

REMARKS

THE STATE OF STATE LEGISLATIVE ETHICS: WATCHING THE WATCHDOGS*

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The Center for Public Integrity is a nonprofit, non-partisan research organization that studies public policy issues and their effect on the United States and the international community.¹ The Center's analysis spans the local, national, and international sphere with one central goal: to serve as an honest broker of information that inspires citizens to hold government accountable at all levels.

Since its founding in 1989, the nonprofit, non-partisan center has released more than 275 investigative reports and has been repeatedly honored by its peer organizations for its public service journalism. We do not take funding from governments, corporations, unions, or anonymous donors, but we rely instead on foundation grants and support from our citizen members.

The Center has been called a “watchdog in the corridors of power.” It has been called a “model for a new generation” of news. It has also been called the “Left of Center for Public Integrity.” But let me share this little-known fact: The Center broke the “Lincoln Bedroom” story in 1996. You know, the one in which President Clinton sort of auctioned off stays in the White House to the bidder with the most campaign cash for him. The Center's newsletter published a profile of seventy-five high-profile big-time Democratic fund-raisers and donors who had also spent overnights in the posh surroundings of the Clinton White House. About six months later, the administration finally honored the Center's request for the names of all overnight White House guests—the first time any sitting president had released that information to the press. The rest was history, and the original Center newsletter report that first introduced the issue to public discussion later won the Society of Professional Journalists' “Public Service” award.

Outside the U.S. borders and politics, since 1997 the Center has been looking at corruption and ethics across borders through its International Consortium of Investigative Journalists. This cross-border group of nearly 100 journalists made one of its first big splashes with a report on international Big Tobacco and the massive profits and influence in place behind the scenes at cigarette companies familiar to the average citizen—and more than familiar to the average legislator in the United States—that worked hand-in-hand with organized crime to operate a massive international smuggling network.

The Center for Public Integrity's State Projects started with a very simple idea: disclosure does not lead to accountability without accessibility and context.

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1. Center for Public Integrity, <http://www.publicintegrity.org> (last visited May 17, 2006).

In 1995, we gathered the paper campaign finance reports that Indiana legislative candidates filed with the Elections Division of the Indiana Secretary of State, typed them into a database, and analyzed the patterns. We partnered with local media to develop our findings into investigative reports that showed how special interests dominated the legislature. One of our collaborators, the *Indianapolis Star and News*, straightforwardly reported what we found: “[a]n unprecedented coalition of about 40 big-business interests persuaded a sympathetic Republican majority to pass a ‘wish list’ of favorable laws in 1995.”² While our work in Indiana, and later Illinois, touched off a nationwide movement to computerize state campaign finance records and make them available on the Internet, we chose to follow a different trail unearthed by our investigation.

During our Illinois research, we came across anecdotal evidence that special interests used more direct methods to influence state lawmakers than writing campaign checks. They could put that money directly in a lawmaker’s bank account. We discovered that high-ranking legislators in Illinois—from both parties—were on the payroll of the special interests they were supposed to oversee. And that, we thought, might not be an anomaly.

There are some 7400 elected state lawmakers, the majority of whom spend a fraction of their time working for the people. These men and women pass laws influencing everything from the education of children to the hospice care of the elderly; they set environmental policy and determine the manner in which citizens vote in federal elections. All of them have private financial interests, and few have any restrictions over whom they can work for or how much money they can earn while holding office.

Starting in 2001, we began posting on our website every financial disclosure form filed by lawmakers in the forty-seven states that require them. We found that more than one quarter of state legislators sat on a committee that regulated at least one of their professional or business interests. From those potential conflicts of interest, we have isolated actual conflicts and steered reporters to countless others.

That year we also began examining the effectiveness of state ethics laws and institutions. We found that twenty-seven states allow lawmakers to oversee their own ethics, and among those states with an independent agency overseeing ethics among legislators, twelve of the commissions had not ruled against a lawmaker in the last five years. In 2002, we began analyzing what has grown to a \$1 billion a year industry: Lobbying statehouses. We have also found a way to quantify state disclosure laws, ranking the thoroughness and quality of information that lobbyists and lawmakers alike must make available to public scrutiny.

These state ethics laws often seem like a façade—hanging there with nothing holding them up. The Center for Public Integrity strives to put these laws to work—to squeeze out the substance of the laws. That is why we spend hours obtaining, computerizing, and analyzing thousands of documents every year. With the use of databases and the web, the Center puts the “public” back into “public records.”

2. Janet E. Williams et al., *Statehouse Sellout: How Special Interests Hijacked the Legislature*, INDIANAPOLIS STAR, Feb. 11, 1996, at A1.

However, these records can only take us so far. People on all sides become the unknown in the equation—legislators, lobbyists, journalists, the general public. A government for the people needs to provide all these players with the tools to do the best they can; those tools are a combination of disclosure laws, conduct rules, and ethics education. After that, we must rely on the personal integrity of all involved.

From the Center's ongoing studies of state ethics across the country, it is clear that there is no universally accepted definition of ethics in regard to lawmakers. Instead there are some general guidelines, such as no use of office for personal gain, common from state to state, and then various ways states have set up to monitor and enforce those guidelines.

Ethics laws generally come in two categories: disclosure and conduct.

Disclosure laws require campaign finance statements, the lobbyists' statements and legislators' personal financial disclosures. These disclosure forms serve two purposes—one as a preventative measure for those filing the forms (if they have to report it every year, it is a reminder of the laws they should be operating under and they may be more likely to think twice if an ethical dilemma presents itself); and one as an educational tool for the public (people can really learn about the inner-workings of their governments by diving into these public records). These filings are collected and regulated by various agencies, including independent state ethics agencies, departments of the secretaries of state, or the chambers themselves. The Center for Public Integrity's State Projects have done extensive work on campaign finance reports regarding political parties,³ state lobbying disclosure,⁴ and legislative outside interest reporting.⁵

Conduct laws govern the actions of lawmakers, other public officials, and state employees while they are in their public positions. These laws vary extensively from state to state but can encompass categories such as conflict of interest, abuse of power, nepotism, post-term employment (how long until legislators can become lobbyists after serving), and acceptance of gifts, travel payments, and speaking fees, among other topics. In regard to oversight of legislators' conduct, states have set up two systems: twenty-three states have set up independent bodies to oversee conduct of legislators, while the remaining twenty-seven states have legislators policing their own conduct. This is a touchy discussion. Many critics of independent agencies say they violate separation of power provisions set up in constitutions (i.e., since the three branches of government are set up separately, they should be left to regulate themselves). However, in quite a few instances the public has voted in the independent oversight of their legislature through referendums. The Center's State Projects studied these wide-ranging ethics laws in the states in 2001.⁶

3. Center for Public Integrity, *Party Lines*, <http://www.publicintegrity.org/partylines/> (last visited May 17, 2006).

4. Center for Public Integrity, *Hired Guns*, <http://www.publicintegrity.org/hiredguns/> (last visited May 17, 2006).

5. Center for Public Integrity, *Our Private Legislatures*, <http://www.publicintegrity.org/oi/> (last visited May 17, 2006).

6. Center for Public Integrity, *Watchdogs on Short Leashes*, <http://www.publicintegrity.org/>

Although ethics laws differ across the country, the universal philosophical driver for these policies is to boost public trust in government. Many state statutes lead with something to that effect.

Many states enacted their first ethics laws in the wake of the Watergate scandal. The criminal conspiracy that began with a botched break-in and ended with the resignation of President Richard M. Nixon sent shock waves through federal, state, and local governments. Before the scandal, most governmental bodies had no specific laws prohibiting elected officials from using their offices for personal gain, let alone bodies to interpret and punish government corruption. Voters assumed that officials, from the president on down to volunteer mayors in small towns, would adhere to general principles of honest service or, in some cases, vague and ill-defined references to honorable public service in documents like the federal or state constitutions or town charters.

Watergate sent American lawmaking bodies scrambling to codify what, precisely, was meant by honest public service and, in some cases, to create agencies to interpret and enforce these new “ethics laws.” The U.S. Congress and state legislatures across the country drafted complex laws requiring government employees and officials to disclose their sources of personal income and campaign funding, adhere to rules for official conduct, and answer to new bodies created to oversee those rules. Only one state—Hawaii, in 1968—had established an ethics commission prior to the scandal. By 1979, twenty-two other states established outside oversight. The new ethics agencies were intended to reassure the public that something other than honor ensured the integrity of public officials.

Currently, twenty-three states have outside oversight of ethical conduct of members of the legislature. Adding the nine states that have outside oversight of legislative disclosure laws, there are thirty-two states in which independent commissions have some oversight of the conduct and disclosure filings of the legislature. However, the Center learned those agencies maintained adversarial relationships with the lawmakers they regulated and were often ill-equipped to enforce the regulations due to inadequate funding or staffing, or weak enforcement or investigation mechanisms.

For a project called “Power and Money in Indiana” in 1996, the Center for Public Integrity’s first examination of state legislatures, Center researchers developed a database of Indiana state legislative campaign contribution records, coded by interest groups. This previously inaccessible data was given to a dozen news organizations and eight political science professors in the state, and the result was massive, investigative news coverage throughout the Hoosier state. The *Indianapolis Star*;⁷ WTHR-TV Channel 13, the NBC affiliate in Indianapolis; the Fort Wayne *Journal-Gazette*; and the *Evansville Courier* all developed stories and series examining the state legislature.

It was the first time Indiana citizens had ever read such breadth and detail about their politicians and the forces behind them. Within days, 2500 people contacted the *Star*, angry about what they had read—the largest response to any

ethics/ (last visited May 17, 2006).

7. Williams et al., *supra* note 2.

story in the newspaper's history. Weeks later, the legislature took up a formerly tabled bill and voted to computerize campaign records and make them available online to the public (although it took lawmakers a full year to actually authorize the necessary money). A commission was created to study ways to improve the state's campaign finance system.

The arrogance and indignation by the state legislators were palpable. For example, when a *Star* reporter showed Indiana Senate President Pro Tempore Robert Garton the stacks of angry reader mail, he harrumphed and said, "What gives them the right to question us? What gives them the right to question our integrity?"⁸ The reporter observed that citizens elect lawmakers and believe that they are supposed to work for the public. Garton acknowledged that point.

The *Star* remained vigilant, continuing the "Statehouse Sellout" series, but the legislature did not. The Campaign Disclosure Project found in 2004 that Indiana has good access to its campaign finance information and website, but still gets an overall "C-" because of a low grade in electronic filing and a weak campaign disclosure law that ranks among the ten worst in the country.⁹ This is due to infrequent filing, contributors not being required to report employer information, and a lack of reporting on independent expenditures, or campaign spending by outside groups on behalf of candidates. Strikingly, Indiana is the only state in the nation that does not require reporting of in-kind contributions—those donations that come in the form of goods or time instead of cash.

After the interesting experience with citizen reaction in Indiana, the Center wanted to be able to put state laws into a nationwide context, so we expanded our scope to evaluate disclosure laws. Disclosure laws speak to the heart of transparent democracy—and can be useful to both the general public and journalists.

In "Our Private Legislatures" we looked at the fact that although state legislators frequently have jurisdiction over areas in which they hold personal interests, many states have weak mechanisms for disclosing those ties. In fact, twenty-four states received failing scores from the Center for Public Integrity on making basic information about the outside interests of their legislators available to the public.

As of 2004, Indiana ranks twenty-eighth in the country, with a failing score of 59.5 out of 100 points.¹⁰ In evaluating the financial-disclosure laws that apply to members of the legislatures in all fifty states, the Center used criteria drawn from the following categories: outside employment, investments, ownership of real property, officer/directorships, clients, family income and interests, public access to disclosure records, and the existence of penalties for violations of the disclosure laws. Indiana has some narrow definitions of what is required to be

8. Charles Lewis, *Revealing State Secrets*, COLUM. JOURNALISM REV., May/June 1998, available at <http://archives.cjr.org/year/98/3/state.asp>.

9. Campaign Disclosure Project, *Grading State Disclosure 2004 Indiana*, <http://www.campaigndisclosure.org/gradingstate2004.in.html>.

10. Center for Public Integrity, *Indiana Disclosure Ranking Report Card*, OUR PRIVATE LEGISLATURES, Apr. 19, 2006, <http://www.publicintegrity.org/oi/iys.aspx?st=IN&sub=report>.

disclosed and does not require any reporting of real property owned by legislators. Also, there are no late- or mis-filing penalties on the books.

Another Center report turned toward lobbying on the state level, where lobbyists and their employers in forty-two states spent more than \$964 million wining, dining, and generally influencing state lawmakers in 2004. Many details about how those dollars were spent remain hidden from public view. One way for the public to trace the fingerprints left on the 29,000 bills states enacted in 2002 is by looking at the disclosure reports lobbyists or their employers are required to file.

As of 2003, Indiana ranks twelfth in the nation, with a “D” score of 66 out of 100 points.¹¹ These reports should show where lobby money came from, where it went, and why it was spent. They are, in short, a critical measure of external influences on both legislation and legislators. But trying to follow that trail with many states’ current disclosure mechanisms is a daunting, and sometimes fruitless, challenge.

The Center’s founder and former executive director, Charles Lewis, remarked following one project examining conflicts of interest and self-dealing in state legislatures across the country that “these guys make the U.S. Congress look like kindergarten.”¹² At the very core, legislative ethics are up to the individual. If a legislator is determined to commit a behavior that violates ethical standards set before them, there is no amount of regulation that will prevent dishonestly.

With so much potential for conflict and so many legislators overseeing their own ethics, the need for the checks and balances provided by the media and the public are critical—and yet, news coverage at the state capitol level is on the decline across the country. A statistic from the *American Journalism Review* offers a perfect example of this: in a year during which only 626 reporters report full-time on state government, more than 3000 media passes were issued for the Super Bowl.¹³ More and more, citizens themselves are doing the work journalists neglect—searching for and spreading information to hold those in power accountable. This is part of the reason the Center has dedicated so much energy to taking disclosure information and making it accessible and straightforward for citizens.

As we concluded almost a decade ago when beginning the States Projects investigation into legislatures around the country, the most comprehensive ethics laws in the country will not create an accountable, honest government if the information does not reach the people.

Transparency in ethics laws is essential if they are to have any effect and ensure that legislators and the groups and citizens that monitor them can both serve the public’s best interest.

11. Center for Public Integrity, *State Pages*, HIRED GUNS, May 15, 2003, <http://www.publicintegrity.org/hiredguns/nationwide.aspx?st=IN&display=PrStateNumbers>.

12. Center for Public Integrity, *Frequently Asked Questions*, OUR PRIVATE LEGISLATURES, <http://www.publicintegrity.org/oi/default.aspx?act=faq> (last visited May 17, 2006).

13. Charles Layton & Mary Walton, *State of the American Newspaper: Missing the Story at the Statehouse*, AM. JOURNALISM REV., July/Aug. 1998, available at <http://www.ajr.org/Article.asp?id=3279>.