarium. Of course, those with talents and skills unrelated to their official duties (musicians or writers, for example) would be free to accept honoraria or other sources of compensation.

If campaign contribution reforms are implemented, honoraria would provide an undesirable loophole to get around stricter limits. At some point the General Assembly may want to apply the ban to some local officers such as the elected constitutional officers.

A number of other states have enacted bans. For example, South Carolina prohibits any public official or public employee acting in an official capacity from receiving anything of value for speaking before a public or private group. West Virginia's ban applies only to elected officials; its Ethics Commission is charged with setting guidelines for the acceptance of reasonable honoraria by all other public officials and employees. Georgia prohibits elected officials from accepting any fee, although other public officers may accept honoraria up to $100.

Recommendation 27

BAN ON COMPENSATED REPRESENTATION BY EXECUTIVE AND LEGISLATIVE OFFICIALS BEFORE A STATE ENTITY

Executive and legislative officials, other than special government employees, should be prohibited from rendering compensated service to a client or constituent before a state entity, when that entity is acting in a capacity other than as a court or quasi-judicial body. The ban would also include the official's company or firm.

★

Under current law, both legislators and state executive officials are required to disclose representation of any business before any state governmental agencies, excluding courts and judges, for which they received over $1,000 in compensation during the past year.

Under this proposal, it would be allowable for a legislator who is a lawyer to represent a client in an individual proceeding such as a license application before the Board of Alcoholic Beverage Control (ABC Board). But the legislator could not receive compensation for any involvement with agency rulemaking that has general application and is a quasi-legislative function delegated by the legislature.

It would be acceptable under this proposal for an executive official to speak before another state agency while, for example, representing a non-profit organization, as long as he or she makes it clear that these actions are as a private citizen. However, it would not be acceptable to do so for compensation. "Special government employees" refer to board and commission members who are not paid for their part-time service. A member of an agency policy board would be free to represent a client before any other agency.

Recommendation 28

BAN ON COMPENSATED, NON-COMPETITIVE REPRESENTATION OF A STATE ENTITY

No state executive agency shall hire by non-competitive procedures executive officials, legislators, or their firms to represent the agency's interests.

★

Under this proposal, for example, it would be acceptable for an official's firm to receive state contracts for office equipment or landscaping if competitive procurement procedures are followed. But it would not be acceptable for an official's company to be hired by a state entity if the selection process was not generally open to other

competitors—for example, the sole source hiring of an official's law firm to represent a state university.

Our Commission's two recommendations on representation (Recommendations 27 and 28) are less stringent than those of other states that have recently revised their provisions. South Carolina perhaps has the most detailed bans on representation, applying to all state and local officials. It also has a more restrictive ban on legislators than the one we propose, excluding even representation of clients in individual contested cases (Code of South Carolina, section 8-13-745(B)).

West Virginia also takes a stronger approach: its ban covers all officials even after they leave government, and bars even unpaid representation of a client in a contested case or in any specific matter if the official had personally participated in a decision-making, advisory, or staff support capacity (Code of West Virginia, section 6B-2-5-(f)).

Recommendation 29

POST-EMPLOYMENT LIMITS

Post-employment limits should be established for executive, legislative, and independent regulatory agencies. Post-employment representation should be limited as follows:

1. "Switching Sides Provision". A former executive official should not represent a person in a matter before a governmental entity, including an independent regulatory agency, in which matter the former official participated personally and substantially while an official. The term "executive official" means an upper-level executive official or employee who is appointed or serves directly under one who is appointed to his or her position.

2. "No Contact Provision." A former official should not represent a person in a matter or lobby on behalf of a person before the governmental entity in which the former official served for a period of one year after the former official's employment with that governmental entity has ceased. The term "official" includes an executive official as defined above, as well as an upper-level legislative employee, defined on the basis of salary or government service grade. No limits would apply to legislators' post-employment, given the nature of the part-time citizen legislature.

★

Under present Virginia law, there are no restrictions on post-employment representation by former public officials before governmental entities.

Federal law and most states have "switching sides provisions." Our recommendation is similar to the ethics rules governing attorneys, whereby a lawyer who represented a client in a particular matter is not thereafter allowed to represent another client in the same matter, unless the former client consents.

This recommendation prohibits executive and regulatory officials from "switching sides" in a specific matter after leaving government service. It is therefore limited in scope. For example, a high-level official in the State Corporation Commission, who has responsibility for a specific rate request from a utility company, leaves the SCC to work for that company. Under this ban, the official could not contact, either formally or informally, SCC officials about that pending rate request.

The "no contact" recommendation would prevent executive, regulatory, or legislative officials from having contact of an official nature with their former governmental employer for one year after leaving the position. It would prohibit any lobbying by that official of his or her former agency employer during the same time frame. The rationale is to limit as far as possible the opportunity for a state employee to use his or her office to benefit either a prior or prospective employer, and to prevent the appearance of impropriety.

As a general ban, the "no contact" recommendation is much more expansive than the "switching sides" provision. For example, the same SCC official, who leaves to work for a utility company, would be barred from representing or lobbying on behalf of any client in any matter before the entire State Corporation Commission for one year. However, during that year, the ex-SCC official still could lobby any member of the legislature on any issue, including those under the jurisdiction of the SCC. The ex-SCC official could also contact other administrative agencies about issues of interest to his utility company employer, such as discharge permits, waste-energy plants, or road construction.

Few states have enacted "no contact" provisions. The 1978 Ethics in Government Act established the first "no contact" rules for the federal government. In 1987 New York enacted a one-year "no contact" ban that applies to state employees far down in the hierarchy. In 1991 Texas passed a one-year "no contact" ban for those leaving regulatory agencies. Recently, President-elect Clinton has proposed a five-year "no contact" rule that would bar his high-level presidential appointees from contacting their former agencies for five years after leaving government service.

Recommendation 30

USE OF CONFIDENTIAL INFORMATION

A public employee or official should not use or allow the improper use of confidential information to further his own private interest or that of another. In this context, confidential information is that which the person gains by reason of government employment or which he or she knows or reasonably should know has not been made available to the general public.

★

Under present law, a public employee is prohibited from using for his own *economic* benefit or that of another party confidential information that he has acquired by reason of his public position *and* that is not available to the public. A public official can abuse the public trust by using confidential information even if he has no financial stake. Private policy agendas can displace the public interest.

The present law does not prohibit a public official from using confidential information for his benefit as long as the information source is other than "by reason of his public position." We think that a higher ethical standard should be expected from public officials. The Commission does not see this provision as preventing whistle-blowing since public employees exercise their constitutional right to speak on matters of public interest or as deterring those inside government from releasing information to the media.

Recommendation 31

LAW PROTECTING WHISTLE-BLOWERS

The General Assembly should pass a whistle-blower statute that would protect public employees who disclose wrongdoing or waste, provide remedies should a violation be proven, and impose civil penalties on the violators.

★

Governor Wilder recently has established a hotline whereby employees can anonymously report fraud, waste, and abuse. There should, however, be broader encouragement for whistle-blowers to bring problems to public attention. In particular, public employees need explicit protection from reprisal. West Virginia and Maryland provide two models that lawmakers can consider for essential features.

Under the West Virginia law, a whistle-blower is someone who, while employed with a public body, witnesses or has evidence of wrongdoing or waste and who makes a good faith report (without malice, or consideration of personal benefit, and with reasonable cause to believe the report to be true) or testifies, verbally or in writing, to one of the employee's superiors, to an agent of the employer, or to an appropriate authority. No public employer may discharge, threaten, or otherwise discriminate or retaliate against an employee by changing that person's compensation, terms, conditions, location, or privileges of employment.

The West Virginia law provides for the following remedies. The court may order reinstatement, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, and reasonable attorney and witness fees. A person who, as an employer or under color of an employer's authority, violates the law is liable for up to a $500 civil fine and can be suspended from public service for up to six months by the court (Code of West Virginia, section 6C-1 through 8).

Maryland's whistle-blower provisions cover a public employee or an applicant for classified employment who discloses information that he or she reasonably believes evidences a violation of any law, rule, or regulation; gross mismanagement, gross waste of funds, or abuse of authority; or a substantial and specific danger to public health or safety.

If the Maryland Secretary of Personnel or the governor's designee finds that a violation has occurred, remedies may include: erasing any detrimental insertion from the employee's personnel file; hiring, reinstating, promoting, or terminating the suspension of

the complainant; and awarding back pay. The Maryland Secretary of Personnel may also make recommendations for disciplinary action against the employee found to have caused the violation (Maryland Merit System, Employee Disclosure and Confidentiality Protection, section 12G through 12I). ■

RECOMMENDATIONS

D. ESTABLISHMENT OF A STATE ETHICS COMMISSION

Recommendation 32

STATE ETHICS COMMISSION

An independent and nonpartisan State Ethics Commission should be established. The powers and duties of the Ethics Commission should include the following:

1. Establish and maintain a computerized system for receiving and retrieving financial disclosure statements, campaign finance information, and lobbyist registration and reporting information.
2. Issue regulations as provided by statute.
3. Issue advisory opinions interpreting campaign finance, ethics, conflict of interest, and lobbying statutes and regulations.
4. Provide consultation and advice to the network of designated ethics officers throughout state and local government.
5. Educate public officials, candidates for elected office, lobbyists, and the public about ethics rules.

★

Under present law, Virginia has a fragmented approach to implementing ethics provisions. The State Board of Elections receives campaign finance reports and candidates' financial disclosure forms. State board and commission members, judges, executive officials and legislative officials from agencies like the Division of Legislative Services, JLARC, and the State Auditor of Public Accounts file their financial disclosure statements with the Secretary of the Commonwealth. Legislators file their forms with the Clerks of the House and Senate. Local officials file disclosure statements with their local clerk of the circuit court. The Attorney General's Office issues advisory opinions on ethics statutes in the same manner that it issues other opinions. No one conducts organized continuing education sessions.

As of January 1990, over 25 states had established a state ethics commission, ethics board, public disclosure commission, or fair political practices commission. Our

Commission believes that issues of ethics in government are important enough to warrant establishing an independent and nonpartisan State Ethics Commission in Virginia.

Under this proposed recommendation, all filings of disclosure statements, campaign finance reports, and lobbying registration and reporting would be with the State Ethics Commission.

The non-salaried members of this proposed Ethics Commission should not hold elective or appointed office at the time that they serve on the Commission. Care should be taken to structure the appointments process so that the Commission can not be captured and used for partisan purposes, especially by the political party in power. For example, minority leaders of the House of Delegates and Senate could designate appointees, and some positions could be reserved for citizen representatives. No more than a certain number of commissioners should be members of the same political party. Members should have staggered, fixed terms to avoid the possibility of "stacking" appointees during any term.

The proposed Commission would require a small permanent staff. Certain positions at the State Board of Elections, Secretary of the Commonwealth's office, and Office of the Attorney General should be transferred to the Commission in order to reduce the need for additional state funds to be spent.

The State Ethics Commission would be required to issue advisory opinions within a certain time of receiving a request from any person subject to state ethics, campaign finance, or lobbying laws. Any person acting in good faith reliance on such an opinion should be immune from any sanctions or criminal prosecution. The proposed Commission would not have powers to investigate or prosecute alleged violations of the law but would be required to refer all complaints to the attorney general or appropriate commonwealth's attorney.

Finally, this proposed State Ethics Commission would not have to be reactive because its primary role would be education outreach to the approximately 370,000 people expected to abide by public ethics rules and the millions of Virginians who watch or participate in the public process. As Thomas Jefferson stated in his *Notes on Virginia*:

> Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree. ■

RECOMMENDATIONS

E. ETHICS LAW AND EDUCATION

Changes in laws and regulations are but one step in achieving workable conflict-of-interest and other ethics rules. It is important to consider as well what happens or does not happen after the laws are in place. Our Commission focuses here on education. Education combined with our earlier focus on the fullest possible public disclosure of information are two means that are entirely consistent with and supportive of democratic government. Over the last 20 years most states have significantly upgraded their ethics education and training. Virginia could also benefit from closer attention to day-to-day practices.

Recommendation 33

UNIFIED STATE ETHICS LAW

All legal provisions related to conflict of interest, financial disclosure, lobbying, procurement, and other public ethics issues should be included in one separate Ethics Title of the Code of Virginia.

★

Significant public integrity restrictions are scattered throughout the Code of Virginia. This situation only contributes to the confusion surrounding ethics regulations and makes it even more necessary that ethics education be closely coordinated. Most states have enacted unified ethics laws in the last twenty years. This recommendation would be invaluable to any successful ethics education program and symbolically would emphasize ethics as a top priority.

Recommendation 34

STATE LAW AS MINIMUM LEGAL STANDARD

Nothing in the Code of Virginia should preclude agencies and local governments from adopting additional ethical standards and guidance. Agencies and local governments should be authorized to adopt their own ethics codes, as long as they adhere to the minimum standards set forth in the Code.

★

The present conflict of interest statutes comprise a single body of law applicable to everyone in government. This has been interpreted to mean that only one standard must apply to all. Consequently, individual agencies have not been allowed to adopt stricter ethical standards and codes of conduct to fit their special circumstances.

Our Commission believes that the legal approach should follow the model used by the federal government and other states, where the general law specifies the minimum legal threshold and agencies are allowed to fashion additional ethical standards and guidance to instruct their members on how they ought to behave, so long as the standards are not more lenient than the general law.

Recommendation 35

ETHICS EDUCATION

The statewide office with lead responsibility in ethics should emphasize education and training. Explanatory materials on public ethics, written in plain English, should be developed and broadly distributed to candidates for public office and public officials covered by the provisions. A consistent curriculum and outreach approach to ethics education should replace *ad hoc* guidance and presentations.

★

The Attorney General's Office will send representatives to speak on request about the conflict of interests laws, and the office issues opinions on case-by-case situations when requested by the person who has the possible conflict. During our Commission's deliberations, the Attorney General's Office supplied us with over 300 pages of annotations and examples explaining the various legal provisions dealing with ethics. It is a confusing, complicated area.

Our Commission believes that only a small minority of the approximately 370,000 people covered by the Act understand what the general principles and rules are and what the formal process is for getting an answer.

The present system works *only if* someone knows enough to realize that a conflict might exist and then follows through by calling either the Attorney General's Office (for state government) or the local commonwealth's attorney (for local government). Like an iceberg, many conflicts remain submerged and do not get reported. Even if the system works perfectly, the law primarily addresses how to avoid *financial* conflicts of interests—not the broader sphere of important ethical questions that public officials encounter and need to think about before making fair and informed judgments.

The recommended curriculum could draw upon materials from the federal Office of Government Ethics or other state ethics commissions where appropriate. If our Commission's recommendation for a State Ethics Commission is adopted, the education function should be primarily its responsibility. If no changes are made in organizational responsibilities, the Office of the Attorney General, in cooperation with the commonwealth's attorneys, should prepare pamphlets and other materials written in plain English that explain ethics rules.

Recommendation 36

CONTINUING EDUCATION SESSIONS

All newly elected officials should receive orientation sessions on statutes and regulations governing public ethics. All newly appointed board and commission members and new public employees should receive clearly written materials detailing their ethical responsibilities. These sessions and materials could be coordinated with organizations that already offer orientation training for these officials and employees to ensure that the most relevant and pressing issues are covered.

★

Currently, state agencies and local governments hold continuing education on many technical and substantive issues that their officials must master to achieve professional and legal standards. Comprehensive training on public ethics issues is a glaring omission.

Recommendation 37

NETWORK OF DESIGNATED ETHICS OFFICERS

State agencies and local governments should appoint designated Ethics Officers (DEOs), along the lines of the Equal Employment Opportunity Officers (EEO) model, to provide an agency focal point and liaison for ethics concerns.

★

Ethics will be a higher priority if each agency sees ethics issues as a part of its own mission and responsibility. These Designated Ethics Officers would not be new posts but would be responsibilities added to existing duties. We would suggest that these DEO responsibilities rotate rather than being permanently assigned to a specific position.

Given the diverse duties and functions performed by government employees, one central office cannot give sufficient day-to-day guidance on the hundreds of different ethical dilemmas that will arise. The DEO network could help develop agency-specific educational materials and programs. For example, university professors will encounter situations that are different from those of concern to mental health practitioners or correctional employees. Bringing ethics down to the agency level will make it more credible and empower agency employees to be responsible for the consequences of their actions. ■

APPENDIXES

Overall Plan for Proposed Schedule

■ **ELECTION YEAR**
Quarterly Reports Due:

APRIL 15
JULY 15
OCTOBER 15
JANUARY 15

Plus:

8-day pre-primary**
8-day pre-general election
30-day post-general election

■ **NON-ELECTION YEAR**
Semi-Annual Reports due:

JANUARY 15
JULY 15

**Applies to convention candidates as well.

CURRENT REPORTING PERIODS & DATES

Statewide campaigns
General Assembly
Constitutional Officers
County Governing Bodies
(1993 dates used for illustration)

REPORTING PERIOD	REPORT DUE
PRE-ELECTION YEAR *(Statewide and General Assembly only)*	
January 1 to December 31	January 15
ELECTION YEAR	
January 1 to April 25	May 1
April 26 to May 28	May 31
May 29 to July 10	July 15
July 11 to August 10	August 15
August 11 to September 25	October 1
September 26 to October 22	October 25
October 23 to November 25	December 1
November 26 to December 31	January 15
POST-ELECTION YEAR	
January 1 to June 30	July 15
July 1 to December 31	January 15
***Annually thereafter	January 15

CURRENT REPORTING PERIODS & DATES

Committees
(1993 dates used for illustration)

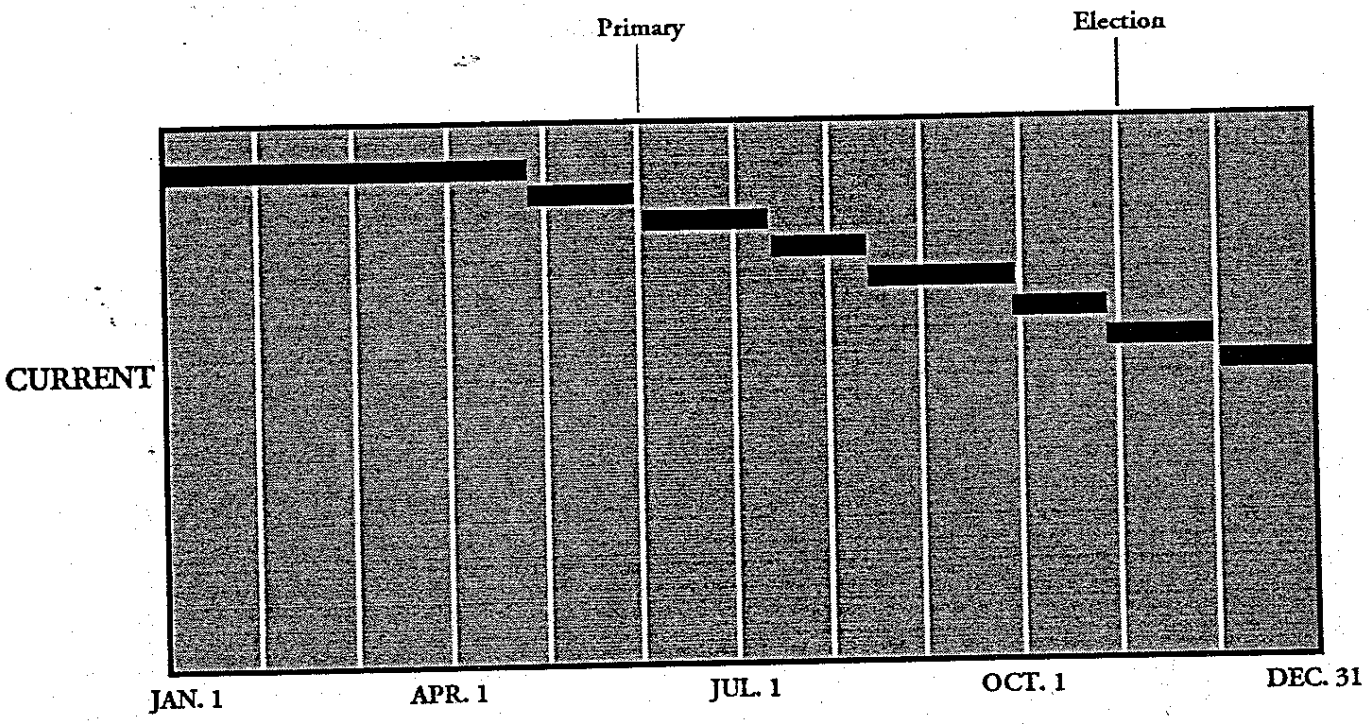
REPORTING PERIOD	REPORT DUE
ALL YEARS	
January 1 to February 21	February 24
February 22 to April 23	April 26
April 24 to May 28	May 31
May 29 to October 22	October 25
October 23 to November 26	December 2
November 27 to December 31	January 15

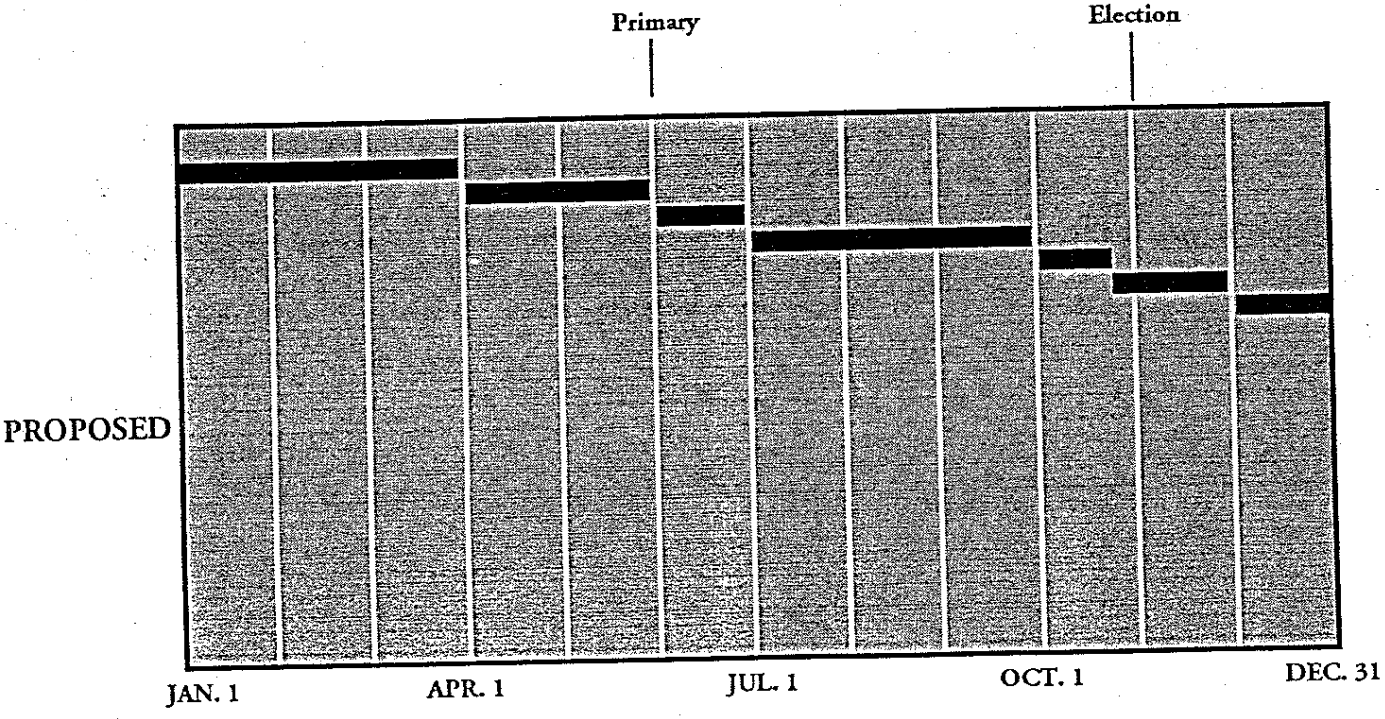
PROPOSED REPORTING PERIODS & DATES

Statewide Campaigns
General Assembly
Constitutional Officers
County Governing Bodies
Committees
(1993 dates used for illustration)

REPORTING PERIOD	REPORT DUE
ELECTION YEAR	
January 1 to March 31	April 15
April 1 to May 26	May 31
May 27 to June 30	July 15
July 1 to September 30	October 15
October 1 to October 20	October 25
October 21 to November 25	December 2
November 26 to December 31	January 15
NON-ELECTION YEAR	
January 1 to June 30	July 15
July 1 to December 31	January 15

NOTE: The 30-day post-election report would be waived for party committees. Therefore, party committees' year-end report would cover the period from October 21 to December 31.


Primary
Election
CURRENT
JAN. 1
APR. 1
JUL. 1
OCT. 1
DEC. 31


Primary
Election
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APR. 1
JUL. 1
OCT. 1
DEC. 31