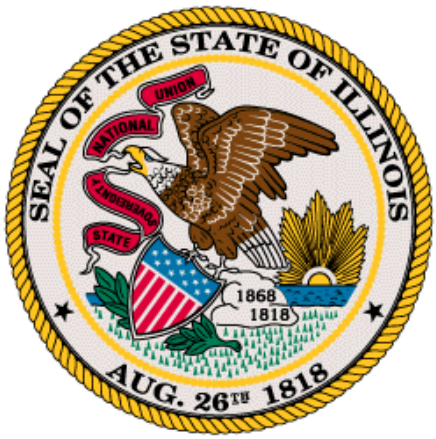

Illinois Reform Commission

100-Day Report

April 28, 2009

Illinois Reform Commission

P.O. Box A3935, Chicago, IL 60690 • Phone: 312.324.8486 • Fax: 312.324.9486

April 28, 2009

Via Hand Delivery
Patrick J. Quinn, Governor
Springfield, Illinois

Dear Governor Quinn:

Much has changed in the one hundred days since the creation of the Illinois Reform Commission. During that time, the people of our State have witnessed the impeachment and indictment of one governor and the swearing in of another. They heard allegations of corruption that would shock the most cynical of us. And, perhaps most significantly, we have heard a persistent call for meaningful reform.

Through our work, we have witnessed Illinoisans renew their hope for a government untainted by pay-to-play politics and corrupt officials. You established our Commission to initiate this much-needed reform, and we are grateful that you honored our desire to independently examine state government to recommend comprehensive reform.

The attached report contains proposals reflecting our considerable effort to approach reform vigorously, holistically, and independently. We hope our recommendations will help usher in an era of reform in Illinois, and we urge you to use the formidable powers of your office to ensure that our proposals receive appropriate consideration from the people and the legislature of this great State. As we enter the final month of this crucial legislative session, the nation is watching us very closely.

Sincerely,

The Illinois Reform Commission

By:_____

CC: All constitutional officers
All members of General Assembly

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All appendices are available in a separate document.

CHAPTER 1: EXECUTIVE SUMMARY

I. Introduction

In January, 2009, while late-night comics were heaping national scorn on Illinois in the wake of the arrest of then-Governor Blagojevich, then-Lieutenant Governor Pat Quinn established the Illinois Reform Commission. Our mandate was as straightforward as it was daunting: recommend meaningful ethics reform for the State of Illinois in one hundred days. We recruited accomplished and independent men and women from a diverse variety of backgrounds to form a citizens' commission. We enthusiastically answered this call to serve, some of us with extensive prior involvement in government, others with virtually none. Although we were mostly strangers before this Commission brought us together, we shared an overarching desire to contribute to solving this unprecedented integrity crisis. We undertook our task as a team with one singular purpose: to devote energy, insight and passion to seize the moment on behalf of the people of Illinois. As we complete our one hundred day journey, we are proposing meaningful reforms — virtually all of which other governmental institutions have implemented — to bring about an end to some of the insidious corruption that has pervaded this State for far too long. Along with these legal and operational reforms, we are issuing a clarion call for a change of attitude in how we view our democracy.

Our work over the last one hundred days has been exhausting and troubling, yet also exhilarating. We embraced a torrid pace — traveling the State from Rockford and Chicago in the north to Carbondale in the south, from Peoria and Champaign in the heartland, to the Quad Cities in the west and Kankakee in the east. We held substantive meetings on complex subjects and digested mountains of data. We listened to testimony from experts in their respective fields and heard from thousands of others through our town halls, hearings and website. We discussed, debated, and even argued at times, but we were unanimous in our desire for reform in six core areas. In fact, virtually all of the recommendations contained in this Report enjoyed the full Commission's support.

We have been troubled by learning that, in core areas governing ethics, Illinois' laws and operations simply do not measure up. For example, forty-six other states have stronger campaign finance regulations in place than Illinois, and forty-six states give their law enforcement agents stronger tools to root out corruption and crime. In addition, no other state resorts to picking a name out of a hat (honest Abe's, no less) to gerrymander legislative and congressional districts. In the wake of recent scandals less severe than our own, a number of states — Connecticut, New Mexico, Massachusetts and even Louisiana —have taken aggressive action to reform their laws and political culture. What will Illinois' response to this current crisis of integrity be? Our nation is watching.

Despite our concerns about the future, the past one hundred days has been exhilarating. Thoughtful people from across this state have energized us. The vast majority of Illinois voters believe that Illinois must implement ethics reform promptly and comprehensively, and it must be done now. They also recognize the need to do more than reform the laws -- we must also reform our attitudes about government and ultimately ourselves.

To comprehensively address reform, we studied six broad categories of issues: transparency, campaign finance, procurement, government structure, enforcement, and inspiring better government. From the start, the Commission determined that a holistic approach was necessary to achieve real reform. As such, we cannot endorse efforts to selectively implement some reforms while ignoring other key proposals. Half-measures will not suffice to repair our State's troubled infrastructure or our citizens' broken confidence. We therefore urge the Governor, the public, and the General Assembly to consider our reforms collectively.

II. Campaign Finance

At best, big money in politics creates the appearance of undue influence over public officials and at worst it fosters actual corruption. Illinois is one of a few remaining states without significant campaign finance regulation. The recent election cycle with never-before seen expenditures in judicial races, out-of-control spending on legislative races as well as scandals that have brought down the last two governors leave little doubt that the system is broken.

At this juncture in the State's history, establishing a well-rounded campaign finance regulatory framework has never been more important. Accordingly, we recommend:

1) requiring year-round, real-time submission of campaign disclosure filings;

2) requiring disclosure of campaign contribution "bundlers;"

3) requiring greater disclosure of those making independent expenditures on behalf of a campaign;

4) imposing limits on contributions to political campaigns from all sources;

5) banning campaign contributions from lobbyists and trusts, and extending bans on contributions from state employees, entities seeking state contracts and entities engaged in regulated industries;

6) holding primary elections in June;

7) enacting a pilot project for public financing of judicial elections in 2010, with an eye toward expanding the program to elections of statewide legislative officials and Constitutional posts;

8) enhancing powers of the Illinois State Board of Elections; and

9) creating more robust discovery and enforcement mechanisms.

III. Procurement

Campaign contributions are the "pay" in "pay-to-play," procurement opportunities are the "play." Manipulation of the state procurement system enables companies with the right connections to benefit from large government contracts, and eliminate genuine market competition. The result increases the costs of goods and services while delivering suboptimal quality to Illinois consumers. Indeed, many companies report that they are hesitant to do business in Illinois because of the State's reputation for corruption.

To help cure state procurement abuse in Illinois, we recommend:

1) moving state procurement officials into an insulated, central, independent procurement office;

2) eliminating loopholes and exemptions in the Procurement Code;

3) establishing an Independent Contract Monitoring Office to oversee and review the procurement process;

4) mandating greater disclosure for contractors, lobbyists, and others; and

5) enhancing transparency in the procurement process.

IV. Enforcement

Effectively combating public corruption requires more than implementing the proper rules. It also requires meaningfully enforcing those rules. We, therefore, turned our focus to enforcement issues. We learned that the State's prosecutorial and investigative tools are too weak to effectively detect and prosecute public corruption crimes, especially when compared to other states and the federal government. As a result, the federal government must act as the primary check on public corruption in Illinois.

To strengthen enforcement mechanisms in Illinois, we recommend:

1) amending and enhancing state laws to provide prosecutors and investigators with many of the same tools available to federal authorities;

2) adding significant corruption offenses to the existing list of offenses that are non-probationable;

3) granting the Illinois Attorney General the authority to independently conduct grand jury investigations of public corruption offenses;

4) directing additional resources to the investigation of public corruption crimes, by creating an independent public corruption division within the Illinois State Police; and

5) modifying the laws applicable to Inspectors General's Offices to improve the ability of Inspectors General to independently conduct investigations.

V. Government Structure

Although pay-to-play politics and public corruption have been at the forefront of the news recently, they are not the only problems decreasing the confidence of Illinoisans in our state government. Rather, our research and public testimony revealed structural infirmities that cause the unfairness, lack of accountability and inefficiency that characterize Illinois' government.

To address structural problems that enable and produce corruption and inefficiency in state government, we recommend:

1) substantially reforming the State's redistricting process;

2) adopting pending legislation that would impose term limits on legislative leadership positions;

3) amending House and Senate Rules applicable to the budget approval process; and

4) amending the House and Senate Rules to ensure that each piece of proposed legislation with a minimum number of sponsors receives an up-or-down committee vote.

VI. Transparency

Illinoisans have trouble getting public documents and knowing whether elected and public officials are fulfilling their duties. While studying the issue of transparency in government, the Commission strongly agreed that, to be effective, government must be open and responsive to its citizens' requests for information or

access to public documents. We learned that, although Illinois has laws that address these concerns, the laws are neither adequately enforced, nor broad enough in scope to create a sufficiently transparent government. This lack of transparency gives corrupt government and misguided officials the ability to conduct their business without significant scrutiny. Reflecting the national debate over the issue, the Commission struggled with striking the appropriate balance between the public's right to know and privacy or law enforcement concerns.

As detailed below, we recommend:

1) enforcing the existing statutes with renewed vigor by adopting a presumption in favor of full public access to information and documents;

2) amending relevant statutes to increase transparency and accountability; and

3) using technology to make public documents readily and easily accessible to the public through the Internet and online databases without waiting for specific requests from the public.

VII. Inspiring Better Government

Finally, recognizing that most of the reforms we considered focused primarily on interactions with elected officials, the Commission evaluated proposals designed to inspire all state government workers to increase the confidence of Illinoisans in their government. We cannot change the culture of corruption in our State without changing state employees' attitudes. Our inquiry extended to the core phases of governmental employment, including hiring the best-qualified candidates, improving ethics training, protecting employees that report abuses, providing a code of conduct to guide ethical behavior, and remedying abuses associated with leaving government service. Through public testimony and our own research, we learned of widespread abuse involving patronage hiring, manipulation of the personnel system, and the need for improvements in ethics training, all of which harm employee morale.

To respond to the foregoing concerns, we recommend:

1) combating patronage by reforming the personnel system to better protect non-political positions and the employees who hold them;

2) reforming the State's hiring process;

3) establishing a code to guide everyday decision-making and holding state employees accountable for abiding by the code;

4) revising the ethics training system to improve state employees' understanding of relevant ethical standards;

5) more clearly defining whistleblower protections to ensure and expand coverage for state employees; and

6) creating additional safeguards to protect against ethical violations by those exiting state employment.

VIII. Recommendations for Further Consideration

As comprehensive as we tried to be in our recommendations, our one hundred day mandate left too little time to consider the many worthy ideas for ethics reform that we received but did not have the capacity to investigate thoroughly. Nevertheless, we recommend studying several of these ideas in the near future, including reforming laws that regulate lobbying; analyzing conflicts of interest and potential abuses in the public election of judges; and increasing civic education to promote citizenship and inspire young leaders, to name just a few.

* * *

The Illinois Reform Commission is grateful to Governor Patrick Quinn for tasking a truly independent Commission to study and recommend substantive reform. We know that the Governor and legislature will not agree with each and every recommendation, but hope that the Commission's findings and recommendations will serve as a blueprint for meaningful reform to help restore public trust in our state government. Although today marks the conclusion of the Commission's one hundred-day mission, the quest for the General Assembly to seriously consider and adopt these reforms is very much in process. The people of the State—after all they have been through—deserve our very best and aggressive reform efforts, even when those efforts threaten some individual short-term political interests. We hope each legislator will seriously consider and then pass meaningful reforms.

We must also remember that democracy requires citizens to be persistent watchdogs of our government. In recent years, complacency in our watchfulness has emboldened those who would cheat their constituencies for personal benefit. This blueprint for reform will be meaningless unless the changes we have envisioned become reality. This goal now belongs to all of us and collectively we can obtain the government we desire.

CHAPTER 2: CAMPAIGN FINANCE

I. Introduction

For decades, Illinois has been rocked by one public corruption scandal after the next — each seeming to take the State to a new low. "Pay-to-play" has become a term of art in Illinois politics as interested parties make large campaign contributions expecting a return on their "investments." These problems are not new, nor are they limited to Illinois. The difference is that the federal government and nearly every other state in the country have adopted a more comprehensive system of campaign finance regulation than Illinois. Instead, Illinois has chosen to rely solely on a disclosure-based system requiring candidates to identify campaign contributions on a semi-annual basis. In fact, excepting the newly adopted pay-to-play bans, Illinois is one of four states without any campaign contribution limits and one of less than half the states without some form of public financing.

As we have a significant track record to evaluate the disclosure-only system in Illinois, we conclude that it is not working. Extensive corruption has continued. Campaign contribution disclosures may have helped people identify the problems, but the filings have not stopped our last two Governors from having to leave office in disgrace. Moreover, mere disclosures have done nothing to create elections that are more competitive or open to qualified challengers. The public perception remains that money buys power, and once in power, some elected officials can, and do, use their positions to reward contributors and perpetuate their hold on office.

The time for bold action is now. Illinois must join the forty-six states that have already enacted campaign contribution limits and the twenty-five that have some form of public financing. In conjunction with improvements in the existing disclosure laws, these changes will give the public more confidence in the fairness of elections, reduce opportunities for big money to improperly influence the conduct of public officials and re-enfranchise voters and small donors in our democracy.

Accordingly, the Commission recommends amending the Election Code and other statutes in the following four areas: Disclosure Requirements, Contribution Limits, Public Financing and Enforcement. As a brief summary, Illinois should:

1) Require year-round, real-time submission of campaign disclosure filings.

2) Require disclosure of campaign contribution "bundlers."

3) Require greater disclosure of those making independent expenditures on behalf of a campaign.

4) Impose limits on contributions to political campaigns from all sources.

5) Ban campaign contributions from lobbyists and trusts, and extend bans on contributions from state employees, entities seeking state contracts and entities engaged in regulated industries.

6) Hold primary elections in June.

7) Institute a pilot project for public financing of judicial elections and consider phasing-in public financing of legislative and constitutional races.

8) Enhance powers of the Illinois State Board of Elections.

9) Create more robust discovery and enforcement mechanisms.

Although the Commission fully recognizes that no magic bullet will prevent all future scandals, the Commission believes that these changes will decrease the opportunities for corruption.

II. Information and Sources Considered

Leading up to and following the Commission hearings on February 23 and March 5, 2009, the Commission conducted extensive research into the complex area of campaign finance. To understand the current situation in Illinois, the Commission heard from former candidates, sitting elected officials, representatives of the Illinois State Board of Elections (ISBE), and advocates for campaign finance reform in Illinois. In addition to considering several fifty-state surveys, the Commission reached out to experts from across the country to better understand what other states have been doing. Finally, the Commission considered legislative proposals for campaign finance reform, including those currently pending in Illinois as well as more general proposals that national organizations have offered as potential models. In all these efforts, the Commission sought to understand not only the legal and academic issues surrounding legislation in this area, but also the practical implications of any regulation it might propose.

A. Research Reviewed. From the start, the Commission understood that it would have to balance the significant constitutional restrictions designed to protect the substantial First Amendment rights of freedom of speech and association against the State's interest in promoting a healthy, functional democracy free from corruption. For example, the Supreme Court has repeatedly rejected efforts to limit individual expenditures, finding the legislation too great of a burden on the rights of free speech and association to pass the Court's strict scrutiny evaluation. On the other hand, recognizing the government's need to curb corruption and the appearance of impropriety, the Court has concluded that most contribution limits pass muster under an intermediate scrutiny analysis. Given the rich history of jurisprudence in the area, the Commission sought to understand the topic thoroughly before proposing any recommendations.

1. Understanding the constitutional parameters. The Brennan Center's Writing Reform project on campaign finance regulation provided a useful starting point to understanding the history and jurisprudence associated with common types of campaign finance regulation as well as a valuable tool in identifying other resources to consider. The Commission also reviewed many other materials that guided its foray into Supreme Court jurisprudence on campaign finance regulation. In addition, the Commission examined less traditional resources, like websites and blogs, to collect as many varied views of the topic as possible, including from organizations like the Center for Competitive Politics, which generally oppose campaign finance regulations on First Amendment and other grounds. Fifty-state surveys from the National Conference of State Legislatures and others helped the Commission identify national trends and creative solutions to problems posed by campaign fundraising. Wanting to compare states with reasonable similarities to Illinois, the Commission reviewed Joyce Foundation and Brennan Center studies examining or comparing systems in: Illinois, Minnesota, Wisconsin, Indiana, Ohio and Michigan. These studies reviewed legislative features, and provided statistical studies concerning amounts spent on elections and projections of the impact of various legislative schemes on contributions and their sources. Almost without fail, each study praised Illinois for its comparatively strong electronic disclosure system, but heavily criticized the State for its lack of other campaign finance regulations. As the Commission has identified in its chapters on Transparency and Enforcement, these comparisons highlight the need for Illinois to improve the content, timing and enforcement of campaign contribution disclosures.

2. Identifying the present state of campaign finance regulation in Illinois. Illinois has long resisted most campaign finance regulation other than disclosure requirements. The Illinois Campaign Financing Act, 10 ILL. COMP. STAT. 5/9-1.1 *et. seq.* (West 2006) regulates the disclosure of campaign contributions and expenditures in Illinois. Any "individual, trust, partnership, committee, association, corporation, or any other organization or group of persons" which receives or spends more than $3,000 on behalf of or in opposition to a candidate or "question of public policy," must comply with all provisions of the Campaign Financing Act, including the filing of campaign disclosure reports. 10 ILL. COMP. STAT. § 5/9-1.6–1.9. The Illinois Campaign Financing Act does not limit *who* may contribute to the campaigns of state officials or *how much* may be contributed.

The Act, however, does limit the manner in which candidates may acquire and spend funds. For example, public officials, state employees and candidates for public office may not fundraise on State property, *see* 10 ILL. COMP. STAT. § 5/9-8.15, nor may they use campaign funds for most personal or "non-electoral" expenses. *See* 10 ILL. COMP. STAT. § 5/9-8.10. Currently, the Act does not require former elected officials to liquidate their

campaign committees when they leave office. Theoretically, if the former official's committee remains active, the official can spend from it indefinitely.

Without contribution limits in place, Illinois candidates for constitutional, legislative and judicial races raised and spent nearly $185 million in the 2005-2006 election cycle. Constitutional officers accounted for almost half the amount, while judicial candidates, who ostensibly should be objective, non-partisan arbiters of the law, raised and spent nearly $35 million on their campaigns. In the 2008 elections, judicial candidates raised and spent approximately $800,000 on races for five judicial circuits and sub-circuits, with recent races downstate and for the Supreme Court garnering significant media attention because of the exorbitant costs involved.

Illinois took its first step toward contribution limits last year when it amended the Procurement Code by enacting Public Act 095-0971. This law, which became effective January 1, 2009, prohibits any businesses with $50,000 in actual or pending state business from contributing to campaign committees for officeholders, or their candidates, who oversee awarding of the contract(s) to the business. It also imposes additional disclosure obligations on those businesses. These obligations run to affiliated entities as well as affiliated persons and their families. ISBE officials have been working to create the online filing system necessary to implement this law and expect to be done before the statutory deadline. But without additional resources allocated to the agency, it remains unclear how ISBE will be able to enforce this law.

3. Comparing Illinois to other states. At least seven other states have "pay-to-play" legislation in place, which bans state contractors from contributing to certain candidates or elected officials. Connecticut, Hawaii and West Virginia include state legislators among those ineligible to receive contributions from state contractors. See generally, CONN. GEN. STAT. §9-612, HI REV. STAT. §11-205.5, and W. VA. CODE §3-8-12(d). All seven of these states limit individual campaign contributions to statewide and legislative candidates and either ban or limit corporate contributions. Illinois is now one of four states without any individual or corporate campaign contribution limits outside the "pay-to-play" context.

Additionally, at least twenty-five states have adopted some form of public financing for political campaigns. Several states have provide partial public financing to candidates for certain elected positions, while a small minority of states has adopted totally "clean" elections, which are fully-financed for those that participate. Others simply provide tax incentives to individuals who make political contributions. Several states are considering legislation this year to adopt or expand public-financing programs.

For a more detailed listing of the materials considered, please see Appendix A.

B. Commission Witnesses. With two full Commission hearings on this topic on February 23 and March 5, 2009, the Commission heard many different perspectives about the legal, theoretical and practical implications of campaign finance regulation. To the extent possible, the Commission used its first hearing to understand the issues surrounding campaign finance regulation, while using its second hearing to focus on specific types of legislation. These witnesses were scholars in the area of campaign reform measures or were current or former elected or appointed officials, whose personal experiences informed the Commission about the benefits and burdens of the current system. The witnesses represented a wide range of viewpoints on the core issues of disclosure laws, contribution limits, public financing and enforcement.

1. Identifying present state of campaign finance in Illinois. Cynthia Canary, Director of the Illinois Campaign for Political Reform, and Kent Redfield, currently a Professor Emeritus of Political Science at the University of Illinois, testified about Illinois' experience with campaign finance regulation, or the lack thereof. Each cited statistics demonstrating the growing nature of the problem. For example, in eight years in office, Governor Jim Edgar raised $11.8 million, with eight contributions exceeding $25,000. In four years in office, Governor George Ryan raised $20 million, with thirty-five contributions over $25,000. Most recently, in his six years in office, Governor Rod Blagojevich raised $58 million, including 435 contributions over $25,000. These and other statistics supported the witnesses' contentions that Illinois' disclosure-only system of campaign finance regulation had done nothing to decrease the hold that big money interests have over Illinois politics.

2. Identifying national trends. Several witnesses, including Michael Malbin, Executive Director of the Campaign Finance Institute, and Jennifer Bowser, Senior Fellow in the Legislative Management Program of the National Conference on State Legislatures, testified about the campaign finance laws in other states, including Illinois' Midwestern neighbors. Although each credited Illinois with having a reasonably strong electronic disclosure system, each noted the relative lack of content on the disclosure forms and the comparative infrequency of the filings. Moreover, they also described Illinois' rejection of other regulations prevalent in the vast majority of states and in the federal system. Indeed, all of the experts identified Illinois as one of a handful of states without any contribution limits. In fact, this number has changed during the Commission's tenure as New Mexico recently adopted contribution limits — making Illinois now one of four states without campaign contribution limits. Several witnesses suggested that the absence of contribution limits and public financing created elections that

were less fair and that strongly favored incumbents. They noted that big money interests wielded undue influence over the election process and over the decisions of elected officials.

3. Understanding growing use of public finance systems. Other witnesses, like Nick Nyhart, President and CEO of Public Campaign, addressed the finer points of various public financing systems as a way of taking big money out of campaigns. These witnesses also provided anecdotal and statistical support demonstrating the effectiveness of public financing in encouraging challengers. They highlighted success stories across the country in which publicly-financed candidates were able to defeat incumbents and wealthier candidates who had opted not to participate in the public financing system. Additionally, they identified possible sources of revenue for public financing systems, even during periods of economic distress.

4. Recognizing limitations and shortcomings of campaign finance regulation. Nearly every witness acknowledged that no particular reform would be a magic bullet to cure what ails Illinois. Some witnesses, including Bradley Smith, former Commissioner, Vice-Chairman and Chairman of the Federal Election Commission, opposed increased regulations. Mr. Smith cautioned that campaign finance regulation is often a reaction to a problem rather than a solution. For example, he asked the Commission to consider whether contribution limits would have prevented the former Governor from attempting to sell the Senate seat in exchange for a position on a charitable board. He argued that existing laws prohibiting extortion and bribery are usually sufficient to address such situations, without the adverse effects on free speech activities or the advantages for wealthy candidates that may accrue from campaign contribution limits.

In addition to problems that Mr. Smith noted, several witnesses highlighted practical considerations associated with financing campaigns in Illinois. Representative Thomas Cross, for example, noted among other things that the timing of primaries in Illinois tended to favor incumbents who are better able to fund campaigns from winter through fall. Joan Krupa and John Rendleman discussed the role that big and out-of-district money played in their respective campaigns. Other witnesses advocated the need for tighter disclosure rules to prevent situations in which contributors time their contributions to skirt the rules for pre-election disclosure.

5. Looking at ISBE ability to enforce campaign finance laws. Officials from the ISBE commented on practical problems of another kind when discussing their efforts to enforce existing legislation as well as potential reforms the Commission was considering. Although the ISBE officials believed that their personnel could handle proposed changes to the State's electronic filing system, including increased regularity of the filings

and increased information in the filings, they expressed concern over their ability to review the data submitted and enforce the filing requirements. They noted that ISBE has no effective means of independently verifying the information. Staff must manually review all of the data submitted in the electronic filings with no computer program able to compare the information filed on A-1s reports identifying certain contributions over $500, with that revealed on the semi-annual filings. ISBE's subpoena power and ability to conduct independent audits is also restricted. Additionally, ISBE's present practice is to keep complaints confidential until deciding whether they are meritorious and to only reveal enforcement actions in Board minutes or documents available through Freedom of Information Act requests.

In general, the information and testimony gave the Commission a clear roadmap on both the need for campaign finance reform, and the ways that campaign finance reforms can have unintended negative consequences. For a more detailed discussion of the testimony considered, please see Appendix B.

III. Commission Findings

The Commission's research identified four key points that define the debate over campaign finance reform: (1) disclosure, (2) contribution and expenditure limits, (3) public financing, and (4) enforcement.

A. Disclosure: Since the 1970s, the Illinois Election Code has required some disclosure of campaign contributions. Although some credit the electronic filing system as one of the better online systems in the country, the content and timing of the disclosure filings in Illinois do not compare as favorably to other states. Most importantly, the current system enables public officials and candidates for public office to delay reporting contributions until after the pertinent election or legislative vote. Without timely access to relevant information about campaign contributions, voters are denied the opportunity to identify connections between the sources of a candidate's campaign contributions and his or her legislative votes.

B. Contribution and expenditure limits: Illinois is one of four states without general campaign contribution limits. Without additional contribution limits, it will be easier for the State to fall victim to "pay to play" scandals in which government decision-makers award contracts and other privileges based on contributions to their campaign funds instead of on the merits of the bid. The State took the first step in this direction when it adopted Public Act 95-971 to address the pay-to-play problems but, in the Commission's view, significant loopholes — and ongoing administrative problems — remain. The federal government adopted campaign contribution limits nearly forty years ago and forty-six other states have followed suit adopting some form of individual or corporate contribution limits. Contribution and expenditure limits will reduce the influence of large contributors

and help decrease the widespread public perception that large donors control Illinois politics.

C. **Public financing**: At least half of the states in the nation have adopted some form of public financing of elections while many other states are considering instituting new public financing programs or expanding existing programs. Based on a review of the efficacy of those programs, the Commission finds that public funding has directly promoted participation and competition in elections by giving funding to serious candidates who may not have access to large contributions from private sources. As a result, states with public financing, like Maine, have seen more women and minority candidates seek public office. Importantly, these candidates, like Janet Napolitano, until recently the Governor of Arizona, have mounted successful campaigns against candidates who were more established, wealthier and not participating in the public financing program.

Testimony and materials from Jennifer Bowser, Senior Fellow at the National Conference of State Legislatures, Nick Nyhart, and the Commission's own research into systems in Arizona, Connecticut, Maine and North Carolina showed that by relying on models that have worked in these and other states, Illinois could fund a public financing system successfully. Even in the face of economic downturns, other states have been able to fund their programs relying on some combination of: (1) surcharges on civil and criminal penalties paid within the state; (2) public check-off systems (less successful in recent years); (3) tax deductions for contributions to the public financing fund; (4) general revenue fund allocations; (5) "seed money" candidates raise to qualify for public funding; and (6) return of unused funds from public financing awards.[2]

D. **Enforcement**: The Commission finds that the ISBE must be a stronger enforcer of the campaign finance laws, particularly if those laws are strengthened. Not all of the tools ISBE needs will be costly. ISBE officials testified that they can modify the electronic filing system to incorporate proposed changes to the disclosure requirements with minimal costs — including incorporating additional information and more frequent filings. Moreover, utilizing basic enforcement tools like subpoena power likely will increase ISBE's ability to impose and collect penalties, with minimal costs. The Commission further finds that those changes that require the State to incur costs, such as requiring staff review of increased filings or administering a public financing system, will be dwarfed by additional revenues that will result from stepped-up enforcement.

Even though no single solution will restore public confidence or foreclose truly criminal behavior, the Commission believes that comprehensive campaign finance reform is a necessary first step. Enhanced disclosure and contribution limits

[2] For more information regarding public funding sources, please see chart available at http://www.ncsl.org/programs/legismgt/about/SourceCandPubFin.htm

will decrease opportunities for corruption and encourage greater public access and input into the legislative system. Legislators will become accountable to a broader range of constituents rather than the narrow interests of large contributors. Moreover, a comprehensive system of limits on contributions and expenditures in conjunction with a credible system of publicly-financed elections will increase competition for elected positions and encourage public-spirited individuals to seek state office. None of this will happen overnight, but as the State faces an unprecedented integrity crisis, the Commission urges the Governor, legislators and the public to demand and enact real change.

IV. Commission Recommendations

Remedying the inherent problems in the present system of campaign finance regulation in Illinois requires significant reform. Small changes, patches and tinkering at the edges of this system will not adequately address the problems that brought the State of Illinois to the present crisis of confidence. Accordingly, on March 31, 2009, the Commission unveiled its legislative proposals for substantial change in four areas of the regulation of campaign financing — disclosure requirements, contribution limitations, public financing and enforcement. While adopting any of these reforms will be a positive improvement to the current system, the Commission recommends that the State adopt the complete package of reforms to provide a holistic remedy to the ailments that currently afflict our campaign finance system.

A. Disclosure Recommendations. Timely disclosure of the campaign finance system is critical to the transparency of the election system, preventing corruption and empowering voters. The Commission concludes that the benefits of an enhanced disclosure system outweigh any marginal imposition on candidates, including those with minimal campaign experience or small staffs.

1. Year-Round "Real Time" Reporting. The Commission heard testimony indicating that elected officials and candidates for public office often delay disclosure of contributions until the next reporting period. This deprives the public and legislative opponents of access to key information needed to link candidates to the special interests supporting them. The Commission, therefore, recommends amending the Election Code to require year-round electronic submission of A-1 forms to the Illinois State Board of Elections within five business days after receipt of any contribution of $1,000 or more for statewide elections and $500 or more for any other elections.

2. Bundling Disclosures. Unlike the federal election code and election codes in other states, the Illinois Election Code does not require disclosure of contribution "bundling." Bundlers collect contributions from other people on behalf of the candidate. They can be a significant source of campaign funds. Under current law, the public is only aware of the

individuals who make the underlying contributions, and then only if those individual contributions exceed the disclosure threshold. The public is unaware of the bundler's connection to the campaign even though the candidate likely recognizes the bundler's efforts. To close this loophole, the Commission recommends amending the Election Code to:

a. require political committees to disclose the identity, occupation, employer and amounts received of any person or entity that at any time coordinated contributions equaling or exceeding a threshold amount ($16,000) during any reporting period;

b. define contributions as "coordinated" if: (1) a person or entity physically or electronically forwards the contributions to the political committee; (2) the political committee credits the person or entity through records, designations, or other means of recognizing that the person or entity has raised the money; or (3) the political committee knows or has reason to know that the person or entity raised the funds; and

c. require political committees to file disclosures within five business days after receiving the contribution that causes the coordinator's aggregate amount raised to exceed the threshold, and update it each time the contributor's efforts generate a new amount of contributions equal to or greater than the threshold.

3. Independent Expenditure Disclosure. As ways to contribute directly to campaigns decrease, "independent expenditures" are likely to increase. In such cases, large contributors who can no longer donate unlimited amounts directly to a campaign may simply pay vendors on behalf of the candidate to purchase advertisements or sponsor campaign functions. Although the current law includes some disclosure obligations, the Commission believes that the public should be able to identify the connection between the person making the expenditure and the campaign. Accordingly, the Commission recommends amending the Election Code to require any person or entity making an independent expenditure in support of the candidacy of any person to disclose their identity, occupation and employer as well as the nature, beneficiary and recipient of any expenditures which individually or in the aggregate, are equal to or greater than $5,000. Additionally, the legislation should define "coordinated expenditure" to recognize that no express agreement would be necessary for the expenditure to be "coordinated" and, therefore, subject to disclosure requirements.

B. Contribution Limits. Enhanced disclosure will not stop corruption, nor will it answer the public outcry for genuine reform of Illinois' system. A system without contribution limits will not achieve the goal of fair, competitive elections,

and will not engender public confidence on the merits of honest governance rather than the influence of large monetary contributors. With two consecutive governors leaving office in disgrace, the State can no longer pretend that the answer lies in disclosure alone.

The Commission's research yielded abundant evidence that large campaign contributions adversely influence decisions made by state officials. Even in the wake of the very public and tragic licenses for bribes scandals involving former Governor Ryan's administration, Cynthia Canary informed the Commission that Governor Blagojevich raised over a third of his campaign funds from large donors with more than 435 contributions exceeding $25,000 — raising at least the appearance of impropriety. Lynda DeLaforgue's comments and other research revealed that commercial interests have successfully blocked legislation, such as legislation to regulate the pay-day lending businesses, by making consistent and substantial contributions to office-holders. Several members of the public and witnesses, including Joan Krupa and John Rendleman, described the adverse effects of large contributions, especially from outside their districts — noting that many voters feel disenfranchised. Despite the validity of the concern about out-of-district contributions, the Commission recognizes constitutional difficulties with banning them. To reduce the influence of large donors, the Commission recommends laws imposing contribution limits, whether in- or out-of district, as follows:

1. Establish Contribution Limits. Amend the Election Code to incorporate contribution limits as follows:

Recipient \ Contributor	From natural person	From state party committee*	From legislative caucus committee	From any other political committee	From corporation, ** labor org, association
To candidate for statewide office	$2,400	$50,000 (General Election)		$5,000	$5,000
To candidate for legislative office	$2,400	$30,000	$30,000	$5,000	$5,000
To candidate for other state office	$2,400	$10,000		$5,000	$5,000
To candidate for local office	$2,400	$10,000		$5,000	$5,000
To state party committee*	$2,400			$5,000	$5,000
To leg. caucus committee	$2,400			$5,000	$5,000
To any other committee	$2,400 (each 2 years)			$5,000	$5,000

*References to "state" party committees reflect the fact that multiple committees of a political party are treated as a single committee for these purposes, such that the limit applies in the aggregate.

**The term "corporation" also includes limited liability companies, partnerships, and similar entities.

2. Extend Pay-to-Play Ban. Allowing bidders or contractors to contribute to the campaigns of legislators and constitutional officers intensifies the appearance of impropriety creating the current culture of corruption in Illinois, and fails to recognize the influence that powerful elected officials can have on contract decision whether or not they are the technical decisionmakers. Accordingly, the Commission recommends expanding the pay-to-play legislation to ban contributions to state constitutional or legislative campaigns from companies engaged in regulated

practices and contractors who have obtained or are seeking state contracts of more than $50,000 during the election cycle.

3. Ban certain contributions. Amend the Election Code to ban contributions from lobbyists, who like contractors and bidders on state contracts appear before state officials on a regular basis seeking specific actions. Additionally, because it can be so difficult to identify the real parties in interest, ban contributions from trusts.

4. Hold later election primaries. Presently, Illinois primary elections occur in February, with the general election in November. This nine-month gap unnecessarily increases the need for campaign fundraising and favors incumbents who are generally better able to outspend a challenger over this long period. In addition to the campaign financing implications of requiring longer campaigns, the Commission's research suggests that holding primaries in February, in the middle of the coldest months of the year creates an inhospitable environment for challengers to mount credible campaigns. There appears to be no valid reason for this lengthy schedule. Accordingly, the Commission recommends amending the Election Code to hold primary elections no earlier than June.

C. Public Financing. The Commission found persuasive the testimony of the witnesses who identified the many benefits of various forms of publicly financing political campaigns. These witnesses and the Commission's research repeatedly identified the adverse affects of ever-increasing campaign costs and contributions. In particular, the Commission noted the significant costs associated with recent elections to the Appellate and Supreme Courts, as well as the outlandish costs of certain seats in the General Assembly. As noted above, at least twenty-five states have adopted some form of public financing because it decreases the influence of big money in politics, increases the diversity of candidates available to voters and allows all campaign donors, small and large alike, to feel as though their contribution matters. No one should feel disenfranchised when they are donating $50 and participating in local elections.

Mindful of legitimate criticism based on concerns about the financial costs of a public financing program in light of present economic realities, the Commission believes that a phased approach has the best chance of success in the current environment. The costs of maintaining the status quo, with its concurrent public corruption trials, special elections and inflated procurement costs outweigh the "new" costs of public financing. After significant discussion, the Commission recommends that the State begin with public financing of judicial elections because more than all other public officials, judges should be non-partisan and as independent as possible. After seeing how well public-financing works and working through administrative issues that ISBE will face, the Commission believes that the

State should evaluate possibilities for expanding the program to elections of statewide legislative offices and Constitutional posts.

1. Set up Pilot Project for Public Finance. The Commission recommends amending the Election Code to adopt a pilot program for public financing of judicial elections beginning with the 2010 election cycle. Moreover, the State should seriously consider expanding the program to include legislative candidates in 2012 and constitutional offices in 2014. The program should have the following attributes

a. Qualifying Contributions. Require candidates to establish credibility by raising a minimum number of qualifying contributions not to exceed $200 per contribution. (The number of contributions required to qualify will vary by office.)

b. Initial Grant. Candidates who qualify should receive initial grants which should vary depending on the type of race (circuit, appellate or judicial court). These grants should be sufficiently large to keep the campaign viable.

c. Spending caps. In return for the qualifying grant, each candidate must agree to abide by predetermined spending limitations. Violations of the spending limitation should result in disqualifications from the program and return of previously provided funds.

d. Matching funds. The Commission believes that judicial candidates should not fundraise after accepting the initial grant. If the State expands the program to legislative or constitutional offices, to keep the fiscal costs of the program down and still encourage communication between the candidate and constituents, the Commission recommends allowing the candidates to continue limited fundraising efforts after accepting their initial grants. Legislative and constitutional officers may continue to solicit private contributions in amounts not to exceed $500. The State should match these funds on a sliding scale (matching less as the candidate raises more) up to a capped amount.

e. Rescue funds. The State should increase the amount of matching funds available to public financing candidates who face opponents who have opted not to participate in the public financing program and are outspending the publicly financed candidate. This amount should be capped.

2. Funding. The Commission acknowledges the difficult economic and financial situation currently facing the State. Mindful of the budgetary crisis, the Commission still recommends adequately funding a public

financing program and retaining any remaining funds to increase the amount available in years when more people are participating. Research suggests that funding can come from a $50 surcharge on lawyer registration fees and a $1.00 surcharge on court filings for the judicial races. If additional funds are needed, or if the State expands the program to legislative or constitutional candidates, other sources of funding may include:

a. the Whistleblower fund;

b. ten percent surcharge on civil and criminal penalties;

c. voluntary donations on tax filings (check the box);

d. require candidates who participate in public financing to remit any unused funds to the public financing fund; and

e. a $50 surcharge on lobbyist registration fees

D. <u>Enforcement</u>. Finally, discussions with ISBE representatives revealed that ISBE rarely uses common discovery and enforcement tools, although staffing issues may explain some of this under-utilization. The Commission's legislative proposals rely upon ISBE having the proper enforcement tools and resources to vigorously enforce the laws. The Commission therefore recommends amending the Election Code to:

1. Increase transparency of Election Code violations, including:

a. requiring the Board to hear complaints publicly;

b. making available a searchable, on-line database of violations and penalties assessed or waived; and

c. updating the database within five business days of any Board action

2. Increase enforcement of Election Code and other campaign finance violations, including:

a. encouraging greater imposition of existing penalties for knowing or willful violations;

b. adopting a more consistent use of available enforcement tools like subpoena power; and

c. instituting regular and random audits of campaign committees to discover violations.

As noted above, the Commission firmly believes that the current state of affairs in Illinois requires a holistic approach to campaign finance regulation. We recommend that the Governor and legislature consider all of these suggestions in concert with each other, even though adopting any of these recommendations would improve the system.

CHAPTER 3: PROCUREMENT

I. Introduction

The State's current procurement system has failed to stop pay-to-play abuse and has resulted in widespread manipulation of the system in awarding state contracts. Clouted and favored companies have benefited from large contracts through corrupt processes, to the detriment of companies without the right connections. Consequently, the reduced competition raises the cost of goods and services; and a system where connected companies do best means tax dollars are leveraged for political advantage. Accordingly, the Commission recommends that the State:

1) move state procurement administrative officials into an insulated, central, independent procurement office;

2) eliminate loopholes and exemptions in the Procurement Code;

3) establish an Independent Monitor to oversee and review the procurement process;

4) mandate greater disclosure for contractors, lobbyists, and others; and,

5) enhance transparency in the procurement process.

II. Information and Sources Considered

Before its March 13, 2009 hearing, the Commission reviewed a large volume of research and material on government procurement, including the practices of other governments, "best practices" advocated by government procurement groups, and various reviews and audits of the researched laws and recommendations regarding government procurement. The Commission interviewed experts in government procurement, current state employees involved in procurement, and individuals who have experienced corruption in the procurement process first-hand.

A. Research Reviewed. The Commission did an extensive review of the State's Procurement Code, policies and procedures. The Commission also reviewed the procurement rules and practices of several other states (including Colorado, Maryland, Massachusetts, and Florida), counties and large municipalities (especially Miami-Dade County), and of the federal government. The Commission studied procurement "best practices" recommended by the National Institute of Government Purchasing (NIGP) and by the American Bar Association (ABA), including the ABA's Model Procurement Code. Among the best practices noted by the Commission:

- The Model Procurement Code recommends one centralized procurement agency headed by one Chief Procurement Officer;

- Colorado and Florida centralize procurement authority in one procurement agency, with very limited delegation to operating agencies;

- Florida's procurement code covers all of state government except for state universities;

- Florida requires all sole source contracts to be publicly posted before being entered into;

- The Inspectors General for the Commonwealth of Massachusetts and Miami-Dade County utilize independent procurement "monitors" who provide "real-time" monitoring of the procurement process;

- Maryland and the federal government provide for bid and award protests to be handled by outside, independent agencies.

The Commission reviewed studies of state procurement done by the Better Government Association and audits done by the State Auditor General. The consistent findings included (1) the state procurement code is riddled with exceptions; (2) disclosure requirements were insufficient; and (3) the entire process lacked transparency.

The Commission reviewed the findings of the State's "Blue Ribbon Committee" which studied state procurement in the 1990s, as well as the State's rewrite of the Procurement Code in 1998, which implemented many of the Committee's recommendations.

The Commission reviewed the findings of the recent House Impeachment Committee, the transcript of the proceedings before both the House and Senate in the impeachment and trial of former Illinois Governor Rod Blagojevich, the federal indictment of Blagojevich and his associates (including two former Chiefs of Staff), the complaint charging Blagojevich, and the evidence from the trials and plea agreements of other defendants in the investigation, including Tony Rezko. Significant evidence was presented that Governor Blagojevich was able to manipulate the awarding of state contracts to benefit political friends and punish enemies.

The Commission also reviewed the charges and evidence against former Governor and Secretary of State George Ryan, and former Illinois Department of Corrections Director Donald Snyder, and interviewed former state employees and a former federal prosecutor who were familiar with Ryan's and Snyder's schemes. The Commission noted that Ryan was able to manipulate the State's procurement system to direct public benefits to his friends and supporters, often by pressuring

the agency head to direct a state purchase to a particular vendor. The Commission noted the almost complete absence of any effective oversight, monitoring, or deterrence in the State's procurement process.

B. Witnesses Interviewed and Testimony Presented at Hearing. The Commission interviewed current state employees from Central Management Services, one of the Executive Inspector General's Offices, and the Illinois Department of Corrections. The Commission noted the following:

- Required documentation is often missing;
- There are few consequences for state employees who circumvent the procurement process;
- User agency employees have considerable discretion in the procurement process, including writing the specifications and choosing members of the evaluation committee;
- There is little to no disclosure of subcontractors.

The Commission consulted with people who had a clear understanding of the concerns of vendors, having dealt extensively with the procurement process in Illinois and other states. The Commission also interviewed a federal law enforcement agent knowledgeable about corruption in the state procurement system. This witness discussed how undisclosed, unregistered lobbyists are able to use their influence over agency heads to steer contracts to politically favored vendors. This witness advocated for separating and insulating the procurement process from the agency heads.

The Commission also presented eight witnesses, on three panels, at its March 13, 2009 hearing on procurement. Panel One focused on first-hand accounts of corruption in the procurement process. The panel consisted of Karl Becker, the former Deputy Director of Finance and Administration at the Illinois Department of Corrections, Basil Demczak, Supervisory Postal Inspector at the U.S. Postal Service, and Andy Shaw, former investigative reporter for ABC 7 in Chicago. Becker and Demczak testified about specific instances where the State's procurement process improperly favored politically-connected companies. Becker and Demczak described situations where state employees narrowed contract specifications to favor certain vendors, gave contracts to vendors who provided expensive meals and gifts to state employees, and allowed politically-connected vendors to "re-do" their bids. Shaw described former Governor Blagojevich's extensive fundraising from state vendors, and testified that Blagojevich and his allies bent the procurement rules to ensure that those vendors received state contracts. All three testified that these abuses cost the taxpayers money in increased prices and inferior products and services.

Panel Two focused on past efforts to reform the State's procurement process. The panel consisted of State Senator Jeff Schoenberg and former State Senator Steve Rauschenberger. Both had been involved in procurement reform efforts over the years, and both testified that abuses continue despite some significant reforms. Both advocated for (1) additional resources for auditing and monitoring of procurement and contract management, and (2) an independent procurement agency that would be disconnected from the political process. Senator Schoenberg also recommended applying the Procurement Code to quasi-governmental agencies — such as the Illinois Finance Authority — which are presently outside the State's Procurement Code.

Panel Three focused on best practices in other jurisdictions, particularly in the areas of monitoring and enforcement. The panel consisted of Christopher Mazzella, Inspector General of Miami-Dade County, Professor Christopher Yukins, Co-Director of the Government Procurement Law Program at George Washington University Law School, and Michael Bevis, Chief Procurement Officer for the City of Naperville, IL. Mazzella testified that his office uses "contract oversight specialists" to provide real-time procurement monitoring. Mazzella believed that monitoring has significantly improved procurement in Miami-Dade County.

Professor Yukins testified that at a recent ABA conference on procurement, a substantial number of large, national companies stated that they do not do business in Illinois because of the State's culture of corruption. As a result, procurement here is not as competitive and contracts are more costly for taxpayers. Professor Yukins said that corruption in Illinois, and the market's perception of that corruption, is an "artificial barrier to competition." Professor Yukins and Michael Bevis supported an independent procurement agency.

III. Commission Findings

The testimony and documents that the Commission considered clearly establish that the procurement system in Illinois has been hampered by political influence, a lack of transparency and insufficient monitoring and oversight systems. Because of these flaws and the corruption scandals that have plagued the State, Illinois is perceived as a state in which vendors without clout or connections are at a disadvantage. Some vendors who might otherwise seek public contracts in Illinois are reluctant to participate in a system in which the odds are stacked against them. Accordingly, competition is hindered and the taxpayers of Illinois pay a steep price for the political favoritism and related deficiencies that characterize the procurement system in the State.

To address these problems, the Commission finds that the procurement structure and system in Illinois needs to be redesigned in a way that ensures greater independence for professional procurement officers, enhanced monitoring of

procurement decisions, more transparency of the procurement process and, overall, a system that is more resistant to political influence.

IV. Commission Recommendations

As with campaign finance regulations, remedying the structural impediments to fair, open and competitive procurement in Illinois requires significant reform. Ending pay-to-play will not happen overnight, but the Commission unveiled its initial legislative proposals toward this end on March 31, 2009. On April 21, 2009, Commission representatives testified about our findings and proposals before the Joint Committee on Government Reform. We appreciate the spirit of cooperation with which the leadership of the Joint Committee, including Speaker Madigan and Senate President Cullerton, has engaged us and look forward to continuing these efforts. Accordingly, the Commission makes the following legislative recommendations, which it urges the Governor and General Assembly to adopt to help end the pay-to-play scandals.

A. Move state procurement officials into an insulated, central, independent procurement office. In light of the extensive history of abuse in the awarding of state contracts, the procurement professionals in state government must be insulated from political pressure to the maximum degree possible. To achieve this, they must be part of a separate procurement department with the ability (a) to resist pressure from political officials (or employees working on their behalf) and (b) to make decisions about the awarding of contracts by following the rules and applying professional criteria. Accordingly, the Commission recommends that the State:

1. Place the five existing chief procurement officers ("CPO") in the executive branch, as well as their staffs, in a new department called the Department of Procurement. If the CPO is currently the head of the agency (as in the Illinois Department of Transportation), the lead procurement official in that agency or the equivalent would become the CPO for that area. Moreover, the State's CPOs should not be subject to removal for political reasons.

2. The five CPOs would report to the Executive Procurement Officer (EPO), who would head the Department of Procurement and would have ultimate authority for procurement and contracting decisions. The EPO would be appointed by the Governor, subject to the approval of a supermajority of the legislature (e.g., sixty percent or two-thirds). The EPO would be appointed to a 5-year term and would not serve at the pleasure of the Governor. Instead, the EPO could only be removed from office for cause after a public hearing.

3. The EPO would hire and supervise the five CPOs, and would delegate purchasing authority to them. Subject to the EPO's approval, the current staff of the CPOs would become part of the Department of Procurement, though their offices would physically remain in their current locations.

4. Even though the procurement professionals would be insulated in a central, independent department, the operating agencies would continue to play a primary role in defining the procurement needs of the agency and evaluating proposals from vendors based on the agency's technical expertise and experience. This is consistent with the typical practice in this area, regardless of whether procurement officials are centralized or decentralized — procurement officials play the role of administering the procurement process while the operating officials play the role of defining the substance of what they need and how to judge competing bids. Critically, however, it must be left to the procurement professionals to determine whether the rules are being followed, and whether the operating agency's recommendations are based on the merits and not politics, favoritism, or other improper factors.

5. The EPO would ensure consistency in procurement policies and practices among all the CPOs, accounting for the diverse types of contracts and procurement situations that arise throughout State government. In addition, the EPO would ensure that training among all procurement officials was thorough and up-to-date.

B. <u>Cut back Loopholes and Exemptions in Procurement Code</u>. The Commission recommends that the State close loopholes that exempt large parts of state government from the procurement rules, so that state contracts are not awarded without approval of the procurement professionals. Specifically, the Commission proposes the following:

1. Require all state contracts above a certain amount (e.g., $25,000) to be subject to the approval of CPOs or their designees within the Department of Procurement.

2. Abolish sections of the Procurement Code that (a) allow CPOs to delegate the power to award contracts back to the "user" agencies themselves, or (b) create a separate tier of officials with the power to award contracts called "Associate Procurement Officers."

3. Make all no-bid contracts (also called "sole source" contracts), which should be very rare, subject to the approval of the EPO personally. Require sole-source contractors to satisfy additional transparency requirements, described below in the Transparency section of this Chapter.

4. Make all emergency contracts subject to the approval of the EPO or the EPO's designee, and allow contracts awarded on emergency basis to be valid for a maximum ninety-day term unless the EPO approves an extension (of no more than ninety days), with both the request for extension and the approval posted online.

5. Require the approval of the EPO or designated CPO for any material changes, including extensions of the contract beyond its original term; change orders for contract limit increases over a specific amount (e.g., 10% over the original contract amount); changes to the contract's scope; substitution of subcontractors; changes to Minority-and Female-Owned Business Enterprise goals (including those resulting from change orders); and modifications of the vendor's Financial Interests and Potential Conflicts of Interest Disclosure Form (hereinafter, Final Interest Disclosure or FID).

6. Amend the Procurement Code so that it applies to all procurements for any good or service above a specified dollar amount (e.g., $25,000) by all branches of state government, including any quasi-governmental agencies. The Legislative and Judicial branches should not be exempt from the Procurement Code. Abolish exemptions for other parts of state government.

7. Require the procurement processes under all constitutional officers to conform to all of the requirements set out above, including the requirement of giving authority to independent procurement officers to approve contracts, hire and fire staff, and serve for a defined term of office.

8. Abolish exemptions for certain types of contracts within one year — such as "purchase of care" contracts — unless the head of the new Independent Contract Monitoring Office (described below) recommends retaining the exemption until after his office can further study the matter.

C. <u>Establish an Independent Contract Monitor to oversee and review the procurement process</u>. Oversight and monitoring of the procurement process by an outside, independent agency are critical to ensure integrity in the procurement system, especially in a place like Illinois where powerful interests have succeeded in corrupting parts of the procurement process in the past. This oversight would include real-time monitoring of the contract-award process and related activities. Only through a strong, independent oversight effort will the existing rules be enforced — and therefore have meaning. Two places that do this well, Miami-Dade County and the Commonwealth of Massachusetts, house this oversight

function in their Inspector General's Offices. Other options include housing it in the Auditor General's Office,[3] or making it a separate office.

Specifically, the Commission proposes the following:

1. Establish an Independent Contract Monitoring Office (the "Monitor") to provide outside oversight and review of the procurement process as it occurs. Ideally, the Monitor's office will be a new independent agency but, alternatively, it could be part of the Inspector General's Office or incorporated into the Auditor General's Office. After the Commission's initial recommendations on this topic on March 31, the Commission heard testimony from Attorney General Lisa Madigan who recommended that the functions of the Monitor be placed in the Inspector General's Offices, and Auditor General William Holland stated that the functions of the Monitor should not be placed in his office. The Commission now recommends either the creation of the Monitor as a separate office or housing it in the Inspector General's Offices. However, it is critically important that this monitoring function be housed in a part of state government that is as independent as possible. If the Monitor is a separate, independent agency, its head would be selected, and protected from removal, in a way that ensures the agency's independence. The Monitor would have a five-year term and could only be removed by impeachment for cause, or after a public hearing.

2. Grant jurisdiction to the Monitor over all of state government, including all contracts issued by agencies under all constitutional officers (not just the Governor), and the Legislative and Judicial Branches.

3. Allocate sufficient funds to the budget for the Monitor's office to make the office effective, and protect it from large retaliatory cuts for acting independently and forcefully. To guard against any retaliatory budget cuts, the budget of the Monitor's office would be tied to the amount of annual contract spending, as set out below.

4. The State should fund any additional cost of creating the Monitor's office by withdrawing from each state agency a small "integrity surcharge" (0.1%) each time the agency makes a contract payment to a vendor. For example, if an agency is making a $10,000 payment to a vendor, the agency would pay a surcharge of $10 for contractual services. Thus, the

[3] Subsequent to the release of the Commission's initial recommendations on this topic on March 31, 2009, Auditor General William Holland stated that he did not believe it would be appropriate to house contract monitors in the Auditor General's Office, as he believes that adding other non-auditing functions into the Auditor General's Office would be inconsistent with its mission of conducting audits of all parts of state government.

agency could still spend 99.9% of the funds budgeted to it for contractors, but the last 0.1% would go to the Monitor.

5. Grant the Monitor real-time access to all procurement files and databases so that it can monitor all phases of procurement. Require agencies to forward timely notices of all procurements to the Monitor. Amend the Ethics Act to include a duty for employees and vendors to cooperate with the Monitor and to provide all requested records.

6. Grant the Monitor or its staff the ability to attend any meeting regarding procurement. Permit the Monitor to initiate reviews of procurements, or groups of procurements or procurement data, for "red flags" of misconduct, waste or inefficiency. The Monitor should also receive advance notification of significant contract modifications, such as change orders over 10% of the contract award amount, and should attend hearings regarding no-bid contracts. The Monitor should also maintain staff and publicize a tip-line and tip-email to receive complaints.

7. If the Monitor observes a problem in the procurement process, the Monitor will have the option of attempting to persuade the relevant state officials to correct the problem by changing their process or decision, or to issue a public report if it cannot correct the problem otherwise.

8. The Monitor will be required to file regular public reports on its activities, and regularly appear before the legislature to discuss those reports or as otherwise requested. By resolution, either chamber of the legislature will have the authority to request that the Monitor review a specific procurement or procurements (as it does with the Auditor General).

9. The Monitor will be charged with ensuring and maintaining complete transparency of the procurement process, including an all-inclusive procurement website described below.

10. The Monitor will also hear appeals of protests on bid specifications and contract awards. Initial protests to contract awards will be lodged with the Department of Procurement (or its equivalent in the other constitutional offices), which will have a short time period to rule on a protest. The aggrieved party may appeal that decision to the Monitor, similar to the federal system in which appeals of denials of bid protests are heard by the General Accountability Office. If a bid protest appeal is granted, the Monitor's Office will have the power to block a procurement, but will not have the power to award the contract to another vendor. The action will simply require the Department of Procurement to re-bid the contract or take a different action.

D. <u>Mandate Greater Disclosures for Contractors, Lobbyists and Others</u>. Transparency in the contracting process — including more robust disclosure requirements — makes it much more difficult for corrupt interests to manipulate the contract process. While the main problem in this area has been that existing transparency rules are not consistently followed, important improvements are required in the transparency and disclosure rules.

1. The Financial Interests Disclosure submitted by vendors should include all individuals (other than company employees) who are or will be having any communications with state officials in relation to the pertinent contract or bid. This includes lobbyists, but also includes non-lobbyists who are acting in any way as the agent for the company.

2. Vendors must disclose the names of all subcontractors, including information about payments to subcontractors.

3. The FID requirements should also require disclosure of all officers and directors, any debarments, adverse judgments or findings, bankruptcies, and criminal convictions for crimes related to the veracity of the entity, its five percent or more owners, and its officers/directors. If any owners are corporate entities, then those corporate entities should also have a duty to file a FID, and so on, until individual owners of more than five percent are disclosed.

4. All disclosure obligations must be ongoing, so that as a company adds lobbyists or agents, or changes subcontractors, it will have an obligation to update its disclosures.

5. The FID must require signature under penalty of perjury, must be incorporated as a material term in the contract with the State, and must be filed with the State in a searchable and sortable format, preferably in on-line form. Penalties for knowing violation of disclosure requirements should include the immediate cancellation of the vendor's contract with the State, and possible debarment from future state contracts.

6. The Procurement Code should require that all procurement staff keep a log of all contact with vendors and their agents, including lobbyists, and any other interested parties. On a regular basis, this log should be posted in the on-line searchable database with all other procurement information. This disclosure should be part of an expanded Recommendation of Award process, where all employees involved in a procurement are required to sign off that they are not aware of any violations of state law, and are required to disclose any contacts with any agents for the bidders.

7. State employees should have to disclose, as part of their annual Statement of Economic Interest, any equity/debt interest of more than five

percent in any company that does business with the State. Those disclosures should be collected and made available in a searchable, sortable format on the central procurement website.

E. <u>Enhance Transparency in the Procurement Process</u>.

1. All information regarding state procurement — by the executive, legislative and judicial branches, and every constitutional officer and quasi-governmental agency — should be collected in one website in a format that is easy to use, searchable, and sortable. As set out above, the Independent Contract Monitor should be in charge of maintaining the website, in order to avoid the current problem of contract information being scattered throughout different websites (when it is actually posted). By having an agency outside the procurement process responsible for ensuring that all relevant procurement documents are posted, an important check is in place against officials who may want to avoid transparency in certain situations.

2. The information collected on this state procurement website should include: current procurement opportunities; all applicable procurement rules and regulations; interactive training modules; a continuously updated FAQs file; current and pending awards, including change orders and bid protests; links to the Monitor, the Inspector General's Office, Auditor General and Attorney General's Public Corruption Unit; payments to prime vendors and prime vendor payments to associated subcontractors, including the invoices/vouchers submitted; a description, with relevant links, of the bid protest process; Vendor Disclosures of Financial Interests; Employee Statements of Economic Interest; agenda and meeting schedule for the Non-Competitive Procurement Review Committee; vendor political contributions; and information required as part of the vendor registration with the Board of Elections.

3. The Procurement Code should mandate that when a Request for Proposals (RFP) or Request for Information (RFI) process is used, all documents related to the recommendation by the evaluation committee must be made public after the award is made, including the identity of the members of the committee and their scoring sheets.

4. The Procurement Code should be amended to require a public hearing by the Department of Procurement (or its equivalent in the other constitutional offices) before the approval of any "no-bid" or sole source contract, where the subject agency must provide its justification for using the "no bid" process. The Department must publish its agenda, meeting time and meeting place in advance of the meeting, so that it may hear from vendors or other members of the public. All documents the Department reviewed, as well as its decision and reasoning must be publicly available. Only the EPO

should be able to close the hearing upon a determination that the hearing would disclose trade secrets, national security information, or other highly confidential and sensitive information.

5. The Procurement Code should be amended to require that all approvals for emergency contracts include a written justification regarding the emergency and must be posted online within forty-eight hours, or as soon as is feasible if the emergency makes posting within forty-eight hours impossible. Such contracts should only be awarded for a ninety-day term unless an extension (of no more than ninety days) is approved by the EPO, with both the request for extension and the approval and justification posted on-line within the same time period.

CHAPTER 4: ENFORCEMENT

I. Introduction

For far too long, Illinois has allowed the federal government to serve as its primary check on public corruption. The Commission recognizes that there are examples of successful corruption prosecutions in Illinois at the state and local levels, and notes that in other cases Illinois law enforcement agencies have worked jointly with the federal government.

At other times, however, the ability of Illinois prosecutors to successfully investigate and prosecute corruption has been constrained by limitations on the authority and independence of state enforcement agencies, as well as the investigative and prosecutorial tools available to them. The Commission believes that Illinois need not, and should not, rely upon the federal government to solve the problem of corruption in state government.

Our state's history of public corruption demonstrates a clear need for stronger enforcement mechanisms. In general, the testimony heard and received by the Commission revealed major constraints on the scope of prosecutorial and investigative tools available to Illinois authorities in public corruption cases compared to their counterparts at the federal level and in many other states. The Commission also heard testimony that made clear that adjustments to the power and independence of state enforcement agencies would greatly enhance their ability to investigate and prosecute corruption in state government.

The Commission understands that prosecutors and investigators can abuse their powers, but this abuse can occur whether the authorities are federal, state, or local, appointed or elected. The bottom line is that state and local authorities around the country are often given the same powers and tools as their federal counterparts, and have generally used these powers and tools as appropriately as federal enforcement authorities. These powers and tools mean that the state and local authorities in other states have much greater ability to investigate and prosecute public corruption. This is simply not the case in Illinois, where the laws hamstring the enforcement authorities in a way that is highly atypical around the country. In the Commission's view, it is an important and healthy step for Illinois to let its enforcement authorities operate in a more normal fashion. We believe that this will have the positive effect of increasing the amount of effective law enforcement effort in the area of public corruption.

The Commission believes that, at a minimum, state and local authorities should be armed with the types of time-tested prosecutorial and investigative tools available to federal authorities and other states in corruption cases. Effective change begins, however, with a decision to make enforcement of public corruption crimes a priority. The Commission therefore also recommends removing certain

structural limitations on the power and independence of enforcement agencies, which should increase public accountability by eliminating some of the often-cited excuses for why public corruption investigations have languished in the past. Accordingly, the Commission recommends:

1) Amending and enhancing state laws to provide prosecutors and investigators with many of the same tools available to federal authorities;

2) Adding significant corruption offenses to the existing list of offenses that are non-probationable;

3) Granting the Illinois Attorney General the authority to independently conduct grand jury investigations of public corruption offenses;

4) Directing additional resources to the investigation of public corruption crimes, through an independent public corruption division created within the Illinois State Police; and

5) Modifying the laws applicable to Inspectors General's Offices to improve the ability of Inspectors General to independently and effectively conduct investigations.

II. Information and Sources Considered

In addition to the testimony and statements provided to the Commission at its April 9, 2009 meeting on these issues, the Commission independently conducted research on the laws and practices in other jurisdictions. Additionally, interested members of the public and other witnesses submitted written and oral testimony and materials for the Commission to consider. For a detailed list of the documents that were submitted by testifying parties or otherwise provided to the Commissioners, please see Appendix A.

A. Research Reviewed. The Commission conducted research of laws and practices in Illinois and other jurisdictions regarding investigative and prosecutorial powers, as well as the structure of enforcement agencies. Federal law, in particular, provided a key reference point for the Commission in light of the success that federal authorities have had in prosecuting public corruption in Illinois and elsewhere. The Commission also reviewed laws in other states. The Commission's research identified a number of areas in which Illinois law is deficient or needs amendment to take advantage of enforcement tools and powers that have seen demonstrated success in other jurisdictions.

A number of peculiarities in Illinois law make it more difficult for prosecutors in Illinois to investigate and prosecute public corruption crimes as compared to other jurisdictions. For example, Illinois is one of only four states that

allow neither recording of conversations with the consent of one party to the conversation, nor wiretaps in corruption investigations. The "two-party consent" rule in Illinois makes it substantially more difficult for state prosecutors to obtain and use consensual recordings, which have played a fundamental role in numerous public corruption prosecutions at the federal level (including prosecutions of numerous corrupt Illinois officials). Under current Illinois law, prosecutors cannot even obtain judicial approval for a wiretap in corruption cases, because corruption-related offenses are not included in the wiretap statute. Thus, while state and local prosecutors can use wiretaps to aggressively pursue gang, drug, and gun offenses, they are barred from using wiretaps to aggressively pursue corrupt public officials, no matter how serious the alleged offense.

The Attorney General, the chief legal officer of Illinois, has authority to convene a statewide grand jury to investigate certain specified crimes — but not public corruption. This stands in stark contrast to the scope of Attorney General's power in Pennsylvania and most other states that have adopted statewide grand jury systems. And the existing state Racketeer Influenced and Corrupt Organizations (RICO) statute is also extremely limited as compared to those enacted under federal law and in a majority of other states, which further limits prosecutors' ability to present evidence of systemic corruption to a jury.

In short, given the scope of the corruption problems in Illinois, the Commission believes that Illinois law should be at least equivalent to the best practices developed in other jurisdictions.

The Commission also reviewed the Principles and Standards for Offices of Inspectors General promulgated by the National Association of Inspectors General, as well as the laws and practices for Inspectors General in Illinois and in other jurisdictions. The Commission's research reveals that the limitations imposed upon the authority of certain state Inspectors General, specifically the Inspectors General created by the Ethics Act adopted in 2003, are significantly more onerous than those found elsewhere or recommended by national experts. Moreover, the secrecy under which the Inspectors General are required by law to proceed—even after a determination of misconduct—contributes to a lack of public awareness about the importance of ethical conduct and role of the Inspectors General, and erodes public faith in the Inspectors General's Offices.

B. **Commission Witnesses**. In its public hearing on April 9, 2009, the Commission heard from a broad range of witnesses with personal knowledge of the challenges facing prosecutors in Illinois, including Governor Pat Quinn; Lisa Madigan, Illinois Attorney General; Joe Birkett, DuPage County State's Attorney; James Wright, Illinois Executive Inspector General; Jim Burns, Inspector General for the Illinois Secretary of State; Jack Blakey, Chief of Special Prosecutions Bureau for the Cook County State's Attorney; Scott Turow, Member of the Illinois Executive Ethics Commission, and partner at Sonnenschein, Nath, & Rosenthal

LLP; Michael Newman, Associate Director, AFSCME Council 31; and several witnesses from outside of Illinois, including Tom Jordan, Deputy Director of the Oklahoma State Bureau of Investigation; and Amy Zapp and Christopher Carusone, Deputy Attorney Generals for the Pennsylvania Attorney General's Office. Illinois Secretary of State Jesse White also submitted written testimony to the Commission.

The speakers, many of whose powers and authority might change if the State adopts the Commission's recommendations, provided a wide variety of substantive recommendations to the Commission for proposed reforms. Illinois Attorney General Lisa Madigan, DuPage County State's Attorney Joe Birkett, and Chief of Special Prosecutions Bureau for the Cook County State's Attorney Jack Blakey offered a number of specific recommendations for amendments to existing Illinois law, many of which were modeled after federal law, to enhance the abilities of prosecutors to investigate and prosecute corruption. Each of them, as well as other witnesses, supported both a one-party consent rule for recording conversations, and expansion of the wiretap statute to include corruption offenses. They also recommended that additional resources be allocated to public corruption investigations, and both Illinois Attorney General Lisa Madigan and DuPage County State's Attorney Joe Birkett supported amending the Statewide Grand Jury Act to allow the Attorney General to independently prosecute public corruption. Lisa Madigan also supported the addition of significant public corruption crimes to the existing list of non-probationable offenses.

The speakers involved in a panel discussion on Inspectors General expressed general agreement that modification to the rules regarding disclosure of sustained investigations was appropriate, despite the need to find a balance between privacy interests and public disclosure. The testimony of James Wright, Illinois Executive Inspector General, and Jesse White and Jim Burns, Illinois Secretary of State and Inspector General for the Illinois Secretary of State, respectively, highlighted some of the distinctions between the more constrained authority provided to the Executive Inspectors General in the 2003 Ethics Act and the broader authority and independence that the Secretary of State Inspector General is provided in a separate law, 15 ILL. COMP. STAT. 305/14. Scott Turow and Michael Newman helped identify for the Commission the challenges presented in developing standards regarding publication of Inspector General reports.

The witnesses from the Oklahoma State Bureau of Investigation and the Pennsylvania Attorney General's Office provided examples of how an independent investigative body and statewide attorney general power to investigate corruption, respectively, have helped those states combat corruption.

For additional information on witness testimony and public comments, please see the meeting minutes set forth in Appendix C.

III. Commission Findings

In light of the testimony and documentation received at the April 9, 2009 hearing, the Commission's independent research and experience, and other comments and testimony that the Commission received through sub-group hearings and the website, the Commission finds that Illinois law in its current form does not adequately provide prosecutors and investigators with the power and tools to independently and effectively investigate and prosecute public corruption. Existing law also does not sufficiently discourage the culture of corruption that is pervasive in Illinois, or provide sufficient transparency to encourage the public to believe in the efficacy and integrity of enforcement agencies. As a result, the public has developed a cynical view of state enforcement agencies' interest in and ability to combat public corruption.

The Commission encourages the Governor and General Assembly to implement the recommendations identified below to increase the likelihood that state authorities will successfully investigate and prosecute public corruption crimes, and to improve the public's faith in the ability of Illinois authorities to police misconduct in state government.

IV. Commission Recommendations

The Commission recommends the following:

A. Criminal Statutes

1. Expand Wiretap Predicates to Include Corruption Offenses: In order to allow prosecutors the ability to use existing wiretap authority to investigate public corruption crimes, the Commission recommends amendments to 725 ILL. COMP. STAT. 5/108B-1, *et. seq*., that expand the predicate offenses for wiretap authority to include corruption crimes, including bribery, extortion, fraud, official misconduct, government contracting crimes, and RICO crimes. Current law does not allow state and local prosecutors to seek judicial approval of wiretaps for most corruption-related offenses.

2. Allow Recorded Conversations with One-Party Consent: The Commission recommends allowing state and local prosecutors to authorize use of an eavesdropping device where any one party to a conversation to be monitored has consented to such monitoring. Adoption of this recommendation would bring Illinois in line with federal law and the vast majority of states.

3. Amend State Criminal Law to Conform to Federal Law Where Appropriate. A number of time-tested federal laws have proven instrumental in combating public corruption. The Commission recommends that state laws

be enacted or amended in the following ways to reduce the disparity between state and federal prosecutors when it comes to their ability to prosecute corruption:

a. State RICO: The Commission supports an expanded and strengthened version of the state RICO law to make it equivalent to the federal RICO law.

b. False Statements: The federal "False Statement" crime, 18 U.S.C. § 1001, makes it a crime to make a false statement to a federal law enforcement officer regarding a matter within the jurisdiction of the federal government. The Commission supports adoption of a similar, but more limited, false statements statute in Illinois.

Specifically, it would constitute a criminal offense for a person to: (1) knowingly make a false statement; (2) to a state or local law enforcement or criminal investigative officer; (3) regarding a criminal matter that the person knows to be under investigation by the officer; (4) if, during the interview, the person is first informed by a prosecutor who is working with the officer on the investigation that a knowing false statement to the officer relating to the investigation would constitute a criminal offense. This statute would complement the existing obstruction of justice statute, which relates to a similar subject but contains different elements — as in the federal system.

The Commission is sensitive to the fact that some are distrustful of law enforcement officials, but fundamentally believes that a statute that has served an appropriate and effective role for federal law enforcement in combating crime — particularly in the area of corruption and other white-collar offenses — is an appropriate statute for our state as well. We believe that witnesses must be discouraged from making false statements to investigative officers. Our suggested language is substantially more narrow than the federal statute, as it only pertains to false statements made (1) regarding a matter under criminal investigation, (2) that the person knows is under investigation, and (3) only when a prosecutor is involved in the investigation and gives an appropriate warning about the consequences of lying. We believe that these limitations will help ensure that the statute is applied appropriately.

c. Fraud. The Commission recommends that the current statute regarding schemes to defraud, 720 ILL. COMP. STAT. 5/17-24, be amended to delete the requirement that a person use a "wire" or "mail" communication. The wire and mail requirements were imported from

analogous federal law, where they are necessary in order to establish federal jurisdiction. Under state law, however, no such jurisdictional limitations are necessary, and therefore the wire and mail requirements unnecessarily limit the scope of what otherwise should be a general fraud statute.

d. Extortion. The Commission recommends amending the state theft and intimidation statutes to create a state "extortion" law equivalent to the federal extortion law, 18 U.S.C. § 1951, without the interstate commerce requirement required for jurisdictional reasons in federal law. Federal law defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." This change was recommended by Attorney General Madigan, and the Commission agrees that a state extortion law would provide state officials with an appropriate compliment to the bribery law codified at 720 ILL. COMP. STAT. 5/33-1. It is of particular importance in public corruption cases for prosecutors to have use of the "under color of official right" language when attempting to prove an extortion case against a public official. The federal definition acknowledges that in some circumstances, public officials who use their official position to improperly coerce or pressure individuals to give up property may be committing extortion in as serious manner as someone who threatens an individual with violence. Including a new extortion offense that contains this language will give prosecutors an additional, important tool in the fight against public corruption.

e. Theft of public funds. Regarding the theft or embezzlement of public funds, either by public employees or others, federal law defines these offenses more broadly than Illinois law. *See* 18 U.S.C. §§ 641 and 666(a)(1)(A). As recommended by Attorney General Madigan, the Commission recommends that state law be amended so that Illinois law matches federal law in scope regarding these offenses. Given the importance of protecting taxpayer funds from corrupt practices, it is appropriate that Illinois prosecutors have the same tools available to them on this subject as their federal counterparts.

B. Ensuring Appropriate Penalties for Corruption Crimes

Given the scope of the corruption problems in Illinois, the significant cost of corruption to taxpayers, and the heavy damage corruption crimes inflict upon the public's faith and trust in the integrity of public institutions, the Commission recommends that significant corruption offenses be added to the existing list of crimes that are non-probationable. Illinois law already prohibits a

judge from sentencing a defendant to probation for a wide variety of crimes, including conspiracy to deliver marijuana if the defendant possessed more than 20 marijuana plants and received more than $500, or possession of a gun by someone ineligible for a Firearms Owner Identification card. *See* 730 ILL. COMP. STAT. 5/5-5-3(c)(2). Wherever the proper line is between probationable and non-probationable offenses, the Commission believes that significant corruption crimes do great damage to our society and that therefore at least some period of imprisonment is appropriate.

Specifically, the Commission recommends that if a defendant is convicted of a crime that involves the corruption of a public official, whether that official is the defendant or someone else, and the offense is a Class 3 felony or higher, the defendant may not be sentenced to probation and must be sentenced to a term of imprisonment if either:

(1) the defendant was an elected official at the time of the offense, or

(2) the offense involved more than $10,000 in money or property, based on either the value of any corrupt payments or the value of the item that was the object of the corrupt offense.

However, as in federal law, if the prosecutor certifies to the court at the time of sentencing that the defendant has provided substantial assistance in the case or another prosecution of substantial public importance, the prohibition against imposing a sentence of probation should not apply.[4]

C. Attorney General Grand Jury Powers

The Commission recommends that the Statewide Grand Jury Act, 725 ILL. COMP. STAT. 215/1 *et. seq*., be amended to give the Attorney General's Office the power to independently conduct grand jury investigations of public corruption offenses. The current Statewide Grand Jury Act allows the Attorney General of Illinois to convene a statewide grand jury, but only in certain types of cases involving drugs, gangs, or child pornography. Both Illinois Attorney General Lisa Madigan and DuPage County State's Attorney Joe Birkett voiced their support for the expansion of the Statewide Grand Jury Act in their testimony before the Commission. Moreover, the Commission heard testimony about the statewide grand jury powers of the Attorney General's Office in Pennsylvania, where a statewide grand jury has been used to successfully investigate public corruption cases, apparently without any conflict between state and local prosecutors. As the state's chief legal officer, it seems particularly important for the Attorney General to have the power to independently investigate corruption in state government.

[4] Commissioner Gratteau opposes any sentencing scheme that requires mandatory minimums for public corruption crimes.

D. Independent Public Corruption Division within Illinois State Police

The Commission recommends that the State establish an independent Public Corruption Division within the Illinois State Police, headed by an officer chosen through an independent selection process. The Illinois State Police is the State's primary statewide investigative body and is the closest equivalent to a state Bureau of Investigation (as the Illinois State Police used to be called). We therefore believe that it is important and appropriate for this body to play a central role in investigating public corruption in state government.

However, it is a critical part of our recommendation that any Public Corruption Division within the Illinois State Police have much greater independence than the Illinois State Police currently has. Two primary reasons justify this recommendation. First, public comments to the Commission make it clear that there is, at minimum, a public perception that the Governor's office has historically impeded public corruption investigations. Second, the scope of the corruption problem in Illinois warrants additional investigative resources, a position numerous speakers echoed at the April 9, 2009 hearing.

Specifically, the Commission recommends that the State establish a Public Corruption Division within the Illinois State Police. The head of the Division should have a term of office and not be subject to removal before the expiration of any term except for cause and by a vote of the majority of the Senate after a public hearing. The Division will conduct public corruption investigations regarding criminal matters, and must work directly with a state or local prosecutor's office on the investigation. If the matter concerns corruption in state government, they must work directly with the Attorney General's Office, unless the Attorney General's Office refers the matter to a county prosecutor's office.

A seven-member panel consisting of one chief of police, one sheriff, one state's attorney, and four lay members should make the initial appointment of the Division head, recommendation of removal, and any subsequent appointment. The Governor should appoint the panel to serve staggered seven year terms. The Commission heard testimony from the Deputy Director of the Oklahoma State Bureau of Investigation, which has a similar mechanism for oversight and appointment of a director. In Oklahoma, the independent selection process drastically reduced—and effectively ended—the historical problems that the state had experienced with politicians' attempts to interfere or discourage certain investigations.

The Division officers and staff should be employees of the Illinois State Police but should be chosen by and report to the head of the Division. The Illinois State Police would determine that size of the Division, but a standard investigative team (usually consisting of about ten officers) and support staff would likely be

appropriate. The Illinois State Police could also consider whether the existing Internal Investigations Division, which did some joint investigative work with federal law enforcement during the investigation and prosecution of Governor Ryan, can be modified into a Public Corruption Division with the features being recommended here.

E. Inspector General's Office

The Commission recommends a number of changes to the Offices of the Inspectors General and their powers, particularly the Inspectors General created under the 2003 State Officials and Employees Ethics Act, to (1) enhance the authority of Inspectors Generals to independently investigate public corruption; and (2) strengthen the public trust in the independence and effectiveness of the Offices of the Inspectors General. Specifically, the Commission recommends the following:

1. Publication of Summary Reports: Summary reports of sustained findings by Offices of Inspectors General should be made public within sixty days of the report date, unless the relevant Inspector General certifies to the Executive Ethics Commission that publication would interfere with an ongoing investigation. If the ongoing investigation in question is administrative, publication may be delayed by no more than six months. If the ongoing investigation in question is criminal, publication may be delayed by no more than two years, but the Inspector General must re-certify to the Executive Ethics Commission every six months during this period that publication of the summary report would still interfere with the ongoing investigation.

    a. The Executive Ethics Commission may not redact the name of any employee from a summary report recommending discipline, if the employees must file a Statement of Economic Interests. The public should have the maximum amount of information regarding summary reports that involve higher-level state employees.

    b. The Executive Ethics Commission may use its discretion to decide whether it is in the public interest to redact the employee's name from a summary report if the employee is not required by law to file a Statement of Economic Interests.

    c. The Executive Ethics Commission may not redact an employees' name in those cases involving prohibited political activity or violations of the gift ban or revolving door provisions.

    This would allow the Executive Ethics Commission to strike the proper balance between transparency and privacy when the investigation did not involve higher-level state employees. For instance, it would allow the Executive Ethics Commission to consider whether redaction of a union

employee's name is appropriate while an ongoing disciplinary appeal is pending. Furthermore, the Inspector General may redact information in summary reports that would reveal the identity of witnesses, complainants, or informants before publication if the Inspector General determines that it is appropriate to protect their identity.

When the summary report is made public, the disciplinary decision and justification from the state agency should also be made public, along with any response from the employee if the employee wishes.

2. Removal Procedures for Inspectors General: The Commission believes that an Inspector General should only be removed before the expiration of his or her term if the appointing elected official certifies to the Illinois Senate that there is a "for cause" reason for the Inspector General's removal and a majority of the Senate votes to remove the Inspector General after a public evidentiary hearing. Currently, the elected official who appoints an Inspector General (e.g., the Governor) has the power to unilaterally remove the Inspector General by citing a "for cause" reason. There is no check on this removal power. The best practice around the country is to allow removal only if both the executive and legislative branches approve it, after a public hearing. Another option is to have a public hearing before, and advisory vote of, the Executive Ethics Commission prior to any attempt by the Governor to remove an Inspector General.

3. Ability to Open Investigations: The Commission recommends granting authority to Inspectors General to open investigations on their own initiative, or based on anonymous complaints, when they believe that a matter is worth investigating. Although in his testimony before the Commission, Mr. Newman voiced some concerns about investigations based on anonymous complaints, the vast majority of the witnesses before the Commission as well as the nationwide Association of Inspectors General support a change that would allow Inspectors General to use their experience and expertise to determine which complaints or issues warrant investigation. Further, anonymous reporting will combat a real fear of reprisal felt by many state employees contemplating reporting misconduct. Attorney General Lisa Madigan testified before the Commission that she would support the anonymous reporting of complaints to the Inspector General's Offices.

4. Hiring and Contract Monitors: The Commission recommends that new units be created in each Inspector General Office to proactively monitor hiring and contracting processes in state government, as recommended by Attorney General Lisa Madigan in her testimony before the Commission. These units should have full access to all hiring and contracting information in real-time, and should have the ability to make public reports regarding violations in the hiring and contracting processes if they find such

problems and are unable to persuade state officials to correct the violation. For contract monitoring, the Commission has recommended that this function could also be placed in an Independent Contract Monitoring Office. If instead the function is placed in the Inspector General's Offices, the powers and duties would be those described in the Commission's recommendation for the establishment of an Independent Contract Monitor. (Described above in Chapter 3: Procurement.) The Offices of the Inspectors General must be provided the proper resources to hire employees with the appropriate experience and training to fill these units.

5. Protect Inspector General Resources: The Offices of the Inspectors General must be given sufficient resources to do their work effectively, and their budget must be protected from political meddling by officials who may be unhappy with their work if they are strong and effective. Accordingly, the Commission recommends that by law, each Inspector General's annual budget should be no less than 0.1% of the relevant portion of the State annual budget. For example, for the Executive Inspector General with jurisdiction over all agencies under the authority of the Governor, the Inspector General's budget would be no less than 0.1% of the budget of those agencies. Furthermore, Inspectors General should have the power to control the spending of their budget without interference from the Governor's Budget Office.

6. Consolidation of Inspectors General Offices: The Commission recommends that the eight Inspectors General Offices established by the 2003 Ethics Act consider and report to the General Assembly in 2009 on whether the Inspectors General should be combined into one Inspector General Office. Currently, there is one Inspector General named by each of the five constitutional officers, by the House, the Senate, and the Auditor General. Each Inspector General's jurisdiction is limited to the business of the agencies under those particular appointing officers/bodies. The Commission believes that dividing the Inspector General's jurisdiction in this way may significantly limit their efficiency and, directly or indirectly, respective effectiveness. By comparison, there is one Auditor General who has jurisdiction over all parts of state government, both the Executive and Legislative branches.

CHAPTER 5: GOVERNMENT STRUCTURE

I. Introduction

The goal of Illinois state government and its political processes should be to ensure that the best interests of its people are adequately represented and passionately pursued. To that end, a well-structured government is an essential component of effective, accountable and credible democratic representation. It is apparent, however, that the current structure of government in Illinois does not serve the best interests of the people, and instead functions to protect incumbents and concentrate political power in a handful of officials. Our system of checks and balances has proven dysfunctional—delaying or denying the will of the people in favor of the whims of a powerful few.

During a public hearing held on March 30, 2009, the Illinois Reform Commission considered ways to reform the structure of Illinois government to reduce corruption and promote fair and efficient representation of the people. The Commission focused on several key areas: redistricting, term limits, recall, the budget approval process, the Rules Committee process, and the structure of our State's pension system. In the course of its investigation, the Commission received compelling evidence of the procedural unfairness and fiscal inefficiency that have characterized Illinois government, thus emphasizing the need for reform. After discussion and deliberation relating to the issues identified above, the Commission recommends:

1) adopting legislation to restore fairness to the process by which state legislative and congressional districts are drawn;

2) supporting pending legislation regarding term limits for legislative leadership positions;

3) amending House and Senate Rules applicable to the budget approval process to restore an effective system of checks and balances; and

4) amending the House and Senate Rules to ensure that each piece of proposed legislation that has a minimum number of sponsors receives a full committee vote.

II. Information and Sources Considered

To prepare for its March 30, 2009 hearing and to generate informed proposals, the Commission independently researched laws and recommendations relevant to government structure. Additionally, the Commission considered substantial written testimony, oral testimony, and other materials submitted by members of the public and invited witnesses.

A. Research Reviewed. The Commission received and reviewed materials from experts on government structure and the legislative process. These materials illustrate how Illinois' current system of government does not adequately support the core values of democracy. Of particular note were *Redistricting in Illinois*, a paper from the Paul Simon Public Policy Institute and the relevant chapters of *Challenges and Opportunities on the Road to Reform in Illinois* from the Institute of Government and Public Affairs at the University of Illinois. To provide context for its recommendations the Commission includes a brief background summary of the key topics at issue. This summary relies on the written sources listed in detail in Appendix A, as well as oral witness testimony.

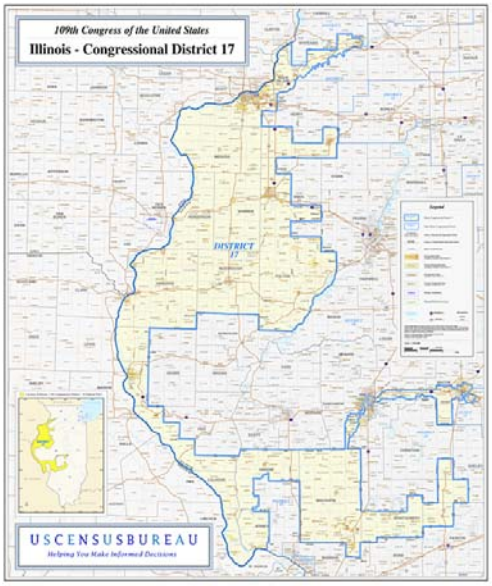
1. Redistricting. The current system in Illinois for drawing congressional and state legislative districts following a federal decennial census places Illinois voters in direct conflict with the legislators who are supposed to represent them. Behind closed doors, political operatives scrutinize the voting history of constituents to draw boundaries intended to protect incumbents or draw "safe" districts for either the Democratic or Republican parties. The results are gerrymandered districts that are neither compact nor competitive and do not serve the best interests of the people of Illinois. Additionally, Illinois is the only state in the United States that has a tie breaker system in which the Secretary of State draws a name out of a hat in a "winner take all" lottery. If the Republican name is drawn, then that party gets to promulgate its preferred map and the Democratic party loses. If the Democratic name is drawn, then that party controls the map drawing process. This system has been repeatedly criticized, with the Illinois State Supreme court noting that "the rights of the voters should not be part of a game of chance." *People ex rel Burris v. Ryan*, 147 Ill. 2d 270, 295 (1992). In the end, regardless of which party wins, the people of Illinois are the losers of this tie-breaker.

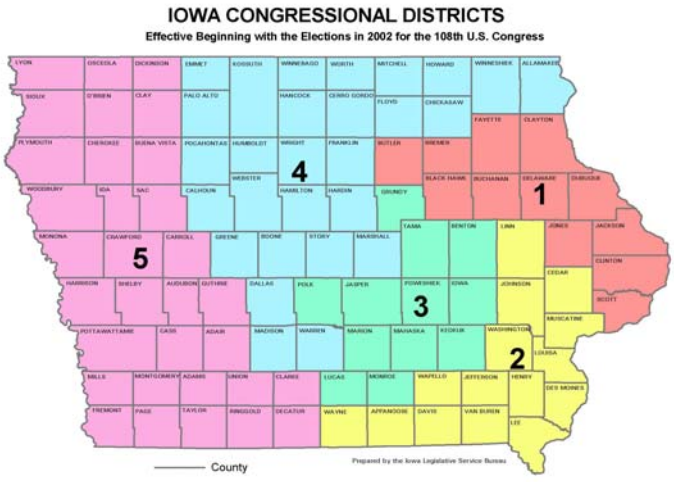
A growing number of states have removed the process of redistricting from the partisan confines of their legislatures and placed authority over the process in independent commissions. These commissions vary by composition and degree of authority, but they serve the common purpose of preventing legislators from "picking" their voters. The commissions typically rely on some combination of the following principles: (1) adherence to all constitutional and Voting Rights Act requirements; (2) district competitiveness; (3) partisan fairness; (4) respect for political subdivisions and communities of interest; and (5) district compactness and contiguousness. It also bears emphasizing that redistricting commissions are only as good as the principles from which they make their determinations. If commissions draw maps using the same politically motivated criteria as legislators, their maps will exhibit the same flaws as those drawn in the current system. Nevertheless, most experts recommend their use, and recent

enactments suggest that the commission process is gaining favor among state governments.

Given the inherently political nature of redistricting, it is unsurprising that the process varies widely by state depending on geography, ethnic and political make-up, and population. To better understand the concept of redistricting commissions, the Illinois Reform Commission specifically examined states that have proposed or adopted them: (i) Iowa (adopted in 1980), (ii) New Jersey (adopted in 1995), (iii) California (adopted in 2008), and (iv) Ohio (which considered, but rejected an independent redistricting commission).

Iowa is often set forth as the model redistricting system. In Iowa, a non-partisan Legislative Service Bureau (the "LSB") uses a computer software program to apply specific criteria to census data to generate a proposed legislative map. The LSB submits the map to the state legislature for consideration and a vote. If the legislature rejects the map, the LSB revises it and submits up to two more proposals. If the legislature does not approve one of the first three plans that the LSB proposes, the legislature must itself propose and approve a plan by September 1 or the State Supreme Court will take responsibility for the creation of a plan. The Governor has veto power over any adopted plan. Despite these contingencies, the Iowa legislature has adopted one of the LSB's first three proposed maps in each of the pertinent years: the third proposed map in 1981, the first in 1991, and the second in 2001. This process has been praised for producing fair and geometrically plausible districts. *See Illustration 1, below* (comparing Illinois' 17th district to Iowa's congressional districts).





Rather than enacting a *non-partisan* commission, New Jersey amended its constitution in 1995 to create a *bipartisan*, independent commission with authority over the federal congressional redistricting process. The commission is made up of six commissioners nominated by leaders of the two major political parties and one tiebreaking commissioner elected by the nominated commissioners. If the commission is unable to choose a redistricting plan, the two plans with the most votes are submitted to the state supreme court, which then selects the plan that "conforms most closely to the requirements of the Constitution and the Laws of the United States." N.J. Const. Art. II § 3. Critics of bipartisan redistricting commissions have suggested that they result in uncompetitive races designed to protect incumbents.

California is the most recent state to adopt a redistricting commission, following a November 2008 constitutional amendment proposed by the Proposition 11 ballot initiative. The amendment authorized the creation of a fourteen-member independent commission with authority over the redistricting process. Pursuant to the amendment, the California commission will consist of five republicans, five democrats and four members who are either independent or members of third-parties. The amendment sets forth six prioritized criteria the members must use when adopting a plan: (1) Constitutional requirements, including equal population; (2) the federal Voting Rights Act; (3) geographically contiguous districts; (4) the geographic integrity of any city, county, city and county, neighborhood, or community of interest (not including relationships with political parties, incumbents, or political candidates); (5) geographical compactness, to the extent practicable; and (6) the relation of state Senate, Assembly and Board of Equalization districts.

Over the past several years, Ohio, which shares some demographic similarities with Illinois, has considered and rejected proposals to change to its redistricting process. Ohio presently uses a commission made up of the governor, the secretary of state, the state auditor and a legislator from each party. Practically speaking, redistricting is controlled by whichever political party holds at least two of the three elected offices. In 2005, Ohio voters defeated Ballot Initiative 4, which would have appointed a commission of five citizens rather than party holders. Despite this defeat, there is still a push for reform of the process in Ohio. In fact, officials have gone so far as to create a public redistricting contest inviting citizens to create their own redistricting maps to obtain "the best possible redistricting recommendations for consideration by the Ohio General Assembly." *See* http://www.ohioredistricting.org.

2. Term Limits. Thirty-nine states have some form of limit on the number of terms a governor may serve. By contrast, only fifteen states have

legislative term limits in place. Because of the potential implications on seniority, innovation and the overall public policy-making process, research on term limits has tended to focus on legislative term limits rather than gubernatorial term limits. This research shows that legislative term limits clearly increase turnover and limit the potentially undue influence of senior members of a legislative chamber. On the other hand, term limits lead to a loss of valuable institutional and procedural knowledge and experience, and such limits may unintentionally vest additional policymaking power in the executive branch and administrative agencies. Moreover, some politicians have avoided term limits in other jurisdictions by simply running for different elective offices — undermining the intent of the law, but not its letter, while continuing to amass significant political power. The Commission's research suggested that gubernatorial term limits would produce only minor substantive effects in Illinois.

3. Recall. In states with direct recall, the recall process is rarely used against state-wide office holders. There have only been two recalled governors: Lynn Frazier of North Dakota in 1921 and Gray Davis of California in 2003. There have been numerous successful recalls of state legislators and local officials. The Gray Davis recall prompted significant debate about the practice, including criticisms that it is a costly political side show, subject to abuse by special interest groups.

4. Legislative and Budget Process. Illinois's legislative procedure is a veritable morass of committees, reviews and amendments. For a basic overview of the existing system see Chapter 9 of the Illinois State Bar Association's *Media Law Handbook*, *available at* http://www.isba.org/newscenter/medialawhandbook/

B. Commission Witnesses. The Commission heard testimony from a number of witnesses including Steven Rauschenberger, former Illinois State Senator and President of the United Republican Fund, Alexi Giannoulias, Illinois State Treasurer, John Jackson, Emeritus Professor of Political Science and Visiting Professor at the Paul Simon Public Policy Institute at Southern Illinois University — Carbondale, James Nowlan, Senior Fellow of the Institute of Government and Public Affairs, and Christopher Mooney, Professor of Political Science at the University of Illinois — Springfield. The speakers generally emphasized the urgency of restoring trust, integrity and accountability to our government and recognized that doing so requires reform to the legislative process.

Former Senator Rauschenberger provided examples of how the State's system of checks and balances has failed to prevent a concentration of power in the hands of a few, and he offered specific recommendations on how to implement procedural change and reform the budget approval and legislative process.

Treasurer Giannoulias described the inefficiencies and potential for corruption that plague the State's oversight of its pension funds. Illinois has three pension boards to oversee the investment activities of the state's five pension funds. Giannoulias recommended consolidating the oversight functions into a single entity. He suggested that consolidation would curb ethics abuses, eliminate redundancy, improve efficiency, and confer for cost savings on taxpayers by cutting administrative costs and management fees. The Commission supports the recently passed legislation regarding the consolidation of the state pension investment board.

John Jackson and James Nowlan each discussed redistricting reform, including a discussion of the various proposed models. Dr. Jackson and Professor Nowlan highlighted important factors to consider in achieving a fair system that promotes fundamental democratic values. Dr. Jackson noted that many Illinoisans believe that state senators and representatives select their constituents instead of the other way around. He also provided a presentation showing the legislative maps in Illinois and identifying criteria that should be used when drawing future maps: equal numbers in districts, natural boundaries, geographical compactness and contiguity, party fairness, ethnic fairness and party competition. He described a plan that the Paul Simon Policy Institute has proposed to decouple the House and Senate legislative maps and allow the maps to better reflect minority voting strengths and consider political boundaries. This proposal also revises the tiebreaker procedures by having the ranking State Supreme Court Justice and the ranking justice from the other party appoint a magistrate judge to select the final legislative map. Professor Nowlan focused on redistricting for U.S. Congressional races in Illinois and other states, as well as the possibility of adopting redistricting reform by referendum.

Christopher Mooney provided useful background regarding gubernatorial and legislative term limits as well as the direct democracy mechanisms. With respect to term limits, Mr. Mooney highlighted potential positive effects of implementation at the legislative level but also noted potential weaknesses and negative effects to consider in any term limits system. Although imposing term limits on legislators can promote the rotation of senior leadership thereby limiting the concentration of power, states implementing such limits have found that many of the hoped-for changes never occurred. General legislative limits have failed to reduce either campaign spending or the number of professional politicians. At the same time, legislative term limits have resulted in a loss of institutional knowledge and a lack of focused leadership in state legislatures, which tends to increase the influence of the executive branch. Turning to the executive, Mr. Mooney observed that only one Illinois governor has ever served more than two four-year terms. Accordingly, adopting gubernatorial term limits in Illinois would likely have only minor practical impact on the state's policy and politics. Moving onto the concept of direct democracy, Mr. Mooney spoke briefly about referendums,

initiatives, and recalls. He noted that recall is rarely used, in part because it requires a higher petition threshold than other direct democracy mechanisms.

For additional summaries of witness testimony and public comments, please see the minutes collected in Appendix B.

III. Commission Findings

The Commission's investigation into Illinois' redistricting process revealed a system rife with unfairness, inefficiency, and self-interest. Specifically, the Commission finds that the State's redistricting process yields gerrymandered legislative maps and deprives Illinois voters of fair representation. In some cases, our disfigured, expansive districts leave representatives hundreds of miles away from their constituents.

Furthermore, the Commission finds that the processes by which the legislature approves budgets and other legislation do not protect against the concentration and abuse of power. Through a complicated labyrinth of committees, reviews and endless amendments, powerful legislators can bury bills and avoid the political ramifications of a straight up or down vote. As Comptroller Hynes remarked to the Commission, "the Rules Committee is where good bills go to die." When it comes to approving some of the State's most important bills, namely its budget, legislators are often required to vote without sufficient time to review or debate the proposed appropriations. Further compounding this lack of scrutiny, the approval process has failed to deliver on the promise of a balanced budget. For these reasons, the Commission encourages Illinois officials to implement the recommendations described in Section IV below.

The Commission believes that lengthy tenure in legislative leadership roles differs qualitatively from long-term service in non-leadership positions. Significantly, Illinois voters do not elect or otherwise determine which officials will fill these powerful positions, and perpetual occupancy of these positions tends to give disproportionate power to a few politicians. This concentration of power disenfranchises the average voter — leading them to believe that without the ear of a select few politicians, their opinion effectively goes unheard. Moreover, these leaders are able to determine the outcome of legislative races by controlling party funds, which could enable them to exchange campaign and other political support for legislative votes. Therefore, while the Commission does not unanimously support *elective* term limits, it supports limits on how long legislators can fill legislative leadership positions. Thus, the Commission urges support of Senate Joint Resolution Constitutional Amendment 0025, as described in Section IV below.

Although both elective term limits and direct recall received a majority of support, the Commission could not reach unanimity on proposals regarding legislative term limits and direct recall. Accordingly, the Commission believes these

two ideas deserve further study and consideration. During its one hundred-day mission, the Commission discovered that these concepts enjoy significant public support. In fact, hundreds of the commenters on ReformIllinoisNow.org cited term limits or recall as necessary reforms in Illinois, and multiple witnesses opined that term limits could be used to shake up the political system and prevent the concentration of political power. Although term limits and recall present some potential benefits for the voting public, they also have the potential for significant drawbacks and unintended consequences.

A. **Elective term limits**: A number of Commissioners were concerned about the impact of term limits on voter choice, especially in times of crisis when voters might reasonably favor expertise over inexperience. Commissioners also found troubling the possibility that politicians could "game the system" by moving from one term limited position to the next. Furthermore, the Commission was struck by Professor Mooney's testimony that states implementing term limits have seen no reduction in campaign spending or professional politicians. After much discussion of the aforementioned pros and cons of elective term limits, the Commission concluded that it could not obtain unanimous support for elective term limits.

B. **Direct recall**: As with general elective term limits, the Commission was unable to make a unanimous recommendation regarding the direct recall of elected officials. While Commissioners acknowledge the merit of making elected officials more accountable to the voters, Commissioners were concerned about the potential unintended consequences of a reactionary endorsement of the recall power. Commissioners noted that the threat of recall might keep elected officials from making necessary, but unpopular, decisions. Commissioners were likewise troubled by the possibility that political parties or their operatives could use recall as a political tool to agitate for removal of their opponents.

IV. Commission Recommendations

To address the issues discussed above, the Commission unanimously recommends the following:

A. **Pursue comprehensive redistricting reform**. The Commission believes that the plan proposed by Southern Illinois University's Paul Simon Public Policy Institute, embodied in House Joint Resolution Constitutional Amendment 16, represents a significant improvement to the current redistricting process. The proposed amendment, which is currently in the Rules Committee, abolishes the "winner take all" tie breaking system and requires the Chief Justice of the Illinois Supreme Court and a Justice from the opposing political party to appoint a Special Master to oversee the redistricting process. Further, this constitutional amendment would decouple the House and Senate Districts so that House Districts and Senate District boundaries can be drawn independently. Although proposed Amendment 16

is a step in the right direction, the Commission believes that bolder action is required to ensure that legislative boundaries are drawn to serve the best interests of Illinoisans rather than the political interests of incumbents or political parties. Accordingly, the Commission recommends the following:

1. Establish a five-member Temporary Redistricting Advisory Committee (TRAC) by February 15, 2011, with the majority and minority leaders of the House and Senate selecting four of the commission members. The fifth commission member should be chosen by a vote of at least three members of the TRAC, and this member should serve as chairperson. No member of the TRAC should hold a partisan political office or political party office or be a close relative of a member of the Illinois General Assembly or Congress.

2. Appoint an independent, non-partisan Redistricting Consulting Firm (RCF) that the majority and minority leadership of both the Senate and House select. The RCF should be an independent contractor with qualified software technicians. The TRAC would provide advice and guidance to the RCF.

3. Decouple House districts from Senate districts. The RCF would be responsible for preparing three distinct maps at a time: one for the Illinois Senate, on for the Illinois House, and one for federal congressional districts.

4. Hold hearings on proposed redistricting maps. The TRAC would be responsible for releasing proposed redistricting plans to the public and conducting public hearings on the first proposed plan. Specifically, the TRAC would conduct at least five public hearings in different geographic regions of the State on the first redistricting plan and issue a report to the General Assembly summarizing the information and testimony received.

5. Require relevant bodies to act promptly in reviewing and approving plans. The RCF would be responsible for delivering the first proposed congressional and state legislative redistricting plans to the General Assembly by April 1, 2011. Within seven days thereafter, there must be a resolution vote (i) by the House with respect to the proposed House redistricting plan, (ii) by the Senate with respect to the proposed Senate redistricting plan and (iii) by the House and Senate (acting together) with respect to the proposed federal congressional redistricting plan.

6. Prohibit amendments and require supermajority approval of the first and second (if applicable) proposed maps. To approve of a first or second map, the relevant voting body must approve it as-is with a two-thirds majority vote.

7. Require consideration of additional RCF-generated plans. If any of the first redistricting plans are not approved, the RCF would then submit a second redistricting plan (for the House, Senate or congressional districts, as applicable) to the Illinois General Assembly by May 1, 2011. The House and Senate would have another seven days to hold a resolution vote (as applicable), and approve the map or maps by a two-thirds majority vote without amendment. If either chamber fails to approve the second redistricting plan, the RCF must deliver a third redistricting plan (again, for the House, Senate or congressional districts, as applicable) by June 1, 2011 for consideration over the following seven days. The third redistricting plan is subject to amendment in the same manner as any other resolution, but would still require the approval of a two-thirds majority.

8. Provide for judicial oversight of the map-drawing process. If the General Assembly fails to approve a third redistricting plan, then the Illinois Supreme Court must evaluate the third redistricting plan on statutory and constitutional grounds. If the plan satisfies statutory and constitutional requirements, it will be adopted. To invalidate the third redistricting plan, a two-thirds majority of the Court would have to find it legally infirm.

9. Permit the RCF to generate a fourth map in the event that the Supreme Court overturns the third. Should the Court overturn the proposed map on statutory or constitutional grounds, the Court would send its findings to the RCF so that the map may be redrawn in compliance with those findings. This fourth map would become effective immediately, subject only to statutory and constitutional review.

10. Use technology to safeguard minority representation and other measures of equity. Any map-drawing program should apply the following criteria:

- create substantial equality of population;
- maximize the number of majority-minority districts consistent with the Constitution and the 1965 Voting Rights Act and all other applicable federal laws to ensure that the interests of racial minorities are protected;
- encourage contiguity and compactness of districts; and
- minimize the number of districts that cross county or municipal boundaries.

11. Exclude the following criteria from consideration:

- residency of incumbent legislators;

- political affiliations of registered voters;
- previous elections results.

12. Pursue direct democracy mechanisms to implement process reforms if attempts to achieve them legislatively fail. If the General Assembly fails to pass redistricting legislation that follows these principles, the Commission recommends that a direct voter petition drive be led to get this constitutional amendment on the November 2010 general election ballot.

B. <u>Amend rules governing legislative leadership to reduce conflicts of interest and the concentration of power:</u>

1. Limit the tenure of legislative leaders. As discussed above, while the Commission could not reach absolute consensus on general terms limits, the Commission concludes that term limits on legislative leadership positions are necessary to restore public confidence in Illinois.

Specifically, the Commission recommends enactment of Senate Joint Resolution Constitutional Amendment 0025, which proposes amending the Legislature Article of the Illinois Constitution to limit a person's total service in the office of Speaker of the House of Representatives, President of the Senate, Minority Leader of the House and Minority Leader of the Senate to a total of (a) ten years in any one office and (b) fourteen years combined in two or more offices.

2. Require exclusive employment for the Senate President and Speaker of the House positions with compensation commensurate with Illinois Supreme Court Justices.

C. <u>Reform budget approval process</u>. To restore meaningful checks and balances to the budget approval process, the Commission recommends that the State:

1. Require a binding budget resolution before consideration of appropriation bills.

2. Separate the final budget into a minimum of five distinct legislative bills covering the areas of Education, Medicaid, Transportation, Human Services, Corrections and General Government.

3. Hold public hearings on the five areas of major program spending identified in clause (2) above.

4. Swear in administrative agency and executive branch witnesses before they provide appropriations testimony.

5. Establish reasonable rules for debate of state budget appropriations bills.

6. Require the Senate President and Speaker of the House to certify that state budget appropriations constitute a balanced budget.

D. <u>Require committee vote on bills with sufficient sponsorship</u>. While the Commission applauds the recent Senate efforts to increase full committee hearing of proposed legislation, the Commission recommends modifying the process even further. To ensure due consideration of pending legislation, the Commission recommends that the House and Senate adopt rules requiring that each bill introduced to the Rules or Assignment Committees, as applicable, be subject to a full committee vote if the bill has a minimum of sixteen sponsors in the House or eight sponsors in the Senate. The Commission believes that this will allow for consideration of all bills that have a reasonable chance of success, while preventing the waste of time that consideration of every single bill might engender.

CHAPTER 6: TRANSPARENCY

I. Introduction

Transparency in government is a critical component of democracy. On February 5, 2009, during its second public hearing, the Illinois Reform Commission focused on how to modify and update our State's laws and infrastructure to promote the free flow of information. Although Illinois currently has laws in place to promote transparency,[5] the Commission heard significant evidence that these laws are neither adequately enforced, nor broad enough to create a government that is sufficiently transparent, open and responsive to its citizens' requests for information. As a result, public officials can conduct public business without the public's scrutiny. By leaving its citizens in the dark, Illinois facilitates a culture of corruption. Accordingly, the Commission recommends:

1) enforcing the existing statutes with renewed vigor by adopting a presumption in favor of full public access to information and documents,

2) amending the statutes to increase transparency and accountability, and

3) using technology to make public documents readily and easily accessible to the public through the Internet and online databases without waiting for specific requests from the public.

The Commission believes that these recommendations should apply to all levels of government within the State of Illinois.

II. Information and Sources Considered

Before and after its February 5th meeting, the Commission independently researched laws and recommendations regarding transparency in government. Additionally, members of the public and invited witnesses submitted written and oral testimony and other materials for the Commission to consider. For a detailed list of the documents provided to the Commissioners, please see Appendix A.

A. Research Reviewed. The Commission reviewed a number of studies and other materials produced by independent third-party groups and experts in the area of government transparency and openness. These studies collectively identified significant deficiencies in Illinois' transparency laws.

[5] Freedom of Information Act, 5 ILL. COMP. STAT. 140/1 *et seq*. and Open Meetings Act, 5 ILL. COMP. STAT. 120.

1. Freedom of Information Act (FOIA). Among other information, the Commission reviewed two comprehensive independent studies of states' freedom of information laws. Both the Better Government Association (BGA) and the Marion Brechner Citizen Access Project (MBCAP) compared Illinois' FOIA to similar laws in other states, focusing on individual provisions of the laws as well as their overall ability to facilitate citizen access to information. Both organizations praised Illinois for classifying a broad range of information public, but recommended enhancing citizens' ability to recover attorney's fees and court costs if forced to resort to the courts to gain access to that information.

Both studies also concluded that Illinois needed to strengthen and clarify its process and incentives for FOIA enforcement. Illinois lost points for its lack of sanctions for state employees who fail to comply promptly with legitimate requests for information. As a further illustration of the problem, a 2006 BGA study entitled "Curiosity Killed the Cat" found that only thirty-eight percent of the public bodies tested in Illinois fully or substantially complied with their FOIA-related obligations. Of the sixty-two percent that failed the test, well over half did not respond to the request at all, while the rest took actions that ranged from mere tardiness to active hostility. For the laws to be effective, they must be strictly enforced against agencies that do not make good faith attempts to comply with their requirements.

2. Open Meetings Act (OMA). The Commission also reviewed existing research related to the OMA. The BGA Alper Integrity Index examined open meetings laws in each state and ranked them based on meeting notice, the timing and content of notice, the timing of the publication of minutes, the time frame for lawsuits or expedited process for complaints if the open meetings laws are violated, and the availability of legal remedies to address non-compliance. The MBCAP likewise scored individual features of open meetings laws. As with FOIA laws, the studies downgraded Illinois' OMA for its lack of penalty and enforcement provisions

3. Information Disclosure Requirements. Disclosure requirements can take many forms. For example, laws may require elected officials to disclose conflicts of interest, lobbyists to disclose who they are and for whom they work, or campaign committees to disclose their donors. To assess Illinois' public disclosure laws, the Commission referred to studies conducted by the National Conference of State Legislatures, the Better Government Association, and the Center for Public Integrity. In particular, Illinois was criticized for its lax approach to campaign finance disclosures. The studies also identified weaknesses relating to the State's disclosure of financial interests and other conflicts for public officials.

In fact, the Center for Public Integrity (CPI) gave Illinois' financial disclosure laws for legislators and executives an "F" grade, based primarily on weak enforcement mechanisms and limitations on the information required by disclosure forms.

4. Technological Improvements. Greater transparency will result as state government is forced to move to the modern communications systems of the current century and millennium. As the collection and filing of public information shifts from file cabinets to databases, and public business is increasingly conducted via e-mail and other modern technology, ready-access to broad categories of information becomes a key measure of transparency. In drafting its technology-based recommendations, the Commission reviewed publications from major industry groups like the Association for Computing Machinery and research institutes such as the Center for Information Technology Policy at Princeton University. These organizations address information technology policy issues that inevitably arise with advances in computer technology. The Transparency Sub-group also interviewed Carl Malamud, an activist for using technology to make government information publicly accessible.

In addition, the Sub-group consulted State of Illinois officials, including State Chief Information Officer, Greg Wass. Mr. Wass identified the lack of consolidation of IT systems across agencies, resulting in significant duplication of IT functions, as a major shortcoming of the State's current technological infrastructure. This decentralized structure has resulted in over a hundred unique fiscal, procurement, HR and payroll IT systems across the State. Moreover, the State's systems are outdated, incompatible and increasingly expensive to maintain. While the State has devised programs to pool resources and share institutional knowledge across agencies, a lack of state funding has delayed their implementation.

B. Commission Witnesses. The Commission heard live testimony from a number of witnesses including Lisa Madigan, Illinois Attorney General; Donald M. Craven, Attorney; John Wonderlich representing the Sunlight Foundation; Tim Novak, a highly regarded investigative reporter for the Chicago Sun Times; and Roger Huebner, an attorney representing the Illinois Municipal League. The speakers generally emphasized the urgency of restoring trust, integrity and accountability to our government and agreed that doing so requires openness and transparency. Many provided examples, some personal, of public agencies willfully disregarding information requests because the public employees deemed the information too difficult, costly or sensitive to produce. Some suggested creating penalties for non-compliance with appropriate and lawful information requests.

Attorney General Madigan also recommended that the State implement a training program for state employees to instruct them on how to

respond to FOIA requests. She also suggested creating a Public Access Counselor position within the office of the Attorney General to monitor compliance with FOIA requests. Shortly after the hearing, Attorney General Madigan endorsed House Bill 4165, introduced on February 27, 2009, which proposes establishing a statewide Public Access Counselor with power to investigate citizen complaints and issue final administrative opinions regarding the release of requested information. The bill is currently in the House Rules Committee.

Mr. Huebner emphasized that most government agencies were, in fact, making good faith efforts to comply with bona fide requests for information and that complying with these requests was often burdensome for many small municipal governments with limited resources. Mr. Huebner suggested that the Commission focus on a common-sense definition of "public record" that would facilitate ease and certainty of compliance.

For additional information about Witness Testimony and public comments, please see the minutes collected in Appendix B.

III. Commission Findings

The Commission reviewed compelling evidence of lapses in government transparency, including limitations in the State's public access laws and state agencies' noncompliance with those laws, both of which were exacerbated by a lack of enforcement. Accordingly, the Commission finds that the FOIA and OMA laws are not adequately drafted or enforced, nor are they broad enough to create a government that is sufficiently transparent, open and responsive to its citizens' requests for information or access to public documents.

Furthermore, the Commission finds that changing public access laws alone will not bring about the transparency that Illinoisans desire. Increasingly, transparency amounts to quick access to relevant information. In an age where citizens can easily track markets, transportation, and even celebrities on the web, there is no excuse for denying us similar access to our government.

Illinois' lack of transparency has produced an atmosphere in which corruption thrives, cynicism increases, and accountability diminishes. For all of these reasons, the Commission encourages implementation of its recommendations as outlined in Section IV below.

IV. Commission Recommendations

On February 11, 2009, the Commission submitted a letter to Governor Quinn that contained several recommendations for immediate executive action relating to transparency and open government. Less than two weeks later, on February 24, 2009, Governor Quinn issued a Memorandum to Agency Directors and General Counsels Regarding Transparency in Government incorporating many of the

Commission's suggestions. The Memorandum stated that transparency should be the guiding principle and motivating force of government operations, and it provided a few specific guidelines regarding FOIA compliance. In addition to those practices adopted by the Governor, the Commission recommends the following[6]:

A. Freedom of Information Act. As the cornerstone of the public's right to know, FOIA has long been considered a vital component of an informed citizenry and a journalist's best friend.

1. Full and Complete Compliance with FOIA. For the strength and vibrancy of our democracy and our government, the Commission recommends that all government agencies fully comply, in letter and spirit, with the Illinois Freedom of Information Act, 5 ILL. COMP. STAT. 140/1 *et seq*. As the current law indicates, it must be "*the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government*." 5 ILL. COMP. STAT. 140/1. The Commission believes that is the only way to fulfill the legislative mandate "*to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest*." *Id*.

2. Adopt a Presumption in Favor of Disclosure. The Commission recommends that all government agencies in Illinois adopt a presumption in favor of disclosure when considering requests for documents made under FOIA.

3. Amend FOIA. The text of Attorney General Madigan's initial proposed amendments to FOIA are included in Appendix C to this Report.[7] The Commission generally supports Attorney General Madigan's proposed amendments, but also recommends key modifications to the pending legislation:

a. Section 6; Authority to charge fees: The Commission supports the recommendation that the responding public body provide the first fifty pages of copies to the requesting party at no cost. The Commission, however, opposes the concept of allowing the public body

[6] As a sitting State's Attorney, Commissioner Alvarez is a member of the Illinois State's Attorneys Association, which has issued its own opinion regarding Illinois FOIA. Commissioner Alvarez, therefore, does not join any opinions herein to the extent that they conflict with those of the Illinois State's Attorneys Association. Commissioner Alvarez also declines to join in this Report's recommendations regarding the OMA.

[7] As with any bill, further revisions are anticipated, but the Commission expects the debate to continue to focus on enforcement and crafting exceptions that balance disclosure with competing interests.

to perform an "acceptable cost study" to demonstrate the costs of reproduction. Accordingly, the Commission recommends adopting a maximum fixed cost of $.15 per page and striking all references to "cost studies," and it opposes vesting any public body with discretion to exceed the maximum fixed cost.

b. Section 7; Exemptions:

In theory, FOIA starts with a presumption that public bodies should release all information. The law then identifies certain categories of information as "exempt" from disclosure. Rather than narrowly crafted exemptions, the Illinois FOIA contains twenty-seven exceptions that, coupled with weak enforcement, result in rampant and uncorrected abuse of the law. Moreover, many of the exemptions appear duplicative and protect special interests instead of the public's right to know. As a starting point, public bodies should construe all FOIA exemptions narrowly to encourage disclosure. Further, if an otherwise non-exempt document contains exempt information, the public body should redact the exempt information and produce the document. Where possible, the government agency should indicate how much information it redacted, and from where it redacted the exempt information, when disclosing such a document.

Any FOIA reform proposal should emphasize a preference for disclosure and limit the field of exempt information. To protect public access to information, the Commission recommends that FOIA include the following amendments and comments:

(1) Privacy (Subsection 7(1)(b)): This exemption covers the disclosure of personal information that could be an invasion of privacy. While personal privacy is a valid concern, government agencies have relied upon this exemption to deny the public access to entire records, rather than redacting only the private information. Although the Commission acknowledges Attorney General Madigan's efforts to narrow the basis of this exemption, the Commission does not believe that her proposed language goes far enough. Accordingly, the Commission recommends the following language:

> *"(b) Private personal information (including, without limitation, social security numbers and other related personal information), contained within personnel file, medical files or other files, the disclosure of which would*

constitute a clearly unwarranted invasion of personal privacy;"

(2) Law Enforcement (Subsection 7(1)(c)(i)): The proper scope of an exemption for investigative agencies is difficult to determine. The Commission takes no position on the specific language in this subsection, other than one subsection described below. Instead, we must reiterate the importance of striking a proper balance between maximizing the transparency and maintaining the confidentiality of ongoing investigations, which is often critical to their effectiveness, especially in sensitive areas like public corruption. However, non-investigative entities should be prohibited from invoking this exemption to deny FOIA requests. Those involved in drafting FOIA amendments should carefully examine the investigative exception in the federal FOIA statute, and cases interpreting the exception, and consider using it as a model for Illinois.

(3) Confidential Sources (Subsection 7(1)(c)(iv)): This exemption presently enables public bodies to refuse to disclose the identity of confidential sources, other confidential information received from the source, or the filing of a complaint. Attorney General Madigan proposed having the exemption apply only to protect the identity of people who file complaints. The Commission believes that FOIA should continue to include the concepts of "confidential source" and "confidential information" and recommends maintaining the relevant language that Attorney General Madigan wishes to omit from subsection (c)(iv).

(4) Drafts (Subsection 7(1)(f)): Under current law, governmental entities can withhold internal memoranda and other materials by designating the document a "draft" or "preliminary document." In addition to the Attorney General's proposed amendments to this subsection, the Commission recommends making the latest-drafted "preliminary documents" public if no subsequent versions are created within six months of the last draft. In that case, the preliminary document would be deemed "final" and releasable to the public.

(5) Financial Information (Subsection 7(1)(s)): Public bodies may refuse to release certain information regarding the regulation of financial institutions or insurance companies. The Commission believes that the Attorney General's proposed financial information exemption should be limited to personal

information regarding account holders and policy holders. All other matters discussed in regulatory reports regarding financial institutions and insurance companies should be disclosed under FOIA.

c. Section 7.5; Duplicative Statutory Exemptions: In addition to the broad power to refuse disclosure where prohibited by state statute conferred in Section 7(1)(a), this section identifies specific statutes under which the government may refuse to disclose information. The Commission believes some of these may be duplicative and recommends further review and revision, if applicable, of the specific statutory exemptions in light of the broad exemption contained in Section 7(1)(a).

4. Penalty Provisions. To deter wrongful and illegal behavior, the penalty provisions need to be even stronger than those that the Attorney General proposed. Specifically, a public official who is found to have knowingly and willfully violated FOIA would be (a) guilty of a Class A misdemeanor, punishable by up to one year in jail (along with any monetary penalties that the court may impose), and (b) assessed a civil penalty of $2,500, which penalty shall be paid by such public official's agency to the Office of Transparency's general fund (see subsection F for more information about the Office of Transparency). The Commission also recommends amending FOIA to require courts to remove from office any public official convicted of such Class A misdemeanor.

5. Annual FOIA Training. The Commission recommends requiring annual training of any government employee involved in responding to or evaluating FOIA disclosure requests. Such training should be conducted online and each participant must certify their completion of the training.

B. Open Meetings Act. As the public's window into the world of governmental decision making, the OMA must protect the average citizen's right to evaluate the government's use of state resources, including tax dollars.

1. Make the General Assembly Subject to OMA. Current Illinois law exempts the General Assembly and its committees or commissions from complying with the OMA. There are no decisions more worthy of public oversight than those of the State's legislature, and the Act should be amended to eliminate this exception by including the General Assembly and its committees and commissions, in the definition of "public body."

2. Timeframe to File Lawsuit. Under current Illinois law, plaintiffs have just sixty days from the date of an alleged OMA violation to file a

lawsuit. The Commission recommends amending OMA to extend the date to file a lawsuit to one year from the date of the alleged violation.

3. Expedited Process. The Commission recommends amending the OMA to require a court hearing within fourteen days of service of the initial complaint.

4. Enhanced Penalties. Although the OMA currently authorizes civil and criminal sanctions for violations of the Act, the Commission recommends increasing the penalties for such violations. Specifically, a public official who is found to have knowingly and willfully violated the provisions of OMA would be (a) guilty of a Class A misdemeanor, punishable by up to one year in jail (along with any monetary penalties that the court may impose), and (b) assessed a civil penalty of $2,500, which penalty shall be paid by such public official's agency to the Office of Transparency's general fund. The Commission also recommends amending OMA to require courts to remove from office any public official convicted of such Class A misdemeanor.

5. Reduce Permissible Reasons to Convene in Closed Session. The Commission recommends amending OMA to reduce the number of exemptions that a public body may rely on to "close" a meeting to the public. Accordingly, the Commission recommends that OMA's requirement for open meetings be exempt only for the following reasons:

a. A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated before closing a meeting. At its next open meeting, the public body must summarize its conclusions regarding the evaluation. If the individual who is the subject of the meeting so requests, the meeting must be open.

b. Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

c. Closed meetings may be held for negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

d. A public body may hold closed meetings to consider evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

e. After identifying the subject property on the record, a public body may close a meeting to deliberate regarding the sale or purchase of property, including to determine the asking price for real or personal property to be sold by the government entity; to review confidential or nonpublic appraisal data; and to develop or consider offers or counteroffers for the purchase or sale of real or personal property. Closed meetings under this paragraph should be recorded and retained for eight years. In addition, following the closed meeting, the relevant entity must publish a list of all persons present at the meeting. Offers considered at closed meetings must receive final approval at an open meeting subject to applicable notice requirements.

f. Public bodies may close meetings to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. However, financial issues related to these matters must be discussed and decided in open meetings. Before closing a meeting under this paragraph, the public body must describe the subject facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. At its own expense, the governing body must tape record the closed meeting and preserve the recording for at least four years.

6. Meeting Minutes. The Commission recommends amending OMA to adopt specific requirements regarding the content of meeting minutes.

7. Audio/Videotape. The Commission recommends that the audio or video tape records of all meetings subject to OMA be available to the public within five business days of such meeting.

8. Annual OMA Training. The Commission recommends requiring annual training on OMA for public officials. The training should be conducted online and each participant must certify his or her completion of the training.

C. Technological Improvements. Many have suggested that technology is the best tool to achieve greater transparency. To that end, the Commission recommends methods for using modern technology to improve disclosure, reporting and collaboration in state government. The recommendations below espouse a broad set of principles regarding the use of data and online technology that serve to improve the usability of information. Although improving Illinois' technology-based systems will require an upfront investment, it will yield a large return for the State.

Though there are many goals yet to be achieved, the Commission would like to recognize the Governor and the State's Chief Information Officer for proactively addressing weaknesses in the government's technology systems through initiatives such as the Sunshine Project and the Shared Services program. In addition to the Governor's ongoing efforts to improve the State's technological environment, the Commission makes the following broad recommendations.

1. General Recommendations.

a. The State's Chief Information Officer should review its capabilities and identify ways to implement the recommendations in this section.

b. The Governor's office should commence a survey of public opinion to determine citizens' information access priorities. This will allow government agencies to focus limited resources on the technology improvements that will yield the most benefit to citizens. For example, the government of Alabama reports on state land leasing using Microsoft Virtual Earth. The citizens of Illinois should decide which uses of technology would most benefit them.

c. Agency information managers should ensure the availability of technical support for users of their data and online systems.

d. The Commission encourages the Governor to institute an open competition to solicit ideas from the public about how to improve the State's technology infrastructure to increase access, transparency and openness in government. The Commission recommends structuring the competition to award a monetary prize for the ideas that (i) best increase government accountability, (ii) save the State the most money and (ii) best improve the State's technological infrastructure.

2. Online Disclosure.

a. The Commission recommends the creation of an online system for filing public disclosures by public officials, lobbyists and others. Mandatory e-filing of required disclosures would lead to greater transparency by enabling real-time reporting of relevant information. It would also help implement this Report's recommendations on campaign finance and procurement.

b. The online system should provide all necessary tools for disclosure, including forms, instructions, and ways to obtain further assistance.

c. The system should publicly identify disclosure failures or irregularities. This will reduce errors or omissions in disclosures and ensure greater accountability for the content of such disclosures.

3. Online Dissemination of Public Information.

a. Citizens should be able to receive instant updates on regulatory and legislative developments via web syndication, i.e. technology that instantly brings information to the users rather than requiring them to seek it.

b. Publicly available information should be delivered in a format that is easy to use and understand. This will promote wider use and greater citizen involvement. People are far more likely to use technology if it is straightforward and easy to understand.

c. Publicly available information should be delivered in a format that is accessible to citizens with limitations and disabilities, as specified by Section 508 of the Rehabilitation Act (29 U.S.C. §794d).

d. Published information should use modern online security methods to ensure that the information originates from authorized sources. This will prevent attempts to mimic government information and mislead citizens.

4. Collaboration.

a. Data published by the government should be in formats that promote analysis and reuse of that data. Reusable data promotes innovative uses of information. For example, Google uses government satellite data to provide maps to consumers. Data in digital formats comes in various levels of reusability and ensuring reusability will encourage similar innovation in the use of public information.

b. Citizens should be able to directly access government-published data rather than having it interpreted for them. This will allow the reuse of data, encourage private-public partnerships to disseminate data, and allow citizens to independently judge information.

D. Public Disclosure Requirements/Electronic Submission of Information. The Commission recommends an overhaul of the "Statement of Economic Interest" form that state officials complete pursuant to the Illinois Governmental Ethics Act (5 ILL. COMP. STAT. 420). Currently, this form is poorly drafted, thereby inviting vague or misleading responses. At a minimum, Illinois

should adopt a form similar to California's Form 700, which requires far more complete disclosures. A copy of California's Form 700 can be found in Appendix C.

E. Whistleblower Hotline. The Commission recommends setting up a toll-free number for the Office of Inspector General to allow anonymous reporting of potential violations of the FOIA and Open Meetings Acts.

F. Office of Transparency.

1. Establish an Independent Office of Transparency. The Commission recommends that the State create an independent Office of Transparency and charge it with the following:

a. Providing information to the public and to government agencies relating to the implementation and enforcement of FOIA, OMA and State ethics and public disclosure laws;

b. Providing annual training courses to agencies, public officials and public employees; and

c. Providing annual, regional training courses to local agencies, public officials and public employees.[8]

The Office of Transparency also should be responsible for administering complaints regarding alleged violations of FOIA or OMA. Specifically, in lieu of filing a lawsuit against a government agency to compel the production of information or documents, a party may petition the Office of Transparency to review its disclosure request. The Office of Transparency must promptly review the request and notify the petitioner of its decision within ten days. If the Office of Transparency finds in favor of the petitioner, the Office of Transparency must send a letter to the government agency demanding that they comply with the disclosure request. If the government agency does not comply with the request within fourteen days, the Office of Transparency must (a) either issue a right to sue letter in favor of the petitioner or file a lawsuit against the government agency on the petitioner's behalf and (b) publish the names and offices of those found to have violated FOIA and OMA on the Office of Transparency's website. Regardless of the Office of Transparency's decision, however, the petitioner still has the opportunity to file a lawsuit in court (including the option to file a lawsuit in the first instance, without an administrative exhaustion requirement).

[8] Although the Commission's preference is for an independent office to monitor transparency, the Commission believes that Attorney General Madigan's proposal for a Public Access Counselor to be housed in the Attorney General's Office constitutes a meritorious alternative.

Annual Report. The Commission recommends enacting a law that would require the Office of Transparency to prepare and make public a report summarizing the complaints received in connection with purported violations of FOIA, OMA or any state ethics or public disclosure laws.

CHAPTER 7: INSPIRING BETTER GOVERNMENT

I. Introduction

At the first Commission meeting on January 22, 2009, eighteen-year state employee Patrick Beaird described for the Commission the effect of the pervasive culture of corruption on the morale and drive of the more than 170,000 state employees. He emphasized the stark contrast between his pride in providing public service and his disillusionment, shame, and despair resulting from public corruption. This State's culture of corruption, most recently revealed during the Blagojevich arrest and indictment, has steadily eroded the integrity of state employment and the dignity of public service. The dispiriting effect on employee morale, and the deleterious consequences for the People of Illinois, cannot be understated. To be meaningful, legislative solutions must be accompanied by a corresponding change in attitudes.

While elected officials' ethical conduct is essential to good governance, these officials comprise less than one percent of the state workforce. Government requires honest, competent and dedicated civil servants to turn its laws and regulations into more than an idealistic facade. Yet, the cloud of corruption that has hung over the State for so long undermines the very cornerstones of such effective administration — merit-based personnel management, ethical conduct, the protection of state employees that report abuses, and the prevention of abuses associated with leaving government service. Employees either learn to suffer through the corruption of their leaders, or worse, begin to perpetuate the system. Taxpayers, in turn, involuntarily subsidize an ongoing political apparatus while suffering inadequate public service.

Altering Illinois' culture of patronage and cronyism requires multi-faceted reform. In addressing this broad challenge, the Commission heard testimony and reviewed research regarding widespread abuse of patronage hiring, manipulation of the personnel system, and weaknesses in the State's ethics training. To combat the culture of corruption and its crushing effects on employee morale, structural and ethical reforms are required. Accordingly, the Commission recommends:

1) combating patronage by reforming the personnel system to better protect non-political positions and the employees who hold them, revising the hiring process, and potentially reducing the number of political positions not subject to the protections of the personnel system,

2) implementing a code of conduct consisting of ethical principles that will guide everyday decision-making and to which employees will be held accountable;

3) revising the ethics training system to improve state employees' understanding and observance of relevant ethical standards,

4) more clearly defining whistleblower protections to ensure and expand coverage for state employees, and

5) creating additional safeguards to protect against ethical violations by those exiting state employment.

II. Information and Sources Considered

A. Research Reviewed. The Commission, and particularly the Inspiring Better Government subcommittee, independently researched laws and issues related to combating improper patronage hiring and improving the ranks of government employees, both before and after its April 24, 2009 meeting. Additionally, members of the public and invited witnesses submitted testimony and other materials for the Commission to consider. For a more detailed description of the materials reviewed, please see the documents listed in Appendix A.

Among other relevant information, the Commission and the Inspiring Better Government subcommittee reviewed two significant reports that shed light on how patronage has operated structurally in Illinois. The Final Report of the Special Investigative Committee of the Illinois House of Representatives, issued January 8, 2009, identifies offices that directed patronage efforts and describes how Governor Blagojevich filled state positions with political and fundraising allies. Furthermore, the Final Report of the Office of Executive Inspector General, dated September 9, 2004, provides specific case studies of patronage abuses. The subcommittee also reviewed a variety of sample codes of conduct from public and private organizations and substantial written material on state employee ethics training.

B. Commission Witnesses. At its April 24, 2009 meeting, the full Commission heard from several witnesses. Mike Lawrence, Retired Director of the Paul Simon Public Policy Institute at Southern Illinois University, described the deleterious effect of the betrayal of public trust on the quality of public service. He advocated a shift in governmental culture predicated on greater citizen engagement and enhanced orientation for new public employees. Ed Hammer recounted his experiences as an investigator for the Inspector General of Office of the Secretary of State, his attempts to root out corruption, and the retaliation that continued until he retired. Noelle Brennan, the independent hiring monitor for the City of Chicago, discussed her role as hiring monitor, particularly insidious forms of patronage, and specific recommendations for state-level personnel reform. Finally, Andra Medea analyzed state employees' sense of "learned helplessness" and discussed means for fighting the culture of corruption and its effects.

Additional witnesses addressed the Inspiring Better Government subcommittee on a wide range of issues. The subcommittee heard from several witnesses on patronage issues. Mary Lee Leahy, counsel in the seminal *Rutan*[9] case and career-long combatant of employment abuse, provided insight on complex political patronage practices, the history of patronage litigation, and ongoing patronage abuses. Professor James Nowlan described historical patronage trends, often-overlooked patronage practices, and cultural factors that allow patronage to flourish. Tammy Raynor of the Illinois Secretary of State's Office described how a culture of corruption destroys employee morale and the difficulties associated with being a whistleblower. Experts also offered analysis on cultural issues, including Andra Medea, conflict theorist and legal ethics expert, and Mary Corbitt Clark, Executive Director of Winning Workplaces, each of whom contributed insight on the effect of corruption on workplace culture and the methods by which cultural change can be affected. Al Rigoni, Chairman of Professional Conduct for the Illinois City/County Management Association, Martha Perego, Senior Manager of Local Government Programs and Ethics Advisor to the International City/County Management Association, and Commissioner Tasha Green addressed the subcommittee on the key aspects of a successful code of conduct and described the means by which a code of conduct can become more than mere words on paper.

The Inspiring Better Government subcommittee also heard testimony regarding ethics training and other methods of ethics education, including from David E. Keahl, Director of Ethics Training and Compliance for the Office of the Executive Inspector General for the Agencies of the Illinois Governor, and from Donna McNeely, Ethics Officer for the University of Illinois. Mr. Keahl and Ms. McNeely each described the history of ethics education among and opportunities to make ethical standards more meaningful for state employees. Jennifer H. Lang, Director for the Center for Human Resources of the Chicago Region of the Social Security Administration, presented several personnel models and suggested steps toward establishing a performance-based personnel system.

III. Commission Findings

The endemic nature of corruption, coupled with public employees' low morale and lack of professional development, as described by Patrick Beaird, Tammy Raynor, and Ed Hammer, has led to a sense of learned helplessness among many in state employment. In other words, state employees come to believe that corruption is a fact that they cannot change or challenge. In turn, effective public service

[9] In *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), the Supreme Court held that Governor James Thompson administration's practices of hiring and promotion based on factors such as the applicant's contributions to the Republican Party, the applicant's record of service to the Republican Party, and the support of local Party officials amounted to unconstitutional patronage. The Court thus held that "promotions, transfers, and recalls after layoffs based on political affiliations or support" were impermissible infringements on public employees' First Amendment rights.

suffers. Talented public servants may choose not to pursue employment in state government, while those who do so may be turned away in favor of the wrong candidates hired for the wrong reasons. Many honest, hard-working state employees put forth their best efforts each day without acknowledgement, only to see less-qualified political cronies land coveted promotions. While ethics training and development are increasingly important in state government, training efforts are undermined when coupled with an attitude in management of "do as I say, not as I do." As Andra Medea described, honest state employees often feel resigned to accept systemic abuses and inefficiencies. Some have reported feeling so beat down that they are merely counting down the time, to the minute, until retirement. In short, the culture of corruption has become more than an embarrassment to the People of Illinois; it's an impediment to their receipt of honest, effective public service.

While reversing this tide of corruption is a tall task requiring many steps, the following reforms will begin the process of restoring the dignity of state employment and the integrity and quality of public service. The personnel system must be reexamined and reformed in all phases of the employment process, from job posting to retirement. Jennifer Lang provided several merit-based personnel models that would markedly improve Illinois' current personnel system. Political patronage allows the wrong people to be hired and promoted for the wrong reasons, resulting in a system that favors political loyalty over objective qualifications and adherence to the law. Noelle Brennan and Mary Lee Leahy identified certain checks on the personnel system that would remedy such patronage abuses. In addition, David Keahl and Donna McNeely suggested specific reforms to the current approach to ethics education that would encourage better understanding of and adherence to relevant ethical standards. Expectation, communication and enforcement are all as critical to the establishment of an ethical workplace as training, as Mary Corbitt Clark attested. An employee must be evaluated by his or her conformance to these ethical standards and must receive the requisite professional development and leadership training to be able to provide ethical and effective services. These ethical standards should be reinforced through a code of conduct that both sets forth goals of public service and proscribes unethical conduct, the value of which was made plain by Al Rigoni, Martha Perego, and Commissioner Tasha Green. Expanded whistleblower protections are needed to protect those who report abuses. In light of these findings, the Commission recommends that the Governor and legislature implement its recommendations in Section IV below.

IV. Commission Recommendations

A. Personnel System. As currently constructed, the state personnel system fails to ensure the hiring, promotion and retention of the best employees. As Noelle Brennan explained, this failure destroys the role of the State as a provider of public services and, as Jennifer Lang described, undermines the integrity of the current state workforce. In addition to the basic patronage reforms outlined below,

the Commission recommends an independent expert review of the personnel system guided by the core principles of: (1) providing effective public service by qualified public servants, rather than rewarding well-connected or politically subservient persons with employment in fabricated or otherwise unnecessary positions; (2) an independent, professional personnel system and (3) meaningful and ongoing oversight. Such an independent examination, like the individual recommendations below, will come at a cost at a time when funding is at a premium. The cost of corruption is incalculable, however, and the restoration of accountability, integrity and efficiency to public service is indispensable. To that end, the following specific aspects of the personnel system should be examined:

1. "Exempt" positions. It is widely acknowledged that Illinois state government has many more "political" positions than the other state governments and the federal government, where three out of every thousand employees are exempt from civil service protection. In the federal government, this means that approximately ten thousand out of three million employees are exempt from civil service protection. The greater the number of "exempt" positions, the greater the expectation of hiring and promotion based upon considerations other than merit. The current system encourages focus on employing a pre-selected person, regardless of the position to be filled or the public service to be provided. The Commission recommends reviewing the necessity and number of "political" positions and revising it to best serve the goals of (a) eliminating the hiring of less-qualified employees for political patronage reasons and (b) increasing the effectiveness of Illinois government.

2. "Contractual employees," "Interns," and other temporary employment. The Blagojevich administration significantly increased the numbers of "contractual employees" and "interns," undefined employee classifications that have not been subjected to anti-patronage rules. These positions, along with other temporary positions, have become a back-door method for making improper political hires. Similarly temporary employment decisions in the form of promotions, salary increases, or, conversely deferred demotions or layoffs are common means of patronage, as Noelle Brennan described. The Commission recommends a review of the current system of hiring "contractual employees" and "interns" to determine whether such classifications should be eliminated entirely, or, if not, should be brought within the *Rutan*-Personnel Code regime. 20 ILL. COMP. STAT. 415/4c(19)-(20).

3. Job descriptions. Patronage hiring routinely requires ignoring or modifying listed job descriptions and minimum qualifications. The Commission recommends examining these politically motivated revisions of job descriptions to ensure that job descriptions and qualifications meet the actual duties of the position. The Commission further recommends that the individual(s) responsible for hiring a candidate explain in writing (a copy of

such writing should be made a part of the candidate's file) any deviation from the established required job qualifications.

4. Simplified hiring plan. Both Mary Lee Leahy and Noelle Brennan attested to the need for a reexamination of state hiring mechanisms and the ways in which candidates are evaluated. To that end, the Commission recommends, as part of a comprehensive independent examination of the personnel system, an examination of current hiring processes, particularly with an eye toward simplification and uniformity.

B. Patronage. As Noelle Brennan attested, patronage is a form of political discrimination that inflicts real injuries on current and aspiring public servants who lack political connections and that forces the taxpaying public to subsidize a corrupt political apparatus. State-level patronage abuses thrive thanks to a combination of insufficient monitoring and inadequate protection. The Commission recommends the following reforms which will more clearly expose ongoing patronage practices while protecting against similar future corruption:

1. Independent Patronage Monitor. The *Shakman v. Democratic Organization of Cook County* case has given rise to an independent monitor for the City of Chicago's hiring practices. The Commission recommends the appointment of a similar independent monitor, appointed by the Governor and confirmed by the General Assembly, with a term staggered from that of the Governor, to identify patronage abuses and opportunities for reform. The Commission also recommends legislation or regulation requiring agencies to cooperate with the monitor and prohibiting retaliation against employee who report abuses to the monitor.

2. Publicize List of "Exempt" Positions. To increase transparency and prevent concealed expansion of patronage hiring, the Commission recommends that all positions that are exempt from the standardized hiring practices imposed as a result of *Rutan* should be listed publicly, as should positions that are subject to *Rutan* and the Personnel Code. Each listed position should also identify whether that position is *Rutan* exempt or coded (and if coded, how), and whether the position is available or occupied. The list should be regularly updated.

3. Protect Non-Political Positions from Unlawful Political Considerations. In *Rutan v. Republican Party of Illinois*, the United States Supreme Court found that the patronage practice of affecting a state employee's or applicant's employment status based on the employee's or applicant's political affiliation was unconstitutional, except in the case of certain high-level policy-making positions. While the Court's important ruling in the *Rutan* case prohibited certain patronage practices, further legislation is necessary to protect against wide-scale patronage. Accordingly,

the Commission recommends that the following prohibition be adopted by the legislature:

> *No official or employee of the State of Illinois or of any unit of local government shall, for any reason related to partisan politics, affect the employment status or terms of employment of a government employee or applicant for government employment, unless such employee or applicant is employed in or applying to a policy making position or a position with a confidential relationship to a policy making position.*

4. Open Primaries/Secret Ballots. A common method of enforcing political patronage is by checking an employee's voting record, particularly in primaries. The Commission recommends that primaries should be open and votes should be secret in order to combat patronage and prevent intimidation of public employees by party leaders. The Commission recognizes that on April 1, 2009, the Illinois Senate defeated a bill (SB1666) designed to open Illinois primaries and, therefore, Illinois voters must continue to publicly declare in which party's primary they will cast their respective votes. Despite this recent legislative defeat, the Commission believes that a registered voter should be able to choose to vote in any party's primary without choosing a separate form and their choice, as with all elections, should be private.

5. Prohibit Campaign Contributions by State Employees to Constitutional Officers. The Commission recommends that all Constitutional officers should issue executive orders, comparable to George Ryan's Executive Order #2 (1999), prohibiting their campaign funds from accepting contributions from state employees under their control. The Commission further encourages all candidates for public office to adopt similar policies.

6. Reconciling "Political" Positions. Currently, state employment positions that are "exempt" from *Rutan* standardized hiring procedures are not similarly "exempt" from the termination provisions of the Personnel Code, 20 ILL. COMP. STAT. 415/1 *et seq*. Thus, some state-level employees can be hired for political reasons but cannot be similarly terminated, while some employees that are protected in hiring are not so protected from termination. The present parallel *Rutan*-Personnel Code systems are unsatisfactory both to an administration seeking to implement policy and employees seeking greater employment security, and pose an illogical impediment to effective governance. The Commission believes these parallel tracks should be reconciled to provide requisite protections for positions subject to *Rutan* hiring and to enable the governing administration to effectively implement its policies through political positions.

C. Code of Conduct. Illinois has never enumerated universally applicable ethical and professional principles to guide and inspire the conduct of state elected officials, appointees, and employees. Neither the State Officials and Employees Ethics Act (the "Ethics Act") nor the Illinois Governmental Ethics Act apply universally and both are riddled with legalese making them incomprehensible to the average state employee. The Ethics Act applies to most state employees but, while proscribing certain unethical conduct, does not set forth a universally applicable, clear, concise standard of ethical and professional conduct. Given recent corruption at the highest levels of state government, including in powerful state boards and commissions, the universality of such a code of conduct is essential.

The Commission believes that a state code of conduct is an advisable expression of values that should be publicized and exemplified in the workplace through training, annual evaluation, and enforcement. A code of conduct can provide the ethical and professional framework by which state employees are developed and assessed. To that end, the Commission believes that, for a code of conduct to be effective, it must be a concise, mandatory, expression of universal principles, adapted locally to suit the particular circumstances of individual agencies.

1. Implementation. The Commission recommends that a comprehensive code of conduct be adopted and implemented at all levels and all stages of state employment. The Ethics Act should be amended to require that all state officers, elected officials, appointees, and employees sign a code of conduct upon entering their respective positions and re-sign such a code each year thereafter.

2. Core Principles. The Commission has reviewed a variety of codes of conduct from the public and private sector. Having reviewed these codes, and received input from several contributors, the Commission believes that the following core principles, expressed through a code of conduct, are indispensable to the dual goals of ethical conduct and professional excellence:

a. Earn public confidence through professional excellence by giving a full day's work for a full day's pay;

b. Maintain the highest level of professional respect, recognizing that state employees have a duty to serve the people of Illinois;

c. Except for exempt positions, as described above, act with political neutrality;

d. Use state resources, including technological resources, exclusively for the public welfare, and not for personal or political gain;

e. Not accept any private gain, whether through gifts or influence, for performance of public service;

f. Comply with all applicable laws, rules, and regulations, without exception;

g. Not engage in any conduct that might create a conflict of interest, including the use of influence or employment to further financial, personal, or political interests except, with respect to political interests, as permitted pursuant to *Rutan*; and

h. Report any possible ethics violations to the appropriate authority, remembering that it is every state employee's job to safeguard the public trust.

3. Localized Adaptation. While the above-stated principles should apply universally to all state employees, how they apply may vary across diverse state employment. A professor at the University of Illinois, an officer in the Illinois State Police, and a member of the General Assembly face vastly different professional and ethical issues. Consequently, key stakeholders, including managers and employees, should be responsible for adapting the principles above and identifying relevant guidelines to create individualized codes of conduct for specific agencies or positions. By tailoring a universal code to the unique needs of governmental units, Illinois can encourage greater employee investment in applicable standards and, in turn, more ethical conduct by state employees generally.

4. Evaluations. State employee evaluations should be required annually, and should consist of an evaluation not only of specific professional objectives but also of conformance to applicable codes of conduct and of compliance with specific ethical standards set forth in the Ethics Act and elsewhere.

5. Annual Self-Assessment. Finally, the Commission recommends that, in conjunction with annual evaluations, each state employee should be required to conduct a written self-assessment of his or her fulfillment of the principles expressed in the code of conduct, and an anonymous assessment of his or her workplace's fulfillment of these principles, including specific shortcomings and opportunities for improvement. Such an evaluation would encourage state employee mindfulness as to the importance of the code of conduct. Any form on which such an evaluation is conducted should include a list of resources for reporting violations of relevant ethical standards.

D. Training. Ethics and leadership training are necessary, but not sufficient in themselves, to the achievement of professional and ethical excellence. Like a code of conduct, employee training is most valuable when it is implemented,

exemplified, and reemphasized throughout the year, rather than serving as an annual obligation that forces ethics officers to focus on compliance rather than development.

1. Ethics Training. Ethics training has been required for all officers, appointees, and employees since the passage of the Ethics Act in 2003. Executive and legislative officials have made effective use of online technology to educate state employees on ethical standards. Still, the Commission finds that ethics training can be bolstered in several ways.

a. Initial training. The Ethics Act currently requires that elected and appointed officials and state employees must complete his or her initial ethics training within six months of commencing office or employment. 5 ILL. COMP. STAT. 430/5-10. The Commission believes that unethical conduct patterns are established well before this six-month period has ended. Indeed, new employees are most impressionable when they are first hired, and therefore must receive immediate education on relevant ethical standards. While some agencies now voluntarily complete initial ethics training in a shorter window, the Ethics Act should be amended to require initial training within two weeks of commencement of employment.

b. Testing. Neither the Ethics Act nor current ethics training models require that state employees demonstrate their understanding of ethical standards set forth in the mandatory ethics training. The current model sets forth occasional ethical questions of the type that typical state employees might encounter. While this format is a valuable educational tool, there is no requirement that employees answer questions correctly. The Commission recommends that state employees be required to demonstrate understanding of the ethical standards set forth in the ethics training. Some specific means of such demonstration include:

(1) Pre-testing. A pre-training assessment could allow returning state employees to "test out" of annual ethics training for that year by demonstrating sufficient understanding of applicable ethical standards.

(2) Comprehension testing. Secondly, state employees should be required to demonstrate individual understanding of ethical standards by answering randomized questions correctly before advancing to the remaining portions of the ethics training, and by answering a minimum percentage of the questions correctly overall. This desirable minimum percentage

may vary based on the complexity of and ethical questions encountered in employees' respective positions.

c. Oath of compliance. Currently, state employees are required to sign an "Acknowledgment in Participation" in which the employee certifies that he or she has read and reviewed the training materials and that he or she understands that violations of relevant ethical standards may result in discipline. The Commission believes that such an acknowledgment should more clearly communicate to state employees its binding nature. Therefore, the Commission recommends that this be restyled as an Oath of Compliance, whereby state employees promise to comply with relevant ethical standards, including those set forth in the Ethics Act and with the applicable, locally drafted code of conduct described above.

d. Ongoing education. While state employees in many cases conduct their ethics training online, and some decisions of the Illinois Executive Ethics Commission are electronically available, scant further ethics resources are available on the various Inspectors General websites. State employees should be able to access a database of advisory opinions, redacted "reasonable cause" summary reports, and other information on ethical standards and violations.

2. Leadership Training. Leadership is a pressure point in state employment from which a culture of ethical conduct and professional excellence can originate. The Commission recommends that any state employee who supervises twenty or more employees should attend leadership training. Leadership training through small-group workshops on issues such as resolving conflicts of interest, delivering professional service, and encouraging employee input can more properly engage and develop managerial-level employees.

E. Whistleblowing. The Whistleblower Act, 740 ILL. COMP. STAT. 174/1 *et seq*., currently prohibits the following: (1) the creation or enforcement of any policies that prevent employees from disclosing information regarding legal violations to law enforcement or government officials; (2) retaliation against an employee who discloses information regarding legal violations in a judicial or other proceeding; (3) retaliation against an employee who discloses information regarding legal violations to law enforcement or government officials; and (4) retaliation against an employee for refusing to participate in an activity that would result in a violation of law. The Commission recommends that the Whistleblower Act be amended to prohibit the threatening of whistleblowers and to include a "catch-all" provision to cover conduct not specifically prohibited.

Furthermore, as presently enacted, the Act defines neither "retaliation" nor which of the whistleblower's rights or benefits are specifically protected. Former state employee Ed Hammer testified about widespread and often subtle forms of retaliation that he endured as a result of speaking out against corruption. The Commission recommends that the Whistleblower Act be amended to precisely define what retaliatory conduct is prohibited (e.g., termination, harassment, and threats) and how the whistleblower is protected (e.g., in his or her employment, title, salary, benefits, and job location).

F. Outgoing Employees.

1. Prohibit pension abuse. Illinois has the largest unfunded pension liability of any state in the nation. The Commission recommends a study of pension abuse practices by state elected officials and employees. In the interim, one simple and just reform to the Illinois Pension Code would be to ensure that all state employees, elected officials, and officers are calculated in the same way. Each state employee's pension should be based on his or her average salary, calculated as an average of the highest-paying forty-eight consecutive months of that employee's career. Current laws calculate some pensions, including those of members of the Generally Assembly and of judges, based on the pensioner's last day in office, a calculation that incentivizes pension abuse.

2. Expand revolving-door prohibitions. Current revolving-door prohibitions are ambiguous and ill-formed. For example, a former state employee's involvement in a particular procurement must have been "personal" and "substantial," neither of which is defined. These terms should be eliminated, such that any employee's involvement in procurement meeting the minimum threshold would prevent that employee from later accepting employment with the beneficiary of that procurement. Also, the period in which the former state employee is banned from accepting employment should be a sliding scale. For example, if a procurement of $25,000 triggers a one-year ban, then larger procurements should trigger longer bans.

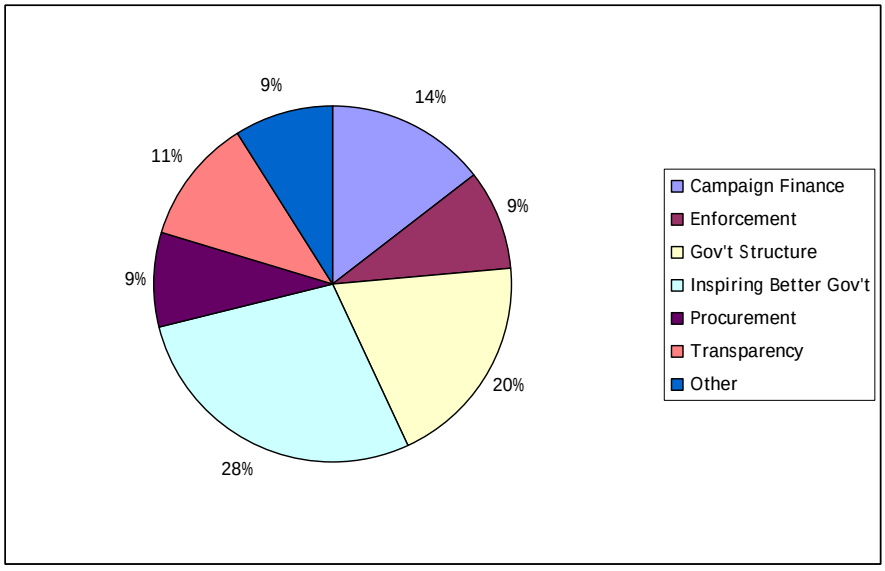
CHAPTER 8: RECOMMENDATIONS FOR FURTHER CONSIDERATION

I. Introduction

While the Commission undertook an in-depth exploration of six key areas for reform, it was unable to give adequate consideration to a number of interesting proposals for preventing and detecting corruption. In this final section, the Commission identifies proposed reforms that warrant further study. Many of these proposals came from members of the public through the Commission's website ReformIllinoisNow.org.

II. ReformIllinoisNow.org

During its tenure, the Commission maintained a website, ReformIllinoisNow.org, through which it solicited public comments. As of April 28, 2009, the Commission has received more than fifteen hundred public comments through its website, fax, phone, and postal mail, sixty-three percent of which contained substantive suggestions for reform in Illinois. All other comments were either logistical in nature or focused on concerns outside of the Commission's scope.



The substantive comments vary in many respects. Some are short suggestions, e.g., "term limits." Some are longer comments that include several specific recommendations. Many are thoughtful and well-reasoned, and most express frustration or anger with state government. A consistent theme was that corruption and inefficiency have made "regular" Illinoisans feel disconnected from their government. Overall, the comments yielded 1647 categorized suggestions, divided roughly evenly among the six topics considered by the Commission. (See below.) "Inspiring better government" served as a catchall for comments that expressed frustration with the caliber of current officeholders. The slightly larger

number of suggestions relating to Government Structure is due to the fact that over one hundred commenters suggested term limits.

The "other" category includes suggestions related to reform, but not reviewed in detail by the Commission, such as lobbyist reform, local government reform, TIF reform, ballot-access reform, and judicial reform. The Commission hopes that public officials and reform-minded groups will give these topics additional consideration.

Finally, the Commission received repeated calls for the removal of the Governor's name from tollway signs and the return of the Governor's residence to Springfield. More than 5% of the commenters specifically mentioned one or both of these suggestions.

III. Areas Identified as Warranting Further Inquiry

A. Lobbyist Reform. While several areas of the Commission's study touch upon lobbying, the Commission heard no direct testimony on reform of Illinois existing Lobbyist laws, e.g. the Lobbyist Registration Act, 25 ILL. COMP. STAT. 170. The Commission recommends this area for further study. At a minimum, the Commission notes that the use of finder's fees and contracting consultants by state contractors is troubling.

B. Judicial Reform. The scourge of judicial corruption was repeatedly noted by commenters on ReformIllinoisNow.org. The Commission recognizes that many distinguished groups and advocates have explicitly and repeatedly focused on the public election of judges as an area rife with conflicts of interest and the potential for abuse. While the Commission has not heard testimony on this area, it urges future attention to this area from groups both inside and outside of state government.

C. Local Government Reform. Many of those who submitted comments touched specifically on areas of local concern, including the Chicago "machine" and problems with corrupt officials downstate and in the collar counties. Others specifically highlighted progress made by their local governments in increasing transparency and reforming procurement. While the Commission primarily focused on statewide reforms, it recognizes the importance of local government reform efforts, and it encourages citizens to demand clean government at all levels.

D. Direct Democracy. Although the Commission heard limited testimony touching on direct democracy practices during its Government Structure meeting, it did not focus specifically on the referendum process. However, a number of commenters mentioned referenda as a method to enact reforms. Currently, Illinois law provides for referendum voting on a very limited basis. The Commission recommends further study into whether Illinois' referendum process is a viable means for enacting government reform.

E. **Illinois Ballot-Access Laws**. While the Commission did not focus on the topic of third-party candidates and independent candidates, many individuals expressed frustration with Illinois ballot-access laws. While the Commission has not reviewed the area in depth, it notes that the difference in petition requirements for candidates slated by a political party and those running independently can have a chilling effect on reform-minded candidates. It recommends this area for further study.

F. **Civic Education.** A number of individuals have emphasized that citizenship is not an innate characteristic, and thus must be taught. Illinois schools should consider mandating a curriculum that teaches students about the staggering costs of public corruption and the need for honest, ethical government. By setting these expectations early, our citizens will be more inclined to demand change when the government fails to live up to them. This proposal deserves more attention than we could give it.

G. **Inspiring Young Leaders.** Finally, many commentators have bemoaned the general absence of "young blood" in state government. Increased civic education is one way to encourage the State's young people to get more involved, but Illinois should look for additional ways to revitalize its state politics with the energy and idealism of our youth.

CHAPTER 9: CONCLUSION

Over the past one hundred days, the Illinois Reform Commission traveled across the State to learn about and promote government reform. Throughout our short tenure, we have been humbled and awed by the number of Illinoisans who have dedicated their time and energy to reform efforts.

Many people have asked why previous reform efforts have failed. One common answer is that those in power fight to maintain the status quo. But this is only part of the answer. The truth is, past reform efforts have met with forces just as destructive as self-interest or corruption: apathy, inertia, and cynicism. Despite the Commission's best efforts to bring attention to areas in dire need of reform, we can only be as effective as the people of Illinois allow us to be. Yet, we would be remiss not to acknowledge the critical role the media have played throughout our journey, which they must continue to play, to keep this discussion before the public.

In our one hundred days as a Commission, we have listened to the voice of our citizens. The message we have heard time and time is clear: Illinoisans want prompt, comprehensive and effective reform. While we provide the blueprint for these long-overdue reforms, their enactment into law will require citizen action and commitment to ensure that elected officials follow through and finally give the citizens of Illinois the honest, effective, and transparent government they deserve.

The endemic corruption in this State has been a source of much embarrassment and frustration in recent years. There are cynics who believe it will never change, but we take strong exception to that view. In spite of the embarrassments of recent years, this State has a proud political history and has elected many honest and dedicated public servants, many of whom serve today. Moreover, we have been encouraged by the sentiment among so many in this State that these problems are not insurmountable.

The recent scandals in this State have reawakened interest in governmental reform. Many in the State, including our political leaders, are asking the same question, "What is wrong with our system and how can we fix it?" We have done our best to propose meaningful answers to that question. We encourage citizens and legislators to consider, discuss and debate our proposals. We are fully aware that some may feel our proposals go too far; others may feel they do not go far enough. We believe such a debate will be healthy and, ideally, lead to the enactment of comprehensive reform that will set this State on the right track. Throughout this country's history, we have repeatedly seen how a crisis often provides the seeds for change or reform. The current political crisis in our State has disillusioned many of our citizens, but we owe it to our children to use this crisis as an opportunity to reform a system long overdue for reform.

The time for change is now.

ILLINOIS REFORM COMMISSION

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