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November 20, 2014

Dear Representative Boucher and Lt. Governor Bolling:

The Campaign Legal Center, a nonpartisan nonprofit organization, urges the Commission on Integrity and Public Confidence in State Government to recommend the adoption of robust and fair ethics rules for the executive and legislative branches of the Commonwealth of Virginia. While no laws or rules can be a substitute for good moral character or intention, clear ethical rules and standards provide important guidance and draw bright lines that create a common understanding of appropriate ethical behavior. It is critically important in ethics enforcement to have consistent interpretation of standards and to provide education, guidance and training for public officials. We are writing to highlight just a few of the elements that are needed for successful ethics enforcement.

First, for Virginia we recommend creating an Ethics Commission charged with investigating allegations of violations of ethical standards of conduct by members of the executive and legislative branches and making recommendations for appropriate sanction in the case of violations. The Commission should consist of an odd-number of Commissioners appointed jointly by the Governor and leaders of the state legislature, with sufficient staff to assist in carrying out the Commission's duties. There are a number of models in states and localities across the country, including the Los Angeles Ethics Commission, which can be useful in formulating a system for Virginia.

Second, we recommend the adoption of stronger gift rules for both the executive and legislative branches. Reports indicate the Integrity Commission is considering a gift limit of \$100. We urge you to reconsider this amount and lower it. Experience in Congress, which has a \$50 limit, and in the federal executive branch, which has a \$25 limit, indicate that these lower limits are reasonable and workable and do not hinder public officials from engaging in the

normal interactions that come with their job. The higher amount you are considering is unlikely to sufficiently protect against the public perception that access-and-influence buying is continuing to occur. The definition of a gift should be inclusive as it is in the congressional rules:

The term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket payment in advance, or reimbursement after the expense is incurred.

To ensure that unreasonable scenarios are not created by the gift limit, the gift rules should specifically articulate necessary exceptions to the rules, such as those in the congressional ethics rules, but any such exceptions should be precisely drafted to prevent the creation of loopholes in the law. We also recommend a total ban on gifts from registered lobbyists.

Third, Virginia's ethics rules governing travel should be overhauled. A ban on privately financed travel is the preferred policy solution. If travel is related to official business, it should be paid for by the Virginia taxpayer and not by private interests. Should you choose not to recommend such a ban, the rules should clearly outline permissible and impermissible travel reimbursements from nongovernmental resources to prevent the use of travel as a means of evading gift limits and allowing those interests with the financial resources to gain undue access and influence. Virginia should also adopt the restrictions included at the federal level on the role of lobbyists in privately financed travel. There should be a ban on travel provided by lobbyists and their clients. Lobbyists should not be involved in the planning of any trips and should not be permitted to accompany public officials during their travel. Additionally, all proposed privately financed trips should be approved by the Ethics Commission and the burden should be on the public official to demonstrate such a trip is worthwhile and beneficial to his official duties and that any recreational activities will be incidental and not underwritten by the trip sponsor. Requests for travel approval and all expenses and other pertinent details of such trips should be publicly disclosed on an easily accessible website in database format within a timely manner.

Fourth, we urge a significant strengthening of Virginia's financial disclosure requirements. Disclosure systems that work include information on earned and unearned income, transactions, liabilities, all gifts received, and all travel reimbursements received. Disclosure requirements should also cover outside employment (and the negotiation of such employment). Virginia should also set clear standards for recusal on voting on matters in which a legislator has a direct, personal financial interest.

Fifth, the Commission should recommend the adoption of rules and guidelines for permissible and impermissible campaign activities by legislators, including (but limited to) proper use of official resources, proper use of campaign resources, permissible campaign work by legislative employees outside of work hours, and prohibitions on campaign contributions from legislative staff.

Sixth, the Commission should recommend the adoption of post-employment lobbying restrictions for legislators and executive branch officials. Experience has shown, for example, that the current two-year restriction on former Members of Congress and high-ranking legislative staff returning to lobby Congress is insufficient to protect against conflicts of interest and the appearance of “cashing in” on public service. We urge the Commission to consider a three- to five-year “cooling off” period.

Seventh, we urge the Commission to review Virginia’s current rules covering nepotism and discrimination in employment to ensure they are sufficient.

A robust, functioning ethics process in Virginia will serve as a deterrent for unethical practices in state and local government, while also increasing public confidence in the integrity of Virginia government. We urge you to consider our recommendations as you move forward with your proposals. Please contact us if you have any questions or we can be helpful in any way.

Sincerely,

A handwritten signature in black ink, appearing to read "M McGehee". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Meredith McGehee
Policy Director