

October 14, 2009

Dear Friends and Neighbors:

As some of you are aware a group calling themselves "Utahns for Ethical Government" has filed an Initiative entitled "Government Ethics Reform," with the Lt. Governor's office. During the next year they will be trying to obtain 95,000 signatures in order to put this Initiative on next year's ballot. Many constituents have requested clarification of the effect of this Initiative. Attached with this letter is my analysis of the Initiative and of the flyer, which was handed out in a public meeting they sponsored. I have tried to present an objective analysis. Anything inaccurate is not done purposefully. I apologize for the length but the Initiative is 25 pages and required a thorough response.

Though opposed to this Initiative this does not mean that I am opposed to creating ethical guidelines for the legislature. I sponsored one of the five ethics bills that were passed last session, which are also summarized below. There are few institutions that cannot improve, and Utah's legislature is no exception. I remind you though, that Utah is one of the best managed State in the country and I submit that ethical conduct is part of that successful management formula.

Sincerely,

Lorie Fowlke

Representative, District 59

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Enclosures

LEARN WHAT THE LEGISLATURE IS DOING TO ADDRESS ETHICS REFORM

Ethics Bills passed in 2009:

HB 345 Lobby Restrictions. Rep. Dee. Prohibits certain elected government officials from acting as a lobbyist for one year after leaving office; and requires the lieutenant governor to disapprove an application for a license when the applicant does not meet the eligibility requirements.

HB 346 Campaign Report Amendments. Rep. Dee. Requires contributions to be reported within 30 days of the day on which they are received; requires contributions and public service assistance that are made in the form of a negotiable instrument or check to be negotiated before the filing deadline for, and included on, interim reports.

SB 156. Gift/Meal Provisions for Public Officials. Sen. Bell. Addresses the definition of "tangible personal property"; includes admission to various events in the definition of "gift"; requires reporting of meals costing more than \$25 provided to a public official under certain circumstances.

SB 162. Campaign Fund Use. Sen. Bell. Prohibits the use of campaign and officeholder funds for a purpose that would result in the candidate or officeholder recognizing the funds as taxable income under federal tax law. [This basically prohibits personal use.]

HJR 14. Ethics Training Course. Rep. Fowlke. Requires an annual ethics training course for members of the Legislature and lobbyists, and that the training materials and exercises be available on the Internet to legislators, lobbyists, and to the public.

In addition to the above bills, the legislature also created an Ethics Committee that has been meeting during the interim to study, analyze and address what other ethics reform are needed. Their latest recommendation was to create an independent Ethics Commission with five members: three retired judges and two legislators, one from each party. You can follow the Ethics Committee agenda on the legislative web site: www.le.utah.gov.

ETHICS INITIATIVE REPORT

FLYER. Here are the flyer's statements in regular type and my comments below:

Flyer: "Did you know that under current law:

- Legislators can be lobbyists while serving in office. They also can lobby for themselves or a business (if it is not primarily a lobbying organization) as soon as they leave office.

What's the matter with this?

- 1) Utahns do not know whom their legislator is representing while in office—the public or their lobbying organization?
- 2) We do not know whether the serving legislator is tempted to vote a certain way while in office in hopes of securing a job or a lobbying contract after the sessions ends.

No man can serve two masters with equal faith. The master should be the people of Utah, not the lobbying organization."

Comment: True. However, it is also true that anyone can lobby for themselves or their business at any time they want to take the time to come to the capitol, or contact another legislator. If a legislator wants to lobby for someone else's business, then he/she must register as a lobbyist and wait one year after their legislative service is complete. (passed in the 2009 session.) This initiative changes the time to two years.

While most of us are familiar with the Biblical reference, the truth is that every legislator serves at least "two masters" since our legislature is part-time, meaning all legislators have other jobs and responsibilities. We have attorneys, veterinarians, car dealers, computer programmers, contractors, nurses, teachers, truckers, business owners, administrators, television personalities, social workers, bankers, health care providers, and the list goes on for the 104 individuals who serve there. As long as we have a part-time legislator, you will have people serving, who have personal interests that matter to them. Many believe that the best antidote for that dilemma is full disclosure and the ballot box. Or, we can hire a full-time legislature. Most people prefer the former alternative.

- Legislators can accept appointments to corporate boards when the corporation may have matters to come before the Legislature and when the principal qualification to serve is the legislator's status as a legislator.

Comment: True. Some people believe it is amazing that legislators who already spend considerable time in service to the State are also willing to serve on corporate or non-profit boards. Many legislators serve on the boards of corporate or non-profit entities. Often they are asked to serve to provide input about the legislative process and sometimes help sponsor or shepherd bills through that may address needs of a particular industry or nonprofit mission. This information is public and if voters object, they are free to vote a legislator out of office. Prohibiting this service limits access to information and it is questionable if removing legislators from all corporate and non-profit boards will make government more ethical.

- Legislators can sponsor bills that give a specific financial benefit to themselves or their business interests without sufficient disclosure of their conflicts of interest.

Comment: NOT true unless a legislator chooses to violate the current ethics rules. Legislators are required to disclose any conflict of interest at the beginning of each session, and further conflicts are often disclosed on the floor before a vote. This statement is a reference to the Initiative requirement to provide complete financial statements of all assets and debts of every member of a legislator's family, up to their first cousins.

- Legislators are not prevented from using their official positions to threaten judges and agency heads & get employees of the executive branch fired for not ruling a certain way.

Comment: The first part of this statement is NOT true. This is a reference to a letter that Senator Buttars wrote, on Senate letterhead, to a judge about a case involving a friend. Senator Buttars was sanctioned by the senate and heavily criticized by the press and the bar. The second part of the statement is true, *sometimes*. A legislator should not use their official position to threaten a state employee for not doing what a legislator wants; however, if a legislator discovers that an employee is engaged in misconduct, that legislator's responsibility is to reveal that conduct and do what can be done to correct the behavior, including encouraging firing, if appropriate or necessary. The Initiative makes no distinctions.

- Legislators can spend campaign funds on non-campaign personal expenses.

Comment: NOT true. Campaign funds are to be used for campaigns and legislative expenses. The problem comes in defining, what is a "personal expense." If a legislator uses his car for driving to numerous legislative meetings, particularly if the legislator lives in a rural area, is it a personal expense to provide maintenance to the car? If a legislator is a blue collar worker and is required to wear a jacket and tie to all legislative meetings, is buying a suit a personal expense? The IRS calls it a business expense. The legislature began addressing this issue last session by passing SB 162, which prohibits use of campaign funds for anything that would count as income under the IRS regulations. [see above]

- Legislators can contribute to each other's campaigns with money that was given to them for expected use in their own campaign. They can acquire a war chest and give money to other legislators or legislative candidates to curry favor with them and influence legislative leadership decisions.

Comment: True. Money is part of the political process. It is a way of showing support and the reality is that it costs money to campaign. Full disclosure provides the best remedy, I believe, and that is required. Again, if voters do not think that is appropriate, they are free to vote that legislator out of office. A seasoned lobbyist will tell you that any time campaign contribution rules pass, they will find a different way to contribute to campaigns; just look at Washington where Congress has very stringent campaign laws. It really comes down to, if you believe your legislator is honest or not. I should point out that legislators can "give money to other legislators" also because they believe the legislator is smart, does good work, or provides a valuable service for their constituents. Buying votes for leadership races may occur, but the legislators I know will not vote for someone to be a party leader if they are not confident in their leadership

skills. There is too much at stake to do otherwise. Again, keep in mind that our legislative leadership has helped Utah become the best managed state in the country.

- Legislators can accept unlimited donations to their campaigns from individuals, corporations, and other special interest groups.

Comment: True. Many states have put caps on the amount that can be donated. Some legislators have no objection to campaign caps, though others feel differently. Some races are more expensive than others. Caps tend to level the playing field for those candidates who have limited resources.

This citizen-led initiative will improve the ethical landscape, assuring that legislators do not profit or appear to profit from their positions of trust.

Comment: This above statement, which is at the bottom of the flyer, is what lawyers call a "legal conclusion" not a fact. There are few if any legislators that personally profit from their work in the legislature; however, many lose a significant amount of income by serving there. The few who may be involved in something that would profit them personally will likely never be discovered, by this initiative or other ethical rules, because they are dishonest. Dishonest people do not disclose their conflicts of interest and they rarely admit their faults, unless they are caught. There is no way to know if the provisions of this Initiative will bring about more ethical government, since there is no basis for measurement.

The phrase, "positions of trust" is also a reference to the Initiative language that makes legislators "fiduciaries". Fiduciaries are bound by certain principles that do not apply to legislators and it is impractical to do so. This will become a legal issue ripe for a court dispute.

INITIATIVE ANALYSIS - "Government Ethics Reform"

If you do nothing else, please read the Initiative. It is amazing how many people have said the support or do not support this huge policy shift, but have relied on the words of others in making that decision. Some individuals, including Chair of the Board of Regents and former UVU President, Bill Sederburg, supported the Initiative until they actually read through it, and then changed their mind. The summary of the bill sounds worthy, but it is the initiative itself that would be on the ballot if sufficient signatures are obtained, and the initiative causes great concern for many who are familiar with the legislative branch of government.

The first question in reviewing the process this Initiative sets up is, **where in the country has a similar process worked at improving legislative Ethics?** Unfortunately, no one at the Provo public meeting could provide the name of a single State where a process similar to the one being proposed, has been implemented, let alone improved ethics. For anyone who runs a business, let alone a government, this seems to be a significant oversight. The authors claim 40 other states have independent ethics commissions; why are they reinventing the wheel?

A second question should be is: **what objective standard is used to determine if Utah's legislature has sufficient ethics?** Does having an Ethics Commission mean we are now ethical and no Ethics Commission means we are not? Do more ethical rules make legislators more ethical? How many rules does it take and what rules, to accomplish the task? Is there an acceptable ratio of ethical rules that lead to ethical behavior? Can ethics in government be measured accurately? How do we measure if this Initiative or the ethics bills passed last session, or the ones currently being proposed at the Legislature's Interim Ethics Committee are effective? These questions should be answered, or at least considered, before we spend more time and money in this direction.

I. Intent Statement.

The Government Ethics Reform Act starts with an intent statement: six paragraphs that begin with a demand that the people's business be conducted with "fidelity, integrity, and selfless judgment." Then there is an accusation that the legislature is "unwilling to enact enforceable ethical standards of conduct". It observes lobbyists and special interests can donate "unlimited amounts of corporate money". There are many other statements and accusations, including the legislature's failure to enact meaningful ethics reform, the legislature pressured the governor to strike ethics reform from his agenda, and the only way to get meaningful reform is for citizens to do it themselves.

Comment: This statement appears to be aimed at blaming the legislature and providing negative innuendos. When referencing campaign donations from lobbyists, it says, "it is contrary to human nature to expect that such transactions are nothing more than friends helping friends in the grand cause of better government." Further, "lobbyists have every reason to agree to every legislator's request for money, no matter how dubious." Later, "It is axiomatic that, 'He who pays the piper calls the tune.'" While some

statements may be accurate, many are negative opinions and conclusions. It ignores the five ethics bills the legislature passed this last session, claiming all but "cosmetic gestures towards reform have withered and died." It ignores the fact that lobbyists from both sides of many issues actually provide much valuable information for legislators. And it ignores the Utah Constitution, which provides that the legislature is to discipline its own members, not the Governor, which is why the Governor did not proceed. Rarely is proposed legislation so full of accusations and negativity.

II. Utah Independent Ethics Commission.

Definitions. The first section provides definitions, which is significant here. Concerning definitions are "client," "control person," "corporation," "gift," "insider," "legislator," "lobbyist," "personal interest," "public official," and "sponsors." Review these carefully in the context of the process itself and code of conduct. The section concludes that the Act should be "construed liberally in furtherance of its remedial goals" and directs broad application to any proscription, including instructions that "any conduct, instrumentality, and means which may be used, either directly or indirectly, to accomplish such act."

Comment: Remedial means corrective. This is clearly meant to "correct" legislators, lobbyists, and almost anyone currently involved in the legislative process. Some of these definitions are so broad they could be unconstitutional or "void for vagueness". For example, "personal interest" includes "potential or actual partisan political benefit to a person or insider of such person." Much of a legislator's conduct could be construed as for "partisan political benefit," so it would be unclear what conduct would or would not be subject to sanction. "Control person" is anyone who is on the board or can influence the affairs of the company. "Lobbyist" includes anyone who pays a lobbyist, including any corporation [which includes nonprofits]. By broadly interpreting all the definitions "in furtherance of its remedial goals" almost everyone could be included in one of these categories, meaning no one will be qualified to be part of the legislature.

Commission Members. The 5 commission members must be 25, citizens, Utah residents, with "demonstrated integrity through leadership and service," and "educated and experienced broadly in ethical matters." Though those phrases sound good, they could be used to include or exclude a lot of people because of their vagueness. No member shall have been a legislator or public officer for 5 years prior to service. Members are selected from a hat with 20 names. The 20 names are selected by legislative leadership (senate majority and minority leader/house majority and minority leader) unanimously. If leadership cannot select all 20 names unanimously, then the five sponsors of this Initiative s will select the 20 names. This is not just the names of those upon whom leadership could not agree, but all 20 names. The five sponsors are Chase Peterson, Karl Snow, Cassie Dippo, Jordan Tanner, and Carole Peterson, and they remain so forever.

Comment: Since it is unlikely that legislative leadership would agree on all 20 names, these five individual sponsors would have the permanent ability to select the 5 commission members. Replacements are selected the same way. At best, this is an interesting choice of process for individuals who are proposing changes to Utah's legislative ethics, particularly in light of the many accusations the sponsors of the

Initiative have leveled at the legislature. At worst, it is a naked power grab by unelected self-selected individuals. There are constitutional concerns. By contrast, the legislature's Ethics Interim Committee, created this year by the Utah Legislature, [one of the five ethics bills passed] has recommended the formation of an Ethics Commission that would also be made up of five (5) members: three retired judges, and one former legislator from each party--people trained in law and individuals that know the role of a legislator.

Job Description. The Commission is to "investigate and review the conduct of legislators in relation to the code of conduct." They will have an executive director who is an attorney, staff, and use Legislative Research attorneys, the Fiscal Analyst and Legislative Auditor's office. All these resources are used to, "receive, investigate, and process complaints against legislators."

Comment: This provision arguably interferes with the legislature's relationship with its employees, since the State Constitution allows the legislature to choose its own officers and employees. This takes the legislature's attorneys and gives them to the Commission. Legislators have to obtain outside counsel at the state's expense, which will be considerable.

The Commission is to make recommendations for additional ethics rules and create and administer a "training program" for all legislators and staff.

Comment: The legislature actually already enacted a bill last session, which creates an online ethics course that all legislators and lobbyists must take annually and shall also be available to the public. The Initiative does not require that Commission members or lobbyists participate in the training program, though it does require the training program for all legislative staff, including attorneys, fiscal analysts and auditors. The legislature also already created an ethics committee, which is currently in the process of "making recommendations for additional ethics rules" and did so long before this Initiative was released.

The Commission adopts the Utah Administrative Rulemaking Act, but can make its own rules too, so long as they do not "reduce or weaken" the Code of Conduct in the Act. The Commission is authorized to issue subpoenas and compel the production of documents and the attendance of witnesses.

Comment: There is a good argument that this section violates the constitutional independence of the legislature. Again, this is usurping the role of the legislature and the judiciary.

III. Code of Conduct.

Comment: Original concerns with the Initiative were in the processes, since more clarity in the expected conduct is something we all want. However, this Code arguably prohibits conduct that legislators do every day. For example, legislators are prohibited from attempting to "unduly or unconstitutionally ... influence the outcome of any matter to be decided by a public body or public official." This could mean that legislators are unable to persuade their colleagues to vote for legislation pending in the House or Senate. It is not clear what "unduly" or "unconstitutionally" means in this context and again should be "void for

vagueness," i.e. unconstitutional. Influencing the outcome of legislation is what legislators are elected to do, especially if they created the legislation.

Safe Harbor. The Act provides that if a legislator has any questions about whether or not certain conduct is against the "code" they can ask for a written opinion in advance and the Commission "may" respond. However, the legislator must ask at least 30 days before such conduct occurs in order to be immune from prosecution and the facts must be exactly the same.

Comments: While this could provide some direction, often 30 days is not enough time for a legislator to obtain the needed information. Many invitations or offers are for something within thirty days. It sounds good but is not of pragmatic usefulness. The argument could always be made that the circumstances are not "exactly" the same and then the "safe harbor" would not apply. Also, note that the Commission is not required to respond, but "may" respond.

Violations. The Act states that legislators are "fiduciaries."

Comment: This word has certain legal meanings that simply do not apply in this context. It is unreasonable to impose a fiduciary relationship between legislators and constituents and may be an unconstitutional restriction on legislators, as well.

Some of the ethics violations are clear; many are not. They include:

- As of 2013, no legislator can be a board member, officer, partner, 10%+ owner of any corporation or have power to direct or "materially influence" the affairs of another person" if this status is because you are a legislator" and it furthers a legislator's "personal interest." Corporation includes any profit or non-profit, LLC, partnerships, business trusts, joint stock companies, unincorporated associations, and labor unions.

Comment: Basically, while serving as a legislator, an individual cannot be affiliated with any other business. For example, if a legislator bought into a partnership or company, this claim could be made. Of course the business furthers the legislator's business interest, and the legislator may or may not know if the other firm wanted them because they also serve at the legislature. It may have been a large or small part of the decision. The subjectivity of this restraint is concerning. It limits those who could serve as legislators to mostly employees, not business owners or leaders. Yet, it is extremely difficult for regular hourly employees to lose time from their jobs, to serve the nearly seven weeks required during the legislative session. It begs the question: just who do we want to be able to serve in our legislature?

There are many who believe that limiting a legislator's ability to earn a livelihood may be unconstitutional. This provision could also be interpreted to impose an additional qualification on a legislator beyond those established in the constitution.

- No legislator can be a lobbyist while in the legislature, for five years before, or for two years thereafter; nor can they accept a new employment with a lobbyist in any capacity while in the legislature.

Comment: Again, the Act ignores the fact that the legislature enacted a bill this year that prohibits legislators from becoming lobbyists for one year after their service. It is not clear why two years is better than one year, but the real problem is in the very broad definition of "lobbyist."

- No legislator can use confidential information obtained at the legislature to further their personal interest.

Comment: This is already prohibited. When/if it occurs, it is doubtful anyone would really know but the legislator. However, it is likely a false claim could be made and wreck havoc on someone's life and reputation. For example, the Tribune did a story on legislators sponsoring bills that were a "conflict of interest". Many legislators were criticized for bills that were related to their line of work, whether it was construction or education or law, with no analysis of whether the bill would actually personally benefit that legislator. A bill that explains how the construction registry database should be used does not benefit a legislator who works in the construction industry. This is a red herring, but can and has been used to demean many good people.

- No legislator can accept any gift from any lobbyist, period, or any "quid pro quo". Gift is defined as anything of value except campaign contributions, awards, or "light refreshments of negligible value."

Comment: Another bill that passed this legislative session changed the gift requirement to no gifts over \$50 and anything over \$25 has to be reported. There is concern over what comprises "light refreshments of negligible value". Is that just punch and cookies? What about snacks? If a legislator eats too many Swedish meatballs or egg rolls, is it more than "negligible" and subject to sanctions? Does the public really believe that a legislator's vote is for sale for the price of a cup of coffee? If so, then more rules will probably not solve the problem.

- A legislator shall not give consultations about legislation for money or "money's worth."
- A legislator shall "demonstrate exemplary obedience to law".
- A legislator shall not abuse the public trust for personal interest. This is detailed with a page of proscriptions, i.e. "shall not's" – nine, to be exact.

Comment: The proscriptions are related to not using your position to threaten others, improperly influence or interfere with the process for personal interest. Most of these proscriptions are intuitive, and sound appropriate. Again, however, there is some concern about the subjectivity of some of the language. If the members of the Commission have any animosity towards an accused legislator, there is little protection. This is where the objectivity of the membership of the Commission would be critical.

- Every legislator must file a conflict of interest disclosure statement that requires a full page to describe the information that shall be disclosed, "at a minimum." The Commission could make rules to ask for more.

Comment: Some experts believe this could be an unconstitutional invasion of privacy. At best it would take hours to complete and could discourage worthy men and women from serving in a demanding part-time position. Check it out and see if you are anxious to put all this information in the public domain for yourself and your family.

- Legislators and legislative candidates can only solicit, accept, and receive campaign funds for their own campaign. They cannot give funds from their campaign to another legislator or use any campaign funds for personal use.

Comment: Some constitutional experts believe that prohibiting legislators from donating to others could be a violation of the First Amendment free speech rights. Personal expenses are defined as "household living expenses, loans or gifts, clothing and grooming, vacation and leisure travel, or entertainment." This seems clear but sometimes gifts, clothes, travel or entertainment could also be related to campaigns or legislative work. Are we going to require legislators to pay these expenses from their own pockets?

- No contributions in a 2-year cycle over \$2,500 per individual or \$5,000 per PAC.
- Campaign funds left five years after a legislator completes his/her service must be transferred to the state school fund or to a charity from a list chosen by the Commission.

Comment: Requiring private campaign funds to be deposited into a state government account could be interpreted to be an unconstitutional taking. Why not donate the money to another candidate or to any registered charity? Why only the school fund or a charity from a list selected by the Commission?

- Any violation of the Code of Conduct shall be one or more of the following: felony, breach of the peace, action outside ordinary course of legislative business, beyond the scope of official duties.

Comment: There is no further definition of what violations could be a felony or any other category. This could be determined to unconstitutionally over broad. Frankly, the possibility of five self-selected commission members who already stated they believe legislators refuse to enact ethics reform, determining whether or not an act of a legislator is a felony, for some violation of a code of conduct that describes its tenets in broad language, is frightening, especially with no judicial review. [below]

IV. Complaint Process

- Any three persons can file a complaint against a legislator, alleging violation of the code of conduct, in writing, to the executive director.

Comment: ANY three people can start this process against a legislator. This unconstitutionally delegates the Legislature's power to judge the election and qualification of its own members and punish them for disorderly conduct. Those powers are specifically reserved to the legislature in our Constitution. This creates a concern that political opponents, publicity seekers, and extremists could file complaints, disrupt a campaign, and ruin a reputation, even if the legislator is ultimately found innocent of the charges.

- Complainants can go back six years from the date of the alleged violation or from the date they reasonably could have discovered the violation, if it was more than six years.

Comment: There is nothing in the bill's language that makes this prospective only, meaning that legislators could be responsible for conduct that happened before the statute was passed. This is an ex post facto law and clearly unconstitutional. Further, what is the point for bringing action against someone who was no longer a legislator, or the "punishment?" This sounds punitive. If there was criminal conduct, that investigation continues, so does the Commission proceed against someone who is no longer in office?

- The executive director will deliver a copy of the complaint to the commission and the accused legislator and conduct an initial investigation with powers of subpoena. The complainants can participate in this investigation but the legislator cannot.

Comment: Constitutional experts believe that allowing the accusers to participate fully, while the accused cannot, violates a legislator's substantive and due process rights.

- The executive director has 60 days to recommend if the complaint is dismissed or plenary review by the commission is appropriate; then, if the Commission decides to proceed the proceedings become formal and the complainants continue to investigate.
- The formal complaint must identify the complainants, and the conduct violated within 30 days, though no formal complaint can be filed within 30 days of a primary or general election.

Comment: Some recognition that this could be used as a campaign tactic is positive. However, thirty days is not outside the election time frame, by any means. Campaigns begin months before the election date. This provision does very little to protect an accused legislator from opportunists and campaign "dirty tricks".

- The accused legislator files a response to the complaint within 20 days and the Commission will hear the case, make rulings on admissibility of evidence and points of order. The legislator is entitled to a private attorney, but not the legislature's attorneys, because they are helping the Commission. The Commission decides if anyone else can be part of the proceedings.

Comment: Prohibiting the legislature's attorneys from representing legislators or challenging the constitutionality violates the constitutional provision authorizing the Legislature to appoint legal counsel. None of these commission members are required to have any legal training and yet they are going to rule on these evidentiary proceedings and make determinations regarding the legal rights of the legislator and the accusers. Prior to the hearing, this matter will have been pending for at least three months before the actual "trial". Paying for private attorneys for legislators will be a substantial financial burden to the State, in addition to the annual half million dollar required to fund the Commission. Requiring a legislator to hire private counsel and requiring the State to pay for it arguably violates substantial and procedural due process standards and unconstitutionally interferes with the Legislature's plenary power to appropriate money.

- The legislator has the burden of proof of “non-persuasion” after complainants show “prima facie case”. The legislator must show by a preponderance of evidence that he/she did not commit the violation charged.

Comment: “Prima facie case” means the facts alleged must meet the definition of a violation. There is no presumption of innocence. This again provides a viable claim of unconstitutionality by violating substantive and procedural due process rights. Once any three individuals make this claim, it is the legislator’s burden to prove to five non-legally trained people that he/she did not do the act, by a preponderance standard, meaning more likely than not. The legislator is presumed guilty unless he/she can prove a negative.

- The Commission must make a decision, in writing, within 60 days of the final arguments, identifying if a violation occurred and what sanction is appropriate, and provide it to the legislative leadership. The Speaker of the House, or Senate President, must require a vote of the House or Senate as soon as possible but no later than the 30th day of the next general legislative session. Any legislative deliberation about the matter shall be in public, as shall be all votes. Then any legislative decision must be posted on the legislative website for at least 12 months.

Comment: Though this is now five or six months into the process, any decision by the legislature must be made in 30 days. There is no explanation of the purpose for posting the decision for 12 months; evidently it would be to shame the offending legislator.

V. Miscellaneous Provisions

- There shall be no judicial review or agency review of any commission action.

Comment: This is one of the most inexplicable provisions. There is no judicial review and no oversight by any other agency in state government. Why are the sponsors of this proposal so opposed to any type of review of their actions, particularly when they have no legal training? If any legislator wants to challenge the constitutionality of any part of this Act, the legislator cannot use the legislature’s attorneys in the Office of Legislative Research, meaning they would have to pay for their own legal fees to do so. Constitutional concerns exist.

- If this Initiative is passed and anyone challenges it on constitutional grounds, the sponsors have an “absolute right” to intervene in the lawsuit.

Comment: This means that even if the Commission members are not the sponsors, if anyone challenges some part of this Act as unconstitutional, the sponsors of the Initiative can become parties to the lawsuit. This is an unconstitutional delegation of government powers to non-government people, who also happen to be unelected. This again arguably violates substantive and procedural due process provisions of the Constitution. More to the point, why should be sponsors want to be part of any subsequent lawsuit?

The Government Ethics Reform Act is 25 pages; this analysis is only slightly shorter. Congratulations if you read this far. Please convince others to do so as well. We all want ethical government but not this way.