October 3, 2023

The Honorable Pat Proctor, Chair
Special Committee on Governmental Ethics Reform, Campaign Finance Law
Kansas Legislature

The Honorable Mike Thompson, Vice Chair
Special Committee on Governmental Ethics Reform, Campaign Finance Law
Kansas Legislature

Re: Statement on the Constitutionality and Importance of Campaign Finance Laws

Dear Chair Proctor, Vice Chair Thompson, and Members of the Committee,

Campaign Legal Center (CLC) respectfully submits this written testimony to the 2023 Special Committee on Governmental Ethics Reform and Campaign Finance Law and thanks the Kansas Legislature for the opportunity to testify. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. CLC has longstanding expertise on campaign finance topics: since the organization's founding in 2002, it has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. CLC's work promotes every American's right to participate in the democratic process and enjoy a government responsive to the will of the people.

CLC focuses its testimony today on the importance of campaign finance laws and their constitutionality, with a particular emphasis on their crucial role in enhancing electoral transparency. Disclosure laws — including reporting and disclaimer requirements — play a critical role in our democracy and vindicate core First Amendment values. At a time when there is more money in politics than ever, and special interests routinely seek to obscure their identity from the public, it is important to protect voters' right to know who is seeking to influence their vote and their elected representatives. Strong, clear laws, and a regulatory body with the power to meaningfully enforce those laws, are essential.

Background

Nearly 50 years ago, in its seminal decision in *Buckley v. Valeo*, the Supreme Court remarked that "virtually every means of communicating ideas in today's mass society requires the expenditure of money."[1] That statement was prescient, as the costs of elections — and the overall amount of money in politics — have skyrocketed, triggered by another Supreme Court decision, *Citizens United v. FEC*,[2] which ushered in a wave of spending by nominally independent groups, including the so-called "super PAC." The nonpartisan nonprofit OpenSecrets estimated that federal election spending in 2020 exceeded $14.4 billion, including an estimated $3.3 billion in spending by independent groups spending money to influence the election.[3] Local news reports in 2022 remarked on the unprecedented sums of money entering the Kansas gubernatorial election, on top of the millions of dollars spent on down-ballot races in Kansas.[4]

With more money than ever pouring into the electoral system, regulators must ensure that voters can easily determine who is funding electoral communications and campaigns, which is essential for voters to "make informed decisions and give proper weight to different speakers and messages."[5]

Special interests frequently seek to mask their electoral spending from the electorate, undermining transparency in the process. For example, special interests will often donate to nonprofit groups that do not have to disclose their donors, and structure their activity in a manner designed to evade registration and reporting requirements for "political committees." These "dark money" nonprofit groups effectively act as vehicles for special interests to spend huge amounts of money on electoral communications, leaving voters in the dark about who is really spending money to influence their vote, and thus unable to evaluate the credibility and veracity of the ads paid for by these groups.

Dark money has become particularly pernicious on the state level. According to a report by the nonpartisan Brennan Center for Justice, secret spending in state elections often originates from special interests with a direct and immediate economic stake in the outcome of the electoral contest in which they are spending.[6] These contests include elections for offices like attorney general, local utility boards,

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[1] 424 U.S. 1, 19 (1976).
[2] 558 U.S. 310 (2010).
[3] Karl Evers-Hillstrom, *Most expensive ever: 2020 election cost $14.4 Billion*, OPEN SECRETS (Feb. 11, 2021), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/.
[4] *See* Andrew Bahl, *Campaign spending continues to rise in Kansas races. Here's who spent what*, TOPEKA CAPITAL-J. (Nov. 1, 2022), https://www.cjonline.com/story/news/politics/elections/2022/11/01/laura-kelly-derek-schmidt-spend-millions-in-kansas-governors-race-election-2022/69593634007/.
[5] *Citizens United*, 558 U.S. at 371.
[6] CHISUN LEE ET AL., BRENNAN CTR. FOR JUSTICE, SECRET SPENDING IN THE STATES 3, 10-11 (2016), https://www.brennancenter.org/our-work/research-reports/secret-spending-states.

and judges — positions that may directly wield power over a case or policy that is of particular interest for a special interest, such as a corporation, union, or wealthy individual.[7]

As the Brennan Center describes, dark money in state elections has been traced to, *e.g.*, an out-of-state mining company targeting a Wisconsin state legislator with power over mining permits; payday lenders supporting an attorney general that could limit the extent to which the payday loan industry is regulated; and food companies spending money on a ballot measure concerning food labeling requirements.[8] Voters, unaware of the special interests behind the communications they saw or heard in those elections, could not meaningfully evaluate the credibility of the ads or decide whether their elected officials were working for the benefit of their special-interest supporters.

Another tactic some wealthy individuals and groups use to conceal their election spending is passing their money through a shell company or other intermediary. These "straw donor" schemes involve funneling money to the intermediary entity, like an LLC or nonprofit, with instructions that the entity contribute the money to a political committee or candidate in its own name, thus concealing the true contributor's identity. The political committee or candidate that ultimately receives the funds reports the conduit as the contributor rather than the original source of the funds, who remains concealed. This tactic is also used by those prohibited from making political contributions to circumvent those prohibitions. CLC has documented numerous straw donor schemes used to funnel money into federal elections, including schemes involving prohibited contributions from federal contractors and foreign nationals.[9]

Faced with these deliberate efforts to undermine electoral transparency, policymakers and regulators must ensure that voters continue to have complete and accurate information about the sources of money in the political system. As described in greater detail below, courts have consistently recognized the importance of electoral transparency and repeatedly upheld the constitutionality of disclosure laws.

Transparency Laws

A. The Importance of Electoral Transparency

Disclosure laws are crucial to the democratic process in serving at least four clear purposes: they allow voters to effectively participate in elections; they ensure

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[7] *Id.* at 10.
[8] *Id.* at 11-16.
[9] Roger Wieand, *How Straw Donor Schemes Undermine Transparency in Elections*, CAMPAIGN LEGAL CTR. (Aug. 17, 2023), https://campaignlegal.org/update/how-straw-donor-schemes-undermine-transparency-elections.

representatives remain responsive to their constituents; they deter corruption; and they assist regulators in detecting other campaign finance violations.

In order to meaningfully participate in the democratic process, voters need "to make *informed* choices among candidates for office,"[10] and campaign finance disclosures are the precise way voters are provided the information necessary to do so. As the Supreme Court has recognized:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.[11]

Effective disclosure regimes also strip through efforts to be "misleading" or "mysterious" and expose the true source of electoral messages.[12] It is common practice for some wealthy special interests to "hid[e] behind dubious and misleading names" to disguise who they are and mask the source of their funding.[13] As the Supreme Court has even noted, some of these groups themselves have acknowledged that it can be "much more effective to run an ad by the 'Coalition to Make Our Voices Heard' than it is to say paid for by 'the men and women of the AFL-CIO.'"[14] Requiring transparency about who is actually behind these messages enables voters to fully understand them and place them in a proper context.

Disclosure requirements also ensure that elected officials are responsive to their constituents. The Supreme Court has long recognized that campaign finance disclosures serve a key accountability function, as "[a] public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return."[15] As recently as *Citizens United*, the Court has reiterated that "prompt disclosure" can provide citizens "with the information needed to hold . . . elected officials accountable for their positions and supporters."[16]

Disclosure also serves as an obvious deterrent for politicians seeking to engage in corrupt arrangements, and the transparency disclosures create bolsters public confidence that the political process is untainted by such arrangements. As

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[10] *Buckley*, 424 U.S. at 14-15 (emphasis added).
[11] *Id.* at 66-67 (citation and quotations omitted).
[12] *McConnell v. FEC*, 540 U.S. 93, 128 & n.23 (2003).
[13] *Id.* at 197.
[14] *Id.* at 128 n.23 (citation and quotations omitted).
[15] *Buckley*, 424 U.S. at 67.
[16] *Citizens United*, 558 U.S. at 370.

Justice Brandeis famously recognized nearly a century ago, "Sunlight is . . . the best . . . disinfectant."[17]

Finally, campaign disclosures allow regulators to "gather[ ] the data necessary to enforce more substantive electioneering restrictions."[18] When the face of a report makes plain that a candidate has accepted an excessive contribution or money from a foreign national, or has spent campaign funds on personal expenses, the regulator can take action to enforce campaign finance laws. Disclosure requirements also make efforts to evade or circumvent the laws more difficult.

Accordingly, disclosure laws are an immensely powerful tool for advancing democracy and protecting voters, and they are minimally burdensome for speakers. Political committees typically file periodic reports — *e.g.*, a quarterly or monthly report of their contributions and expenditures — and groups that do not qualify as political committees usually only report sporadically, as they meet certain spending thresholds. Disclosure neither limits nor chills speech; in *Citizens United*, the Supreme Court specifically rejected a challenge to a disclosure law based on the claim that disclosure would "chill donations to [its] organization by exposing donors to retaliation."[19] Indeed, transparency regarding election spending is necessary to advance the public discourse at the core of the democratic process. As Justice Scalia — a frequent critic of campaign finance laws — once declared, "Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."[20]

B. Transparency Laws are Constitutional and Advance the First Amendment

Disclosure laws have been a feature of American campaign finance law for more than a century,[21] with one court calling disclosure requirements "part of our First Amendment tradition."[22] Over the course of many decades, the Supreme Court has had numerous opportunities to examine electoral disclosure laws and has repeatedly upheld their constitutionality. Engaging in a traditional First Amendment analysis — probing whether a law has a sufficiently compelling governmental interest to justify its alleged burden on speech — the Supreme Court has called each interest addressed in the section above "important" and held that the public's informational interest is "alone . . . sufficient to justify" disclosure laws.[23]

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[17] *See Buckley*, 424 U.S. at 67 (quoting LOUIS BRANDEIS, OTHER PEOPLE'S MONEY 62 (Nat'l Home Library Found. ed. 1933)).
[18] *McConnell*, 540 U.S. at 196.
[19] *Citizens United*, 558 U.S. at 370.
[20] *Doe No. 1 v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring).
[21] *See* Publicity of Political Contributions Act, Pub. L. No. 61-274, §§ 5-8, 36 Stat. 822, 822-24 (1910).
[22] *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1022 (9th Cir. 2010) [hereinafter, *HLW*].
[23] *Citizens United*, 558 U.S. at 369; *McConnell*, 540 U.S. at 196.

But not only has the Supreme Court repeatedly upheld electoral disclosure laws, it has praised them as one of the least restrictive means of governing campaign spending, because disclosure requirements "'impose no ceiling on campaign-related activities' and 'do not prevent anyone from speaking.'"[24]

The Supreme Court has upheld challenged disclosure laws by an 8-to-1 margin three times in the past twenty years. In *McConnell v. FEC*, the Court upheld a law requiring outside spending groups that finance "electioneering communications" to file reports identifying themselves and certain of their donors.[25] In *Citizens United v. FEC*, the Court's decision to strike down the century-old federal ban on corporate independent expenditures was predicated partly on the requirement that such expenditures would have to be disclosed publicly, and there was again broad agreement that spending on "electioneering communications" must be disclosed.[26] And in *Doe v. Reed*, the Court again voiced its strong support of disclosure laws, upholding a Washington law providing for disclosure of ballot measure petition signatories, reasoning that "[p]ublic disclosure . . . promotes transparency and accountability in the electoral process to an extent other measures cannot."[27]

Finally, while critics of disclosure laws often characterize them as a burden on speech, the Supreme Court has chastised plaintiffs for that view. In one case, the Court stated that litigants challenging a federal disclosure law were "ignor[ing] the *competing First Amendment interests* of individual citizens seeking to make informed choices in the political marketplace."[28] The Court recognized that far from inhibiting First Amendment interests, disclosure actually *advances* those interests.[29]

One of the primary purposes of the First Amendment is to preserve "uninhibited, robust, and wide-open" public debate.[30] Disclosure equips voters with the necessary information about who is supporting the messages and candidates in an election, allowing them to participate in the kind of well-informed discourse that the First Amendment exists to enable. "Providing information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing

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[24] *Citizens United*, 558 U.S. at 366 (citations omitted) (quoting *Buckley*, 424 U.S. at 64 and *McConnell*, 540 U.S. at 201).
[25] *McConnell*, 540 U.S. at 194-96.
[26] *Citizens United*, 558 U.S. at 367-71.
[27] *Doe No. 1*, 561 U.S. at 199.
[28] *McConnell*, 540 U.S. at 197 (emphasis added) (citation and quotations omitted).
[29] *See Citizens United*, 558 U.S. at 368.
[30] *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

the democratic objectives underlying the First Amendment."[31] In other words, disclosure enables effective self-governance.[32]

By contrast, secret spending on elections, where the sources of the money used to express ideas remains hidden, is anathema to the robust public debate that the First Amendment seeks to foster. Disclosure laws are the most effective and least burdensome antidote to uphold the principles of the First Amendment and strengthen our democracy. More disclosure — not less — is the solution to the dark-money and straw-donor issues we see adversely impacting our democracy today, and is an overall necessity as election spending continues to increase.

Enforcing Campaign Finance Laws

Laws are only effective if they are enforced. To ensure voters have the information that campaign finance laws promise them, and to effectively guard against corruption, there must be an effective regulator that can enforce the laws robustly and fairly. CLC has studied state governmental ethics commissions across the country and developed recommendations for how they can best function to protect the public interest.

CLC's full report on the subject is attached, but key points include: (1) fostering confidence in the commission by barring those who participate in the campaign finance system (such as political party chairs, candidates, and legislators) from serving as members; (2) equipping the commission with the power to conduct investigations, hearings, and audits, and assess appropriate penalties, so that it can promptly address and deter violations; and (3) disclosing enforcement actions to the public to foster transparency and bolster deterrence.[33] Together, strong regulations and a strong regulator can help guarantee citizens' access to the information they need to participate fully in our representative democracy.

Conclusion

Kansas is well poised to meet today's challenges in regulating money in politics. It has a governmental ethics commission and a set of laws that seek to enhance transparency. As it considers updates to its campaign finance code, it

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[31] *HLW*, 624 F.3d at 1005.

[32] The Supreme Court's recent decision in *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2389 (2021), does not undermine these well-established precedents. The law at issue there had nothing to do with election spending or disclosure of information to voters. Rather, the invalidated law broadly required all charitable organizations soliciting funds in California to report confidentially a list of their major donors to the state Attorney General. While the Supreme Court clarified that all disclosure laws must be "narrowly tailored," the Court distinguished and approvingly cited precedents *upholding* electoral disclosure requirements. *Id.* at 2383-85.

[33] The document can also be accessed on CLC's website: https://campaignlegal.org/sites/default/files/2018-06/Principles%20for%20Designing%20an%20Independent%20Ethics%20Commission.pdf.

should work to strengthen and expand the framework it already has; it should not move backwards. Voters in Kansas have a right to know who is funding their elections and the Legislature must safeguard that right.

Respectfully submitted,

Shanna (Reulbach) Ports

Shanna (Reulbach) Ports
Senior Legal Counsel, Campaign Finance

Aaron McKean
Legal Counsel, State & Local Reform

Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

Attachment

CLC
ADVANCING DEMOCRACY THROUGH LAW

1411 K ST. NW, SUITE 1400 / WASHINGTON, DC 20005 / 202.736.2200

PRINCIPLES FOR DESIGNING AN INDEPENDENT ETHICS COMMISSION

Citizen demands for ethics accountability have put new state ethics commissions on the ballot for 2018

Executive Summary

Poll[1] after poll[2] indicates the public's growing distrust of American government institutions and, to a degree, democracy itself. Americans expect the people who work for them to be accountable for their actions. A strong independent ethics agency is an essential part of a government that is representative, responsive, and accountable. This type of agency, referred to here as an "ethics commission," provides oversight that is critical to a functional democratic system by overseeing ethics, financial disclosure, lobbying, and campaign finance laws.

Taking steps at the state and local levels is critical to the success of instilling ethical standards and principles in government. In New Mexico and South Dakota, voters will be going to the polls this year to decide whether they should join their 44 sister states, and countless cities, towns, and counties, in adopting an ethics commission.[3] Vermont established a new ethics commission on January 1, 2018;[4] the City of Pittsburgh recently revamped its Ethics Hearing Board;[5] and Sandoval County in New Mexico is in the process of approving its first ethics commission.[6]

A well-designed and well-resourced ethics commission can help build public trust in government by creating a culture of integrity and holding officials accountable for violations of the public trust. Ethics, financial disclosure, lobbying, and campaign finance laws are intended to provide citizens with a level of transparency regarding who is trying to influence government and to hold officials accountable for real and perceived conflicts of interest. To fulfil these goals, an ethics commission must be built on the principles of independence, accountability, and transparency.

Independence and Structure

An ethics commission must be independent of the officials it oversees to make clear that the commission serves the public interest and not the personal interests of public

officials. A state or local government must make decisions regarding where the commission fits in government, the structure and composition of the commission, and the staff that support the commission.

Where Does an Ethics Commission Fit in Government?

Because it can be difficult for an ethics commission to be independent from other branches of government, an ethics commission should have features that allow it to operate as independently as possible. An ethics commission benefits from these legal arrangements by making clear that its activities are less dependent on the officials it oversees. States and cities across the country approach this question in different ways:

- In Colorado, the Independent Ethics Commission was moved from the executive branch to the judicial branch to maintain its independence and autonomy.[7]
- Missouri's Ethics Commission is established under the executive branch, but only for limited budgeting and reporting purposes. The executive branch in Missouri is prohibited from performing other supervisory duties and may not interfere with the work of the commission.[8]
- Oakland, CA, and Jacksonville, FL, established their commissions in their city charters, ensuring that they can be changed only by the more difficult process of amending the charter.[9]

How Should the Commission Be Structured?

An ethics commission should be structured to effectively and fairly enforce the laws it administers. Unless the commission has built-in mechanisms to prevent partisan deadlock, the commission should have an odd number of commissioners. Having an odd number of commissioners ensures that the commission will be able to make decisions when voting on administrative regulations, enforcement matters, or other actions. In the case that a commission has an even number of commissioners, often with a bipartisan split to prevent one political party from dominating commission votes, there should be features that prevent it from paralysis by deadlocked votes. A commission that has an even number of commissioners should have a strong chairperson position that has agenda-setting authority or require that only a majority vote of the commission can overrule the recommendations of the general counsel. A commission should also avoid having too many commissioners because it dilutes accountability for individual commissioners and can make reaching consensus difficult. Typical commissions have between five and nine commissioners.[10]

How Should Commissioners Be Selected?

The process for selecting commissioners should ensure that a commissioner is independent of the person making the appointment. A common procedure is to have the executive and legislative leadership split nomination and confirmation duties. Another approach is to require that appointments be made by a nominating commission or local civic organizations that do not include the government officials the ethics commission oversees.

- Minneapolis's Ethical Practices Board is appointed by a committee made up of the Chief Judge of the Hennepin County District Court and the deans of the University of Minnesota and University of St. Thomas law schools; the nominations are supplemented by recommendations from nonpartisan civic groups and colleges.[11]
- For Milwaukee's Board of Ethics, seven local organizations, including the local chamber of commerce and the local NAACP chapter, submit nominees for appointment by the mayor.[12]
- In Maryland, the governor appoints three members, one of whom must be from the principal political party of which the governor is not a member. The governor also appoints a member nominated by the speaker of the house and a member nominated by the president of the senate.[13]

Who Can Serve?

It should be clear to the public that the ethics commission serves the public interest and not the interests of those groups subject to the commission's oversight. A commission can demonstrate this independence by prohibiting a person from serving as a commissioner if that person is an elected official, a candidate for office, a contractor with state or local government, an employee of the state or local government, a lobbyist, or campaign consultant. In a similar vein, some commissions restrict commissioners from supporting election or ballot measure campaigns or from running for office for a certain time before or after serving as a commissioner.

- Oakland's ethics commissioners may not be employed by the city or have any direct or financial interest in any city activities, seek election to public office or contribute to municipal campaigns, or support any candidate or measure in an Oakland election.[14]
- Vermont's ethics commissioners may not be state employees or hold any legislative, executive, or judicial office; hold or enter into a lease or contract with the state; be a lobbyist; be a candidate for state or legislative office; or hold office in a state or legislative office candidate's committee, a political committee, or a

political party.[15]

- Oklahoma's ethics commissioners are not eligible to run for elected office for two years after the end of the commissioner's term.[16]

To further insulate an ethics commission from political meddling and allow commissioners to work independently of the interests of public officials, jurisdictions should provide that commissioners may only be removed for cause.[17] This safeguard allows commissioners to do their work without fear of reprisal.

- A commissioner on Massachusetts' State Ethics Commission may be removed only for substantial neglect of duty, inability to discharge the powers and duties of the office, violations of certain prohibitions on commissioner activities, gross misconduct, or conviction of a felony.[18]

- A commissioner on California's Fair Political Practices Commission may only be removed for substantial neglect of duty, inability to discharge the powers and duties of office, or a violation of certain prohibitions on commissioner activities.[19]

A jurisdiction must also decide how long a commissioner may serve. Commissioners are typically appointed to serve staggered terms of four or five years. Some commissions have explicit rules limiting commissioners to one or two terms while others have no term limits. [20]

Dedicated Staff

An ethics commission should have sufficient dedicated, paid staff to administer its laws. First, a commission should have an executive director and other administrative support staff to ensure that the commission keeps up with its work and is properly resourced. Second, a commission should have its own independent experts, including investigators, auditors, general counsel, and trainers. By relying on these independent experts, a commission can not only obtain independent advice and analysis of facts and law in specific cases, but also avoid the appearance that it depends on an elected official or appointee of an elected official, such as a secretary of state or city attorney.

- The Florida Commission on Ethics is required to hire an executive director and provide the executive director with office space, assistants, and secretaries.[21]

- Philadelphia's city charter requires its Board of Ethics to appoint an executive director, legal counsel, and other staff, subject to budget constraints.[22]

Enforcement and Disclosure

An ethics commission should be structured to have the authority necessary to hold

public officials accountable and maintain the public trust. This oversight may also overlap with a legislature's internal ethics review process, such as an ethics committee of a state legislature.[23] In establishing an ethics commission, jurisdictions should take into account that aspect of coordinating ethics enforcement between various interested entities when determining commission oversight responsibilities.

Enforcement

An ethics commission must have the ability to take actions to enforce ethics, lobbying, campaign finance, and financial disclosure laws to ensure effective oversight. The key powers for a commission include:

- Receiving and evaluating complaints.
    - The commission should be able to receive complaints from any member of the public.
    - While many ethics commissions require a sworn or verified complaint, each jurisdiction should carefully consider whether this requirement could have a chilling effect on potential complainants.
    - California's Fair Political Practices Commission allows any person to file a complaint as a sworn complaint, a non-sworn complaint, or an anonymous complaint.[24]
- Conducting audits, investigations, and hearings.
    - A commission should be able to subpoena witnesses and documents. Depending on the state constitution or local charter, to give a commission this subpoena power, it may be necessary to take additional steps, such as making this power enforceable by a court.
    - A commission should be able to initiate investigations on its own and perform regular audits. Some commissions are required to audit a certain percentage of political committees or other entities to encourage compliance with reporting requirements.
    - The Oregon Government Ethics Commission may initiate investigations based on complaints from any person or on its own motion.[25]
- Issuing orders compelling compliance and imposing civil fines and penalties for violations, with appropriate recourse to challenge those penalties.
- Referring appropriate cases for criminal prosecution.

Disclosure

A commission should publicly disclose its enforcement actions, regardless of whether the commission issues a sanction or finds no violation, to foster transparency in government and to enhance the commission's credibility with the public.

- Florida's Commission on Ethics is required to publish its findings for each investigation.[26]
- Atlanta's Board of Ethics is required to make its findings and decision public as soon as is practical after the commission reaches its decision.[27]

Training and Advice

Because transparency is a touchstone of effective ethics oversight, an ethics commission should provide the public and the people it oversees with information regarding the laws it administers and how to comply with those laws. Providing training, advice, and recommendations for legislative changes furthers an ethics commission's mission of creating a culture of integrity by educating the public and demonstrating how the commission functions.

Training

An ethics commission should be required to provide trainings for government officials and employees. Training provides an opportunity for people in government and people working with the government to become familiar with local laws and understand what is required, permitted, or prohibited. Without a useful training program, officials and others doing business with the government may not be able to adequately recognize or resolve possible ethics problems.[28] Depending on the availability of resources, there may be various ways for an agency to provide this outreach: in-person presentations, online trainings, written materials, or even on-call staff to answer questions over the phone or through a website.

- The Connecticut Citizen's Ethics Board and Office of State Ethics provides training for all state employees annually.[29]
- The Memphis Board of Ethics is required to supervise the training of all city officers and employees regarding their ethics obligations.[30]

Advice

A commission should be empowered to serve as an advisory body, providing guidance to individuals subject to ethics, campaign finance, financial disclosure, and lobbying laws. This service educates people who are subject to the commission's oversight,

helping them avoid violations and penalties. Advisory opinions should have legal significance: a public official who relies on an opinion when taking an action should be able to assert that reliance as a defense against liability for a violation of the law.

- The Arkansas Ethics Commission is specifically empowered to provide advisory opinions and guidelines for the laws it oversees and enforces.[31]
- In Iowa, Boise, ID, and the ethics commission legislation under consideration in Sandoval County, NM, a person who relies on an advisory opinion can use that reliance as a safe harbor against liability for a violation of the law.[32]

Further, advisory opinions should be published in order to demonstrate the role the commission plays in overseeing public officials and provide education on these laws for the wider public. Providing advisory opinions can help an ethics commission achieve one of the most important ethics goals: encouraging public officials to think ahead about and ensure professional handling of ethical conflicts.[33]

Legislative Recommendations

As an expert in often complex regulatory landscapes, an ethics commission should regularly provide recommendations for changes to ethics, lobbying, campaign finance, and financial disclosure laws. In addition to the power to create rules for administering these laws, a commission is often best positioned to evaluate how well a law is working and the ways in which a law may be overbroad, underinclusive, or otherwise deficient for effective oversight. These recommendations can educate lawmakers and the public about the state of oversight and accountability laws that apply in their jurisdiction.

- The Board of Ethics in Sioux Falls, SD, is tasked with recommending legislative action to effectuate the ethics policies it oversees.[34]
- Connecticut's Citizen's Ethics Board and the Kansas Government Ethics Commission are required to annually provide recommendations for legislative action to their legislatures.[35]

A Culture of Integrity

Creating a culture of integrity is an intangible best practice at the heart of an ethics regime. Because this culture cannot easily be written into rules or policy, it is the best practice that is most challenging to achieve.[36] A commitment to ethical government, without any real or perceived bias, is necessary in selecting commissioners, hiring staff, and executing the commission's duties. It is also important to foster this commitment in the people the commission oversees. While difficult to achieve, the results would be obvious: more public officials seeking advice to understand their ethical obligations

and to prevent any ethics violations, more public support for an ethics commission, and an electorate that holds their elected officials at the ballot box for ethical failures.

ABOUT THE CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. Through litigation, policy analysis and public education, CLC works to protect and strengthen the U.S. democratic process across all levels of government. CLC is adamantly nonpartisan, holding candidates and government officials accountable regardless of political affiliation.

CLC was founded in 2002 and is a recipient of the prestigious MacArthur Award for Creative and Effective Institutions. Our work today is more critical than ever as we fight the current threats to our democracy in the areas of campaign finance, voting rights, redistricting, and ethics.

Most recently, CLC argued Gill v. Whitford, the groundbreaking Supreme Court case seeking to end extreme partisan gerrymandering. In addition, CLC plays a leading watchdog role on ethics issues, providing expert analysis and helping journalists uncover ethical violations. CLC participates in legal proceedings across the country to defend the right to vote.

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1 *Public Trust in Government 1958-2017*, PEW RESEARCH CENTER (Dec. 14, 2017), http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/.
2 Jeffrey Jones et al., *How Americans Perceive Government in 2017*, GALLUP (Nov. 1, 2017), http://news.gallup.com/opinion/polling-matters/221171/americans-perceive-government-2017.aspx.
3 National Conference of State Legislatures, *State Ethics Commissions: Jurisdiction*, http://www.ncsl.org/research/ethics/50-state-chart-state-ethics-commissions-jurisdic.aspx (last visited May 10, 2018).
4 *Vermont creates first-ever ethics commission in wake of Center stories,* THE CENTER FOR PUBLIC INTEGRITY (JUNE 14, 2017) https://www.publicintegrity.org/2017/06/14/20922/vermont-creates-first-ever-ethics-commission-wake-center-stories.
5 Adam Smeltz, *City ethics board opens an office*, PITTSBURGH POST-GAZETTE (Nov. 1, 2016), http://www.post-gazette.com/local/city/2016/11/21/City-ethics-board-opens-an-office/stories/201611210037.
6 Stephen Montoya, *County ethics law moves forward*, rrobserver.com, Apr. 6, 2018, http://www.rrobserver.com/news/article_7230781a-39d9-11e8-841b-fbe58b4b4001.html.
7 Colorado Independent Ethics Commission, National Conference of State Legislatures, http://www.ncsl.org/portals/1/documents/ethics/colorado.pdf.
8 Mo. Rev. Stat. § 105.955.
9 Oakland, Cal., Charter, art. VI, § 603; Jacksonville, Fla., Charter, art. I, § 202.
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