

ETHICS REFORM IN ALABAMA

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A government that is honest, ethical and honorable is fundamental to a better future for Alabama. Without it, we can’t expect the people to trust that we’ll do what’s best for them and for their children.¹

INTRODUCTION

Currently in Alabama there is a widespread and consistent call for ethics reform that extends well beyond the political arena.² Complaints about

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1. Governor Bob Riley, Office of Gov. Bob Riley’s Website, <http://governor.alabama.gov/issues/ethics.aspx>. Several other political figures in Alabama have expressed the need for ethics reform. See, e.g., John Fleming, *State to Again Try Ethics Reform*, ANNISTON STAR, Feb. 26, 2009, available at <http://www.istockanalyst.com/article/viewnewspaged/articleid/3074423/pageid/1> (quoting Representative Cam Ward: “OK, you tell me . . . what kind of signal does it send that you are willing to let someone have subpoena power to investigate people who cut hair, but not give that same power to the body in charge of investigating public corruption?”); *Alabama Legislature: Ethics Reform Is on the Table. Will it End Up in the Garbage?*, Left in Alabama, <http://www.leftinalabama.com/diary/3332/> (Feb. 4, 2009, 08:25 CST) (quoting Representative Mike Ball: “With public confidence in the legislature at rock-bottom, I don’t believe we can effectively address most of the problems facing our state unless we first improve our credibility.”); Bob Lowry, *Orr, Ball Again Offer Package of Ethics Bills*, HUNTSVILLE TIMES, Jan. 27, 2009, at 1B (quoting Senator Arthur Orr: “If public officials will not voluntarily disclose their business relationships and sources of outside income, then we must pass stronger laws that compel them to disclose.”).

2. See Cameron Vowell, *State’s Ethics Panel Needs Clout*, BIRMINGHAM NEWS, Oct. 18, 2009,

the current system and demand for change have been expressed by academics throughout the halls of Alabama's universities,³ the editorial boards of the state's major newspapers,⁴ and by ordinary citizens fed up

at F1 (after recently finishing a five year term on the Alabama State Ethics Commission author notes there were many more complaints about violations than advisory opinions and provides a "big picture" wish list including subpoena power, a source of funding independent of the Legislature, the power to investigate and prosecute without a complaint directly to the commission, and finally leadership in state government fostering a strong ethical culture).

3. Harvey Jackson, a history professor at Jacksonville State University, describes Alabama's state government as "a shadow government, [where] a bunch of behind-the-scenes string pullers . . . could, or at least claimed they could, get bills passed, appointments made, and people elected." HARVEY JACKSON III, *INSIDE ALABAMA: A PERSONAL HISTORY OF MY STATE* 290 (2004). Some pundits have suggested that Alabama has "four branches of government—executive, legislative, judicial, and lobbyist." *Id.* Wayne Flynt, a professor emeritus at Auburn University, has pinpointed some of the contributing factors that caused Alabama to be ranked "the poorest governed state in America." WAYNE FLYNT, *ALABAMA IN THE TWENTIETH CENTURY* 78 (2004). One of the key factors that Flynt cites as leading to the mismanagement of Alabama's state government is the inadequacy of Alabama's ethics laws. *Id.* When Alabama's ethics laws were first enacted, they did not fund the agency adequately or provide the ethics agency subpoena power to compel testimony. *Id.* In fact, the Alabama Ethics Commission was the only state ethics agency in the U.S. without subpoena power. *Id.* Since the Alabama Ethics Commission had little power to enforce ethics laws, lobbyists and political action committees (PACs) became very influential forces on state legislators. *Id.* at 81. Under Alabama law, PACs

could still contribute unlimited amounts to political campaigns, hide contributions by transferring them from one PAC to another, and spend up to \$250 per day to wine, dine, and entertain legislators without even a report to the commission. Meals, golf trips, beach parties, and other fringe benefits turned Orange Beach and Gulf Shores into Alabama's unofficial capital where the real business of government got done.

Id. at 81–82. Academics within Alabama and in the South have also come to the same conclusion as Flynt: the lack of strong ethics laws has led to a proliferation of lobbyists and an ineffective state government. "Lax, ineffective, or poorly designed ethics laws allowed state officials to take money from these [special] interests as campaign contributions even as matters affecting their interests awaited action. Scandals involving such payoffs became increasingly frequent, as did the defense that such practices were common among officeholders." WILLIAM ROGERS, ROBERT WARD, LEAH ATKINS AND WAYNE FLYNT, *ALABAMA: THE HISTORY OF A DEEP SOUTH STATE* 605 (1994). Flynt further explains that the ethical principles of Alabama legislators started to change as the influence of lobbyists became stronger. FLYNT, *supra* at 82.

The ethical principle that legislators should not vote on matters that benefited them directly seemed a foreign, liberal, perhaps even Communistic violation of old-time Alabama tradition. In May 2000, for instance, 49 legislators with ties to Alabama public schools, colleges, and universities (the highest percentage of any state legislature) voted in favor of a 4 percent pay raise for all public school employees.

Id. Even the citizens of Alabama became well aware of the problem that their leaders were no longer independent. In one poll, when Alabamians were asked who controlled Alabama's government, "8 percent said the people, 20 percent answered the legislature, 30 percent listed the governor, and 40 percent cited special interests." *Id.* at 83.

4. David Prather, *It's Time For Reform*, HUNTSVILLE TIMES, Jan. 30, 2009, at 8A (Senators Orr's and Ball's ethics package, in addition to banning PAC-to-PAC transfers, would require substantial disclosure by candidates of sources of political contributions and internet access of state expenditures that citizens can easily monitor); Editorial, *Job One: Corruption*, BIRMINGHAM NEWS, Jan. 19, 2009, at 6A (attorney general candidates should put ethics reform and corruption prosecution at the top of their lists); John Archibald, *What's A State Got To Do To Be 'Most Corrupt'?*, BIRMINGHAM NEWS, Dec. 14, 2008, at 11A (noting that Alabama is 5th among all states for having the most corruption convictions); John Ehinger, *Blame Game on Ethics*, HUNTSVILLE TIMES, Dec. 27, 2006, at 4A (Ethics Commission should have a prosecutorial division); Sebastian Kitchen, *Davis Calls for Ethics Overhaul*, MONTGOMERY ADVERTISER, Apr. 10, 2009 (Congressman Artur Davis' proposal for ethics reform includes: banning gifts from lobbyists to public officials, prohibiting lawmakers from dispers-

with the culture of corruption.⁵ Indeed, the recent flurry of indictments and convictions of prominent figures including two former governors,⁶ several members of the legislature,⁷ municipal officers,⁸ as well as others⁹

ing their discretionary funds on behalf of their employer, stopping transfer of money between PACs, capping campaign contributions, stricter lobbyist registration requirements); Sebastian Kitchen, *Lawmakers Lament Confusing Ethics Law*, MONTGOMERY ADVERTISER, Apr. 19, 2009 (discussing Gov. Riley's call for ethics reform and the problem that no rule expressly prohibits gifts of any value); Editorial, *Seeking Ethics in Alabama: A Bill Worth Passing*, ANNISTON STAR, Apr. 22, 2009 (calling for ethics reform citing examples of lobbyist spending and the need for subpoena power for the Ethics Commission); Editorial, *Vows from Vance*, BIRMINGHAM NEWS, Aug. 12, 2009, at 6A (criticizing the lack of political corruption prosecutions).

5. Editorial, *Off the Web: Anger or Apathy Could Drive Birmingham's Votes for City Council, School Board Today*, BIRMINGHAM NEWS, Aug. 25, 2009, at 3A (comments posted criticize corruption in Birmingham politics); Editorial, *Use of Power of Polls To Influence*, TUSCALOOSA NEWS, May 21, 2009, at 6A (Wetumpka reader bemoans fact that legislature has failed to pass legislation such as ethics reform and calls for constitutional initiative to allow voters to bypass legislature); John Fleming, *Former Prosecutors: Request For Siegelman Sentence Astonishing*, ANNISTON STAR, May 20, 2009, at 1A (request to lengthen Siegelman's sentence); Editorial, *Riley's Full Disclosure: Always A Good Idea*, ANNISTON STAR, June 25, 2008, at 8A (reader commended Riley's disclosure of his donors for 2007 inauguration and called for others to do the same); Editorial, *Speak Out: More of Same From Legislature: PAC-to-PAC Transfers Must End*, ANNISTON STAR, Nov. 7, 2007, at 8A (reader laments Alabama's rank as 49th for campaign finance disclosures and calls it another embarrassment of the dysfunctional legislature).

6. See *United States v. Siegelman*, 561 F.3d 1215 (11th Cir. 2009). A jury convicted former Governor of Alabama, Don Siegelman, of bribery using federal funds, mail fraud, and conspiracy, and obstruction of justice. The bribery charge involved a \$500,000 contribution from Richard Scrushy, the former CEO of HealthSouth, to a campaign fund that Siegelman had created to campaign for a state lottery. In exchange for this \$500,000 contribution, Siegelman agreed to allow Scrushy to keep his seat on Alabama's Certificate of Need Review Board. Although the lottery fund was required to report all contributions to the Alabama Secretary of State, no disclosures were made until after newspapers questioned the source of these contributions. The Eleventh Circuit affirmed all these convictions except Siegelman's mail fraud, which was reversed due to insufficient evidence. See also James L. Sumner, Jr., *The Alabama Ethics Law: A Retrospective*, 60 ALA. LAW. 264, 267 (1999). Former Governor Guy Hunt was convicted and removed from office in 1993 for using \$200,000 from his 1987 inaugural fund for his personal use. Although the verdict was upheld in state and federal appeals, the Alabama Board of Pardons and Paroles pardoned Hunt based on their belief that he was innocent.

7. Former State Treasurer Melba Till Allen was convicted in 1978 for using her public office to obtain bank loans for a personal business venture. She also failed to report the loans on her ethics financial disclosure forms. She was sentenced to three years in prison. See Sumner, *supra* note 6 at 267. Former Public Service Commission President Juanita McDaniel was convicted in 1980 for filing false expense requests and sentenced to seven months in prison. *Id.* Former Insurance Commissioner Jimmy Dill was convicted in 1997 for accepting \$175,000 from his daughter who was in the insurance business and subject to her father's regulation. Dill was no longer serving in his state position when the ethics case began. The verdict in this case was overturned by the Alabama Court of Criminal Appeals. *Id.* Industrial Relations Director Dottie Cieszynski was fined \$3,000 in 1996 for using state employees for her personal errand and a state car for personal use. *Id.* Selma Mayor Joe Smitherman was fined \$4,000 in 1998 for using his city automobile to make personal trips to the beach and to other destinations. *Id.* Former Birmingham Water Board Chairman Horace Parker was convicted in 1998 for arranging to get a water main upgrade done on the street on which he lived in Gardendale to improve the water pressure for his lawn sprinkler system. Parker also voted as a member of the Water Board to approve the work being done. *Id.* In 2006, former state Rep. Bryan Melton, D-Tuscaloosa, pleaded guilty to using grant money to pay personal gambling debts. He was sentenced to 15 months in prison. See Val Walton, *Former Lawmaker Bryant Melton Sentenced to 15 Months in Prison*, BIRMINGHAM NEWS, Aug. 15, 2008, at 1A. Former State Sen. E.B. McClain is facing nearly six years in prison after being convicted in January of taking kickbacks from a group that received state grants from McClain. See Robert K. Gordon, *Alabama State Sen. E.B. McClain, Rev. Samuel Pettagruie Convicted in Fraud, Bribery Trial*, BIRMINGHAM NEWS, Jan. 22, 2009, at 1A. In 2006, Jimmy Armstrong and

serve as a powerful witness that ethics reform is badly needed.¹⁰ Despite these widespread pleas for ethics reform and embarrassing examples of ethical lapses, the state has failed to take any important steps towards overhauling the ethics laws themselves and the enforcement of those laws.¹¹

Part I of this Article provides an overview of Alabama's ethics laws and the tools of enforcing those laws that are currently available. The laws themselves are too generous concerning the level of gifts and other spend-

Fred Huff, members of the Gadsden City Council, plead guilty to participating in a bribery and honest service wire fraud conspiracy. BIRMINGHAM BUS. J., *Two Gadsden Councilmen Sentenced For Role in Bribe Scheme*, Aug. 17, 2007, <http://birmingham.bizjournals.com/birmingham/stories/2007/08/13/daily40.html>. In 2006 former Jefferson County Commissioner Chris McNair was found guilty of corruption followed by the conviction of five businessmen on charges of conspiracy and bribery related to contracts awarded for work on the Jefferson County sewer system. Press Release, Department of Justice, Former Jefferson County Commissioner Chris McNair Pleads Guilty to Bribery, Feb. 14, 2007 (on file with the author).

8. See, e.g., Editorial, *Bessemer City Council Member Louise Alexander is Indicted*, BIRMINGHAM NEWS, Sep. 3, 2008 (discussing City Council member Louise Alexander being indicted for three counts of violating ethics laws by using her office for personal gain); *Birmingham Mayor Larry Langford Arrested on Federal Charges*, BIRMINGHAM NEWS, Dec. 1, 2008, at 1A (discussing Birmingham mayor Larry Langford's federal charges based on financial crimes based around his position as Jefferson County Commission President); *Roanoke Mayor Arrested on Ethics Charges*, WSFA 12, Jan. 9, 2008, <http://www.wsfa.com/global/story.asp?S=7600240> (discussing arrest of Roanoke mayor Henry Bonner on a twenty-six count indictment, many of which were ethics charges).

9. See, e.g., *Culture of Corruption*, CBS 42, July 7, 2009, <http://www.cbs42.com/content/localnews/story/Culture-of-Corruption/R8RXtuB3sUatNsBVpSVrrg.csp> (describing Alabama's position as "fourth in the nation for public officials indicted on corruption charges"); Posting of David Ferrara to al.com, http://blog.al.com/live/2008/08/washington_county_commissioner_1.html (Aug. 20, 2008, 16:53 CST) (describing Washington County Commissioner being indicted on charges of using his position for personal gain and then threatening to kill a witness); *Former County Commissioner Gary White Indicted*, NBC 13, Nov. 2, 2007, http://www2.nbc13.com/vtm/news/local/article/VTM_2007_11_02_0013/21840/ (describing Gary White, an elected official for the Jefferson County Commission, having eleven indictments for conspiracy and honest service offenses being brought against him); Marty Roney, *Autauga County Coroner's Trial Delayed*, <http://da19.alada.gov/inthenews2008/080816b.htm> (last visited Apr. 16, 2010) (describing charges brought against Willie Brown of theft and using his office for personal gain based on actions he allegedly took while serving as warden of the Autauga Metro Jail); *Thomas Arrested on More Indictments*, FOX 10TV.COM, Aug. 10, 2009, http://www.fox10tv.com/dpp/news/crime/Thomas_Arrested_On_More_Indictments (describing long list of ethics charges brought against former Mobile judge Herman Thomas); see also *Covington County Probate Judge Arrested*, Dothanfirst.com, June 13, 2008, http://dothanfirst.com/fulltext/?nxd_id=11161.

10. The need for subpoena power has become quite clear and has already gathered many supporters because this current system effectively renders our ethics committee toothless. State representative Cam Ward introduced a bill granting subpoena power to the ethics commission. Although the bill passed in committee, it failed to pass before the full House. Report of Bradley George (WBHM radio broadcast Sept. 21, 2009), <http://www.wbhm.org/News/2009/ethicscomm.html>.

11. The Alabama Legislature failed to pass any ethics reform measures in 2010. Philip Rawls, *Annual Sham: Ala. Ethics Talk Leads to Nothing*, ANNISTON STAR, Apr. 25, 2010, http://www.annistonstar.com/view/full_story/7195649/article-Annual-sham--Ala--ethics-talk-leads-to-nothing?instance=breakingnews; see also Editorial, *Ethics? Not Here*, (FLORENCE) TIMES DAILY, Apr. 28, 2010, <http://www.timesdaily.com/article/20100428/ARTICLES/4285002/1015/opinion?Title=Ethics-Not-here>.

ing that can be lavished on legislators and other public officials, and in addition are quite vague in drawing the line between permissible and impermissible gifts and other spending. Moreover, the mechanisms for enforcing the ethics laws are so inadequate the criminal justice system has been forced by default to serve as a backstop for the most egregious cases.¹² Using the very recently reformed¹³ ethics laws of two sister Southern states, Mississippi and North Carolina, as examples of far better ethics laws, Part II of this Article discusses some alternatives Alabama lawmakers should consider when proceeding to achieve the goal of ethics reform. Both of these states are far less generous in defining allowable gifts and spending, and provide significantly stronger enforcement tools to ensure compliance. This Article concludes that ethics reform is not only achievable but is also an essential first step towards any meaningful progress in Alabama. Without ethics reform and greater transparency of how tax revenues are spent by public officials, a critical mass of Alabama voters will not support far reaching tax and constitutional reform, greater funding of education and other changes needed to bring about a better future for all Alabamians in the twenty-first century.

I. OVERVIEW OF ALABAMA'S ETHICS LAWS

Like all other states in the nation Alabama law addresses ethical standards for public officials and public employees. Public officials include all individuals elected to public office, such as the governor, members of the Legislature, all elected judges, which includes the Alabama Supreme Court, as well as all elected municipal positions, including mayors, city

12. In February of 2009, Alabama State Representative Sue Schmitz was the third lawmaker to be convicted in a federal investigation of Alabama's community college system. Lee Roop, *Schmitz Guilty of Fraud, Loses Seat*, HUNTSVILLE TIMES, Feb. 25, 2009, at A1. Schmitz was accused of being paid more than \$177,000 from a federally funded program and doing little or no work for the program over a period of three years. *Id.* Schmitz was found guilty on seven of eight counts of federal fraud. *Id.* In June of 2006, Alabama State Representative Bryant Melton plead guilty to federal theft and money laundering charges and a state felony ethics charge. Brett J. Blackledge, *Legislator to Enter Guilty Plea*, BIRMINGHAM NEWS, July 1, 2006, at A1. Melton admitted to sending state grants to the Alabama Fire College Foundation, and then using \$68,000 of the money to cover his own personal expenses and gambling debts. *Id.* There were 43 Alabama legislators who held jobs within Alabama's two year college system between 2002 and 2006. Brett J. Blackledge, *Legislator Tells Grand Jury About College Job*, BIRMINGHAM NEWS, March 14, 2008, at C1 [hereinafter Blackledge, *College Job*]. The Alabama Ethics Commission does not have the power to subpoena testimony from any of these individuals if it wanted to investigate any potential ethical violations. See FLYNT, *supra* note 3 at 78. On the other hand, federal prosecutors can issue subpoenas, and did so to help facilitate an ongoing federal investigation to examine the financial ties of Alabama legislators to the state's two year college system. Blackledge, *College Job*. The ability to subpoena Alabama legislators allowed federal prosecutors to ask state legislators how they got their community college jobs and what they did at their jobs. Kim Chandler & Charles Dean, *At Least 14 Ordered to Appear Guin Among 9 Legislators Subpoenaed*, THE BIRMINGHAM NEWS, March 8, 2008, at D1.

13. See *infra* notes 52-54 and accompanying text (discussing the widespread problems of corruption in both these states that existed under their ethics laws before reform).

council members, sheriffs and school board members.¹⁴ The definition of public official also includes individuals appointed to an elected position if a vacancy occurs between election cycles and the law allows for the position to be filled by an appointment until the next regular election.¹⁵ The definition of public employee broadly includes virtually all individuals who are partially or completely compensated from state, county or municipal funds.¹⁶

Alabama state law forbids a public official or public employee from using “his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law.”¹⁷ Alabama state law also forbids a public official or a public employee from soliciting or receiving “a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.”¹⁸ The combination of the lack of any precision defining “personal gain,” the loose definition containing numerous exceptions along with merely requiring “things of value” to be reported to the Ethics Commission, which must then decide if the “personal gain” threshold was met, and, finally, the utter lack of enforcement tools provided to the Ethics Commission, work together to create an ethics structure totally incapable of reigning in even the most common sense violations outraging the average citizen.

The definition of personal gain is a classic example of defining a term by solely referring to the term itself; a more common-sense metaphor envisions a dog chasing its tail.¹⁹ Although the definition of thing of value is broad and contains boundaries that can be determined with reasonable certainty, due to numerous exceptions those boundaries are very generous, meaning a high level of gifts and spending are outside the definition.²⁰ For example, the infamous \$250 a day rule permits lobbyists and others to

14. ALA. CODE § 36-25-1(24) (2001) (defining a “public official”).

15. Such vacancies may occur in the executive, legislative, or judicial branches. *See* ALA. CONST. art. IV, § 46 (legislative); art. V, § 127 (executive); art. VI, §§ 152, 158 (judicial).

16. ALA. CODE § 36-25-1(23) (2001) (defining “public employee”).

17. *Id.* § 36-25-5. A “[f]amily member of the public employee” is defined as “[t]he spouse or a dependant of the public employee.” *Id.* § 36-25-1(11). A “[f]amily member of the public official” is defined as “[t]he spouse, a dependent, an adult child and his or her spouse, a parent, a spouse’s parents, a sibling and his or her spouse, of the public official.” *Id.* § 36-25-1(12).

18. *Id.* § 36-25-7.

19. *Id.* § 36-25-5(a) (defining personal gain as when “the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain”).

20. *Id.* § 36-25-1(31) (defining a “[t]hing of value” as “[a]ny gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria”).

spend up to \$249 a day for two days in a row for hospitality (food, beverages, lodging), which explicitly includes sporting event tickets. If the gift or spending falls outside the definition of thing of value there is no requirement that the public official or employee even report it to the Ethics Commission. Consequently, on a practical level gifts and spending, which fall outside the definition of thing of value are removed from the scope of the ethics structure.²¹

If the gifts or spending with respect to a public official or public employee fall within the definition of “thing of value,” Alabama does not automatically deem this a violation of the ethics law. The law only requires that the public official or public employee report gifts or spending meeting the definition of “thing of value” to the Ethics Commission. It is up to the Ethics Commission to investigate and decide whether this amounts to using one’s office or position for “personal gain.”²²

There are several features of the ethics laws that render the enforcement arm totally ineffective. First, the definition of using one’s office for personal gain is so vague and inadequate the Ethics Commission has little or no guidance as to what the law actually prohibits.²³ Second, the Ethics Commission has no power to initiate its own investigation of possible ethics violations.²⁴ Rather, the Ethics Commission must depend on reports

21. *See id.* § 36-25-7(a) (forbidding public officials or employees, or their families, from soliciting or receiving a thing of value for the purpose of influencing official action). However, the law excludes numerous items from the term “thing of value.” *See id.* § 36-25-1(31) (defining thing of value to exclude transportation, lodging, food, beverages, tickets, and any hospitality with an aggregate value of less than \$250 in a calendar day). Moreover, because the code has no requirement that a public official report the receipt of goods and services that a substance over form analysis would deny the exclusion (e.g., \$249 a day or \$250 a day for three out of every four days), the law allows creative lobbyists and others to avoid the intent of the law by structuring their spending on public officials to fall within the form of the exclusion. *See id.* § 36-25-1.

22. *See id.* § 36-25-4(a)(7) (“[The commission shall] [m]ake investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter. . . .”). Section 36-25-27(c) provides that:

The enforcement of this chapter shall be vested in the commission In the event the commission, by majority vote, finds that any provision of this chapter has been violated, the alleged violation and any investigation conducted by the commission shall be referred to the district attorney of the appropriate jurisdiction or the Attorney General.

23. *See Fitch v. State*, 851 So. 2d 103, 116–17 (Ala. Crim. App. 2001) (calling general counsel for the ethics commission as an expert witness to show that the granting of county contracts that directly resulted in the defendant’s own personal financial gain constituted a use of his office for personal gain).

24. Although the lengthy list of powers the Ethics Commission enjoys appears deceptively complete, the commission has no power to initiate a complaint against a public official or subpoena information to investigate a formal complaint filed by a third party. *See ALA. CODE* § 36-25-4(a)(1)–(11) for a description of the commission’s powers, which includes the following: making forms available; preparing guidelines for reporting; accepting and filing “written information *voluntarily supplied that exceeds the requirements of this chapter*” (emphasis added); developing, filing, coding, and cross-indexing systems; making filed reports and statements available to the public; preserving reports and statements; examining information *voluntarily supplied*; reporting suspected violations of law to the district attorney or the attorney general; issuing and publishing advisory opinions on the requirements of this chapter (advisory opinions must be adopted by a majority vote of the members of the commis-

from either third parties who suspect that a particular public official or employee has violated the law or the reports public officials and employees are required to make when they receive “thing[s] of value.”²⁵ Third, the law provides the Ethics Commission few effective tools needed to conduct an investigation of the circumstances surrounding the alleged violation reported by the third party or the receipt of a “thing of value” reported by the public official or employee. For example, Alabama is the only state in the nation that denies the Ethics Commission subpoena power during an investigation.²⁶ Without the power to subpoena information such as e-mail and other records, it is difficult, if not impossible, in most cases for the Ethics Commission to determine whether or not a public official or employee has used his or her office for personal gain or to influence official action.

Finally, even if despite all these limitations the Ethics Commission actually finds an ethics violation, the ethics laws themselves provide no separate penalties.²⁷ The only remedy the Ethics Commission has is to turn

sion present); educating candidates, officials, employees, and citizens of Alabama on matters of ethics in government service. Despite all these enumerated powers, the commission has no power to initiate a complaint against a public official or subpoena information to investigate a formal complaint filed by a third party. North Carolina’s ethics commission has the power to both initiate complaints and subpoena information. N.C. GEN. STAT. § 138A-12(d) (2006). Although Mississippi’s ethics commission, like Alabama’s has no power to initiate complaints, *see* MISS. CODE § 25-4-19(a)(i) (1972), the Mississippi ethics commission has subpoena power to thoroughly investigate formal complaints filed by third parties.

25. *See* ALA. CODE § 36-25-4(a)(1)–(11). Although the ethics laws create an appearance that the Ethics Commission has meaningful powers to investigate required public disclosure forms, *see id.* § 36-25-4(a)(7), (stating that the commission has the power to investigate public disclosure forms suspected of being incomplete or fraudulent), this power is hollow due to the lack of subpoena power, which limits the commission’s ability to gather information to required public disclosures mandated by state or federal law. Moreover, the requirements that those filing complaints be publicly disclosed and have actual knowledge of the allegations, *see id.* § 36-25-4 (11)(c), discourage many complaints from being filed. *See, e.g.,* Editorial, *Strengthening Ethics Law Overdue*, MONTGOMERY ADVERTISER, Dec. 16, 2008, at 2B (noting that the commission cannot investigate cases on its own no matter how serious the suspicions; rather the commission must receive a formal, written complaint to launch an inquiry).

26. The Code of Alabama does not confer upon the Alabama Ethics Commission the power to issue subpoenas. Further, Alabama has been cited as the only state ethics agency that cannot issue subpoenas. *See* THE CENTER FOR PUBLIC INTEGRITY, WATCHDOGS ON SHORT LEASHES: IN YOUR STATE—ALABAMA (2001), <http://projects.publicintegrity.org/ethics/iys.aspx?st=AL>. Interestingly, though, the Alabama Board of Cosmetologists *does* have subpoena authority. *See* Alabama Board of Cosmetology Administrative Code, ALA. ADMIN. CODE r. 250-X-1-.02(1) (2005) (granting cosmetology board the power to serve summons). Both Mississippi and North Carolina ethics commissions have subpoena power. *See supra* note 24; *infra* note 35.

27. After receiving an appropriately filed complaint, the director of the Ethics Commission will conduct a preliminary inquiry; if the director does not believe that reasonable cause exists, the charges will be dismissed. ALA. CODE § 36-25-4(c) (2001). The director here has a great amount of power, because his finding alone that no reasonable cause exists will stop the investigation altogether. Only if the director makes an “express finding” that probable cause exists will the complaint be taken to the commission, and then the commission must give “unanimous written consent of all five (5) commission members” in order to authorize an investigation. *Id.* § 36-25-4(c). Even if the director finds reasonable cause, a single hold-out commissioner can stop the entire investigation. Should the complaint survive, a three judge panel appointed by the Chief Justice of the Alabama Supreme Court will

over its findings to the attorney general or the district attorney for potential criminal prosecution. As a practical matter, ethics violations must be severe enough to also cross the threshold of violating criminal laws to face any sanction, thus creating an “all or nothing” approach, where most ethical lapses offensive to the ordinary Alabamian are allowed to escape any sanctions or consequences.²⁸ Even worse, the entire structure of the ethics laws and commission, which effectively eliminates any meaningful scrutiny of ethics violations, means that the criminal justice system is forced to be the only significant check and balance. In other words, in order to face any consequences “ethics violations” must be so severe that they also violate criminal laws, rendering the structure that supposedly addresses unethical conduct as meaningless. Conduct that violates criminal laws has no place within the structure addressing ethical lapses. The attorney general, district attorneys, and others involved in the criminal justice system have subpoena and other powers at their disposal.²⁹

conduct a hearing; this panel must *unanimously* find that a person covered by the Ethics Rules has violated it in order for the case to be turned over to the district attorney in the jurisdiction where the alleged conduct occurred, or to the Attorney General. *Id.* § 36-25-4(c). The district attorney or the Attorney General still has discretion in whether to pursue a case.

28. If the commission finds that a violation has occurred, its only option is to refer its findings to the Attorney General or district attorney in the appropriate jurisdiction. *Id.* § 36-25-4(c). *See e.g.*, Editorial, *Strengthening Ethics Law Overdue*, MONTGOMERY ADVERTISER, Dec. 16, 2008, at 2B (noting because the ethics commission has no meaningful power to investigate or prosecute ethics violations revealed by formal complaints the commission must rely on the local district attorney or the attorney general to fulfill these responsibilities); Editorial, *On the Move for Ethics*, BIRMINGHAM NEWS, Mar. 16, 2009, at 8A (noting that whether an ethics violation is pursued largely depends on the relationship between the ethics commission and the district attorneys and the attorney general, and citing the statistics for the year 2005, where the Ethics Commission received over 200 complaints yet forwarded only 11 to the district attorney or the attorney general, as evidence that this relationship is dysfunctional).

29. The duties and powers of the Attorney General in Alabama are laid out by Title 36, Chapter 15 of the Alabama code. Alabama’s Attorney General is the legal counsel for the state, representing Alabama’s various officers, departments, and agencies when such parties are named as defendants in a lawsuit, either criminal or civil. ALA. CODE § 36-15-1(2) (2001). The Attorney General also represents the state when there is a challenge made to the constitutionality of a state statute. *Id.* §36-15-1(10). However, the Attorney General is not limited to defending actions in which the state has an interest. He may also initiate court actions when trying to protect the State of Alabama’s interests. *Id.* § 36-15-12. In addition to representing the interests of the state of Alabama, the Attorney General also has the power to direct the prosecution of any criminal case if he deems proper, and the district attorney that would have been prosecuting will assist the Attorney General in such cases. *Id.* § 36-15-14. Finally, the Attorney General is required to issue opinions on questions of law connected with the interests of the state or involving the duties of certain state, county, or city officials. *Id.* § 36-15-1(1). District attorneys’ duties and powers are specified by statute. *See id.* § 12-17-184. First and foremost, district attorneys have the power to draw up all the indictments and prosecute all indictable offenses in the territory for which they are elected. *Id.* § 12-17-184(2). To assist in the prosecution of these cases, district attorneys have the authority to issue subpoenas to persons to come before them. *Id.* § 12-17-184(18). The district attorney must also prosecute or defend all civil actions in circuit court in which the state of Alabama is an interested party. *Id.* § 12-17-184(3). Even if a criminal prosecution is removed from the District Attorney’s jurisdiction to a United States federal court, the district attorney must continue to represent the state in that case. *Id.* § 12-17-184(5). Furthermore, the district attorney must attend probation hearings and furnish the trial judge with information concerning applications for probation. *Id.* § 12-17-184(17). Finally, whenever requested by the Attorney General or the Governor,

II. ETHICS LAWS OF MISSISSIPPI AND NORTH CAROLINA PROVIDE MEANINGFUL GUIDANCE

The recently reformed ethics laws and enforcement tools of both Mississippi and North Carolina provide a far better structure that discourages lobbyists and others from influencing public officials and other public employees. As a result, these states will no longer have to rely on the criminal justice system as being the sole backstop to the ethics laws. Mississippi state law forbids a public servant from using “his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law.”³⁰ Mississippi’s ethics provision defines pecuniary benefit very broadly.³¹ North Carolina state law forbids public servants from using their public position in a manner that will result in giving a financial benefit to himself, his family, or business.³² North Carolina further elaborates by forbidding a public servant from soliciting or accepting anything of value in return for being influenced in the discharge of their official responsibilities. The law also prohibits receiving any sort of gift from a lobbyist.³³

district attorneys must go to any place within the State of Alabama, to prosecute cases, work with a grand jury, to attend sessions of court, or transact any other duty of the district attorney. *Id.* § 12-17-184(10).

30. MISS. CODE ANN. § 25-4-105(1) (2001). The Mississippi code defines relatives of public servants as “(i) [t]he spouse of the public servant; (ii) [t]he child of the public servant; (iii) [t]he parent of the public servant; (iv) [t]he sibling of the public servant; and (v) [t]he spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).” *Id.* § 25-4-103(q). The code further defines business as “any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.” *Id.* § 25-4-103(c).

31. The Mississippi Code defines “pecuniary benefit” as a “benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.” *Id.* § 25-4-103(l). Unlike Alabama’s definition of “personal gain,” this definition is clearer and does not define itself by referring back to the word itself. *See supra* note 19.

32. *See* N.C. GEN. STAT. ANN. § 138A-31 (2006), which states

[A] covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated.

33. *See id.* § 138A-32(a), (c), which provide in part that:

A covered person or legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity. . . . No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal

Although the language of Mississippi's and North Carolina's laws prohibiting the use of public positions for private gain resembles Alabama's, the ethics laws in these two are much more effective. In both of these states the exceptions carving out the circumstances where gifts and spending for public servants are allowed are much more restrictive than Alabama's.³⁴ Both of these states allow lobbyists and others to incur expenses where a significant number of people are included in some form of professional capacity.³⁵ To put it plainly, if the lobbyist or other person is willing to "have a party and invite everybody" those expenses do not violate the ethics laws of those states. Because the nature of inappropriate influence ethics laws need to curtail usually involves small groups and a culture of exclusivity, this exception permitting expenses for large gatherings is not problematic. The other exceptions do not even approach the degree of Alabama's allowed gifts and spending, including the infamous \$250 a day rule.³⁶

In Mississippi and North Carolina the ethics laws require lobbyists to report all gifts that meet the definition of value under those respective codes.³⁷ Moreover, unlike Alabama, the tools empowering the ethics commissions in both Mississippi and North Carolina are far greater than those of Alabama. The ethics commissions in these states have the ability to thoroughly investigate the facts and circumstances surrounding the gift

34. See *infra* notes 35, 49 and accompanying text.

35. Mississippi's code excludes "[e]xpenses associated with social occasions afforded public servants" from the definition of pecuniary benefit. MISS. CODE ANN. § 25-4-103(1) (2001). In an effort to ascertain a thorough understanding of the phrase "social occasion," a search of Mississippi's relevant case and statutory law was conducted. Although the phrase "social occasion" was used in a couple of cases, none of these cases specifically defined the phrase "social occasion."

North Carolina's definition provides greater precision. See N.C. GEN. STAT. ANN. § 138A-32(e) (2006). The act provides an exception to the definition of "gift" that includes food and beverages for immediate consumption at gatherings of ten or more people open to the general public, and meetings where at least ten people attend that all members of certain legislative bodies and organizations such as the House of Representatives and Senate are invited.

36. In defining "[a]nything of value," Mississippi's Lobbying Law Reform Act lists the following exceptions:

1. Informational material such as books, reports, pamphlets, calendars or periodicals informing an executive, legislative or public official or public employee of her or his official duties;
2. A certificate, plaque or other commemorative item which has little pecuniary value;
3. Food and beverages for immediate consumption provided by a lobbyist up to a value of Ten Dollars (\$10.00) in the aggregate during any calendar year;
4. Campaign contributions reported in accordance with [the applicable section of Mississippi's Code].

MISS. CODE ANN. § 5-8-3(a)(ii) (2001). However, in defining a "pecuniary benefit" for public servants, the code includes any "benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit." *Id.* § 25-4-103(l). Unlike in Alabama, the exclusions from the definition of a gift in North Carolina are very modest. See N.C. GEN. STAT. ANN. § 138A-3(15) (2006) (commercially available loans, academic or athletic scholarships made available on the same criteria to the general public, inexpensive expressions and condolences related to the death of an individual, and food or beverages for immediate consumption are not considered gifts).

37. See *supra* note 36.

and issue appropriate penalties.³⁸ Like every other state in the nation, these two states allow their ethics commissions the subpoena power necessary to discover facts as to whether prohibited gifts and spending occurred as well as the circumstances surrounding.³⁹ These two states also allow third parties to report suspected violations based on reasonable belief as opposed to the actual knowledge required by Alabama.⁴⁰ In North Carolina, unlike Alabama, the Ethics Commission is empowered to initiate its own investigation.⁴¹ Also, unlike Alabama, both of these states have mechanisms which allow their ethics commissions to participate in issuing sanctions rather than having to rely solely on the criminal justice system.⁴²

38. Mississippi's ethics commission, on the other hand, has the power to impose a "civil penalty" on those it finds to have violated ethics laws. MISS. CODE ANN. § 25-4-19(a)(ii). While the North Carolina Ethics Commission must refer its findings to the Attorney General if it "finds *substantial evidence* of an alleged violation," N.C. GEN. STAT. ANN. § 138A-12(k)(1) (emphasis added), if the Commission finds *clear and convincing evidence* of a violation, it has the option to either issue a private admonishment that will go into the personnel record of the public servant or refer its findings to one of the following: the Governor and the employing entity of the public servant, the chief justice for judicial employees, the principal clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the state, or the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of Governors and the State Board of Community Colleges. *Id.* § 138A-12(k)(3). The Mississippi Ethics Commission has the power to investigate a complaint "signed under oath by *any person*," (emphasis added) MISS. CODE ANN. § 25-4-19(e), and does not require that the complainant have actual knowledge of the alleged actions. While the North Carolina Ethics Commission must have a sworn complaint and identification of the complainant in order to investigate, N.C. GEN. STAT. ANN. § 138A-12(c), the Commission can investigate so long as the complainant *believes* the allegations to be true but does not have actual knowledge of them. *Id.* (requiring only that "*either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true*") (emphasis added). The North Carolina Ethics Commission has the power to investigate "[o]n its own motion" and does not require a complaint to investigate. *Id.* § 138A-12(b). The Mississippi Ethics Commission, on the other hand, may only begin an investigation upon a signed complaint. See *supra* note 24. Mississippi, like Alabama, may not initiate an investigation without a sworn complaint.

39. For the power of the Mississippi and North Carolina ethics commissions to serve subpoenas, see *supra* note 24, and to issue penalties, see *supra* note 38. Without subpoena power, the investigative powers of the Alabama Ethics Commission have no teeth. Although the Commission has the power to investigate properly filed complaints, in its investigations, it does not have the power to force anyone to turn over any information or documents, and without evidence, facts remain hidden and those who violate ethics laws go unexposed and unpunished.

40. The Alabama Ethics Commission cannot investigate a complaint until the source of the complaint has been identified and that source has *actual knowledge* of the allegations in that complaint. ALA. CODE § 36-25-4(c) (2001) (emphasis added). See also *supra* notes 38 and 39 and accompanying text.

41. See N.C. GEN. STAT. ANN. § 138A-12(b) (2006). The Mississippi Ethics Commission, on the other hand, may only begin an investigation upon a signed complaint. See also *supra* notes 24 and 38. Mississippi, like Alabama, may not initiate an investigation without a sworn complaint.

42. Mississippi's Ethics Commission, on the other hand, has the power to impose a "civil penalty" on those it finds to have violated ethics laws. MISS. CODE ANN. § 25-4-19(a)(ii) (2001). In North Carolina, depending on the amount of the evidence of the violation, the Ethics Commission will either refer its findings to the attorney general or issue a private admonishment. N.C. GEN. STAT. ANN. § 138-12(k)(1), (3) (2006).

CONCLUSION

Although Alabama has had ethics rules concerning the legal profession since 1887,⁴³ there were no comprehensive ethics laws tailored especially for public officials until 1973 nor was there an ethics commission in charge of investigating possible abuses of power.⁴⁴ This left the regulation of public officials' conduct entirely up to general laws that applied to the public as a whole (such as fraud). Most states did not enact their first ethics laws until after the Watergate scandal in 1972.⁴⁵

In 1973, Alabama adopted its first comprehensive set of ethics laws explicitly addressing the conduct of public officials.⁴⁶ Largely due to bickering among the members of the House and Senate over an unrelated bill, Alabama's first ethics laws emerged as "one of the toughest ethics laws in the nation in the early 1970s."⁴⁷ Due to a number of factors, including a

43. See CAROL RICE ANDREWS, PAUL M. PRUITT JR., & DAVID I. DURHAM, *GILDED AGE LEGAL ETHICS: ESSAYS ON THOMAS GOODE JONES' 1887 CODE AND THE REGULATION OF THE PROFESSION* 7 (2003). The 1887 Code of Ethics of the Alabama State Bar was the first detailed ethical code "to be formulated by a state bar association for the guidance of its members. [It] was the primary model for other codes of ethics in the late 19th century and early 20th century. . . . [and] was a key source for what has become a national law of legal ethics." These ethics rules were not laws, however, and did not carry any legal weight like convictions do. They were simply the ABA rules adopted by the state bar governing professional conduct of lawyers, and thus, did not even apply to non-lawyers. This may have helped to serve as some sort of moral guide for the behavior of public officials because the amount of lawyers in politics was quite high for most of the early part of our history, but this is woefully inadequate for our present problems. Although we appear to have been ahead of the curve in developing the ethics for our legal profession, we as a state have a lot of catching up to do regarding oversight and regulation of the conduct of our public officials.

44. See Title 55 §§ 327(8)–(20) and Title 55 §§ 327(22)–(39) (1973) (creating ethics commission and ethics laws).

45. See Wendy J. Johnson, Samuel E. Sears, & Daniel J. Rice, *Oregon Government Ethics Law Reform*, 44 WILLAMETTE L. REV. 399, 401–02 (2007).

Before Watergate, most public bodies throughout the U.S. were without specific laws prohibiting public officials from using their position or office for personal gain. In addition, until Watergate, there were few government agencies (e.g., ethics commissions) set up to monitor and punish unethical government actions. Instead, states relied on honest service requirements in constitutions, charters and other documents and on criminal bribery statutes to keep government officials ethical.

See also Kenneth Vogel & Leah Rush, *Watchdogs on Short Leashes*, THE CENTER FOR PUBLIC INTEGRITY, under *Watergate an Ethical Watershed*, Dec. 13, 2001, <http://projects.publicintegrity.org/ethics/report.aspx?aid=610>. Hawaii was the first state to establish an ethics commission and the only state that had an ethics commission established before the Watergate scandal. *Id.*

46. Alabama's ethics laws were first enacted by 1973 Acts Ala. No. 1056. The ethics laws were originally codified at Title 55 §§ 327(8)–(20) and (22)–(39) (1973). The Alabama code was reorganized in 1975 and the 1973 ethics laws were codified at ALA. CODE §§ 36-25-1 to -30 (2001). See also, James L. Sumner Jr., *Encyclopedia of Alabama: Alabama Ethics Commission*, May 28, 2008, <http://www.encyclopediaofalabama.org/face/Article.jsp?id=h-1554> ("Alabama adopted its first ethics law in 1973.").

47. John D. Milazzo, *Stripping Down State Ethics Law: Alabama Standards Have Run Gamut on Strictness Scale*, MONTGOMERY ADVERTISER, Aug. 7, 1993, at 3F (quoting Melvin Cooper, former executive director of the Alabama Ethics Commission). Melvin Cooper explains that during the 1973 legislative session, the media strongly pressured the legislature to pass some type of ethics reform. *Id.* The senate passed a strong ethics bill thinking that "it was so tough the House would never pass it." *Id.* At the time the senate passed its ethics bill, the members of the house and the senate were angry at

failed attempt in 1993 to strengthen the laws in response to Governor Guy Hunt's felony conviction that year,⁴⁸ the ethics laws lost most of their strength and became, as they are widely viewed today, one of the least effective ethics laws in the nation.⁴⁹

each other over an unrelated funeral home bill. *Id.* In what was described as a "legislative game of 'chicken,'" the house passed the senate's version of the bill and tacked on ten additional strengthening amendments in response to the senate's position on the funeral home bill. *Id.* As a result, the 1973 ethics bill was one of the toughest in the nation when Governor Wallace signed it into law. *Id.* See also Sharon Wheeler, *Money in Politics: Reforming Alabama's Campaign Finance and Ethics Laws*, 45 ALA. L. REV. 675, 696-709 (1994) (discussing the history of Alabama's ethics laws and how an attempt at their reform failed in 1993).

48. In December of 1992, Governor Guy Hunt was indicted on thirteen felony counts. SAMUEL L. WEBB & MARGARET E. ARMBRESTER, *ALABAMA GOVERNORS: A POLITICAL HISTORY OF THE STATE* 252 (2001). Although most of those charges were ultimately dropped, Hunt stood trial on the charge that he took \$200,000 from a 1987 inaugural fund for his own personal use. *Id.* On April 22, 1993, Hunt was convicted of illegally transferring funds from an inaugural account to his personal account. See RODGERS, WARD, ATKINS & FLYNT, *supra* note 3, at 605. ("[Hunt] thus became Alabama's first sitting governor to be convicted of a felony and removed from office."). The personal expenses Hunt paid for with the \$200,000 from his inaugural account were "marble showers and riding lawnmowers." William Booth, *Prosecution Rests Case Against Hunt; Alabama Ethics Law Trips Trial Judge*, THE WASHINGTON POST, Apr. 16, 1993. A major impetus for reforming Alabama's 1973 ethics laws occurred following Governor Guy Hunt's felony ethics conviction.

Governor Guy Hunt's felony ethics conviction on April 22, 1993, forced public officials in Alabama to re-evaluate their use of campaign funds and also generated pressure to reform Alabama's campaign finance and ethics laws. As a result, Governor Jim Folsom called an August 12, 1993, special session to revise Alabama's current system.

Wheeler, *supra* note 47, at 675. Before the special session met, Folsom worked with the attorney general's office and the secretary of state's office to develop a comprehensive reform of Alabama's ethics laws. *Id.* Governor Folsom's initial plan to strengthen Alabama's ethics laws would have allowed the ethics commission to investigate "unsigned, anonymous complaints against public officials." *Id.* at 698. Folsom abandoned this proposal two days before the special session began out of fear that his proposal would not get enough votes to pass the House or Senate. *Id.* at 698-99. Both the Alabama House and the Senate passed an ethics bill which amended the 1973 ethics law; however, Governor Folsom vetoed the bill, which was a watered-down version of the bill he had originally hoped would pass. *Id.* at 676, 706-07.

It was feared that if Folsom signed the bill, legislators could use that as an excuse to ignore efforts to pass meaningful reform packages in future sessions. By vetoing the ethics bill, Folsom ensured that existing law would not be weakened and that there might still be a chance for legitimate reform in future sessions.

Id. at 706-07.

49. One of the first challenges to the new ethics laws found a section unconstitutional that required members of the press wishing to attend legislative sessions to register with the ethics commission. *Lewis v. Baxley*, 368 F. Supp. 768 (M.D. Ala. 1973). Another challenge also found that the ethics laws should not apply to appointed board members in towns of more than 15,000 people even though the laws included them within the definition of a public official. *Comer v. City of Mobile*, 337 So. 2d 742 (Ala. 1976). The Alabama Supreme Court has also found that the ethics laws did not apply to the members of the Board of Bar Commissioners, the Court of the Judiciary, and the Judicial Compensation Commission. *Wright v. Turner*, 351 So. 2d 1 (Ala. 1977).

A thing of value was initially defined as a "gift, favor or service or a promise of future employment," but excluded "[e]xpenses associated with social occasions afforded state officials and employees when such expenses are in amounts of less than \$100 per year per state official or employee entertained." 1973 Acts Ala. No. 1056, § 4. However in 1975, the \$100 limit was removed to make the exception much broader. 1975 Acts Ala. No. 13, § 4. Then, in 1995, the numerous exceptions in the current definition of a thing of value were added including the infamous \$250 a day rule. ALA. CODE § 36-25-1 (2001). The circular definition of personal gain was also added in the 1995 amendments as well as the subsection not allowing public officials or public employees to use facilities,

This Article strongly urges the people of Alabama to demand that the Alabama Legislature adopt ethics laws along the lines of what exists in North Carolina and Mississippi, two sister Southern states that have recently reformed their laws.⁵⁰ Although some have argued that reform of ethics laws provides no magic formula automatically eliminating corruption,⁵¹ the states that have enjoyed stronger ethics laws for many years tend to have lower levels of corruption thus providing hope that reform of the ethics laws can produce positive results at least in the long run.

It is true that North Carolina and Mississippi, like Alabama, have had significant levels of public corruption.⁵² There have been several cases in

equipment, labor, time, or any other public property for his or her benefit. *Id.* § 36-25-5. The 1995 amendments also brought the requirement of having a black member of the ethics commission and restricted commission members from engaging in direct partisan political activity including campaign contributions. *Id.* § 36-25-3. The 1995 amendments also increased the requirements for lobbyists and the requirements for the statement of economic interest. *Id.* § 36-25-19; § 36-25-14.

50. See *supra* notes 29-42; see *infra* note 54 and accompanying text. Louisiana has enacted ethics reform very recently. In 2008 Louisiana's legislators passed their Ethics Reform Act. LA. REV. STAT. ANN. § 42:1101 (2008). This act changed the way the state addressed the unethical behavior of public officials. Specifically, Louisiana's ethics laws now require that public officials make personal financial disclosures. *Id.* § 42:1124. Additionally, the Act prohibits contracts between state government and the executive branch leaders. *Id.* § 42:1113. The loopholes once in place for free cultural and sporting events tickets for elected officials were closed. *Id.* § 42:1115. Furthermore, the Act provides a greater separation between the Ethics Board's advisory, investigatory, and prosecutorial functions. *Id.* § 42:1132. Moreover, in an effort to strengthen the means to fight against waste and fraud in state government the Act created the office of the Inspector General. *Id.* § 42:1141. The limits for contributions to gubernatorial teams is now limited to \$5,000. *Id.* § 42:1125. Lastly, with the passing of this Act, those public officials who violate ethics laws will no longer be able to run for elected office until their fines have been paid. *Id.* § 42:1124.4.

51. See Edward L. Glaeser & Raven Saks, HARVARD INSTITUTE OF ECONOMIC RESEARCH, *Discussion Paper Number 2043: Corruption in America* (2004) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=599042 (using empirical data from all fifty states, calculating the correlations between per capita ethics prosecutions and several factors such as racial heterogeneity, education, income, income equality, and governmental factors such as size and laws and finding that almost all of these factors were weakly correlated with the amount of corruption convictions a state had and that a high amount of education (such as high school graduation rates) was one of the only factors that showed a strong correlation with lower levels of public corruption). This study did find, however, that "states with stricter anti-corruption laws have fewer corruption convictions, so these laws appear to have an effect of dampening corruption." *Id.* at 12. The connection between more stringent corruption regulation and the number of convictions was partially measured by using the state's integrity ranking and then calculating the effects of these laws on the per capita public corruption convictions. *Id.*

52. See John Fritze, *North Dakota tops analysis of corruption*, USA TODAY, Dec. 10, 2008, http://www.usatoday.com/news/nation/2008-12-10-corruptstates_N.htm (chart on webpage showing per capita corruption convictions by state). The chart provides a map of the United States. Scrolling over each state provides the total number of federal public corruption convictions from 1998-2007 per 100,000 residents for that state. By comparing these figures, of all the states Louisiana has the second most convictions per capita at 7.7; Mississippi the fourth at 7.3; Alabama the seventh at 5.4; and North Carolina is the thirty-fourth at 2. *Id.* See also United States Department of Justice, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2007*, 68-74 available at <http://www.justice.gov/criminal/pin/docs/arpt-2007.pdf> (showing public corruption convictions by district of the U.S. Attorney's Office for 1998-2007). This report provides a table breaking out the total number of federal public corruption convictions from 1998-2007 by U.S. Attorney District. For the 1998-2007 period, Louisiana had 332 convictions; Mississippi had 212 convictions; Alabama had 252 convictions; and North Carolina had 179 convictions. *Id.*

both these states in recent years involving corrupt public officials.⁵³ However, unlike Alabama, both states have recently enacted ethics reform providing hope that the laws may operate to curtail corruption of public officials in the future.⁵⁴

53. For examples of cases in Mississippi see *Fleming v. State*, 732 So. 2d 172 (Miss. 1999) (county supervisor convicted of fraud by a public officer for converting public property to private use); *Logan v. State*, 951 So. 2d 630 (Miss. Ct. App. 2007) (mayor convicted of embezzlement for taking furniture that belonged to the city); *Edmonson v. State*, 906 So. 2d 73 (Miss. Ct. App. 2004) (president of city council who accepted bribe pertaining to a street widening project convicted of inducement to influence a public official); *Johnson v. State*, 831 So. 2d 1171 (Miss. Ct. App. 2002) (fire chief convicted of fraud in public office for using public funds to order parts for his personal vehicle); Martha Neil, *Miss. Judge Bobby DeLaughter Pleads Guilty to Scruggs-Related Obstruction*, ABA JOURNAL, July 31, 2009, http://www.abajournal.com/news/article/miss._judge_pleads_guilty_to_obstruction/. For examples of cases in North Carolina see *Strates Shows, Inc. v. Amusements of Am., Inc.*, 646 S.E.2d 418 (N.C. Ct. App. 2007) (discussing conspiracy to receive a public contract for the operation of the state fair); *Gibbs v. Mayo*, 591 S.E.2d 905 (N.C. Ct. App. 2004) (chairman of county board of commissioners found liable to county for all funds he received for performing work under contract awarded by board of commissioners); North Carolina Department of Justice, *Fighting Public Corruption*, <http://www.ncdoj.gov/Top-Issues/Public-Integrity/Fighting-Public-Corruption.aspx> (last visited Apr. 16, 2009) (stating the North Carolina Attorney General's office has investigated more than 500 public corruption cases over the past ten years).

54. North Carolina's original code—N.C. GEN. STAT. ANN. § 120-85 (2006)—included a much more general prohibition on gifts that might influence a public official in his duties, as well as a prohibition on a public official's disclosure of confidential information. This section of code was almost completely repealed upon the legislature's enactment of N.C. GEN. STAT. ANN. § 138A (2006). The new act provided much more guidance to public officials as to what they could and could not do. It included a blanket prohibition on accepting gifts of any kind from lobbyists with only a few exceptions. *Id.* §138A-32(c). It also created a new independent ethics commission. *Id.* §138A-6.

Prior to the 2008 amendments to the Mississippi Code commission members could remain after convicted of a felony or misdemeanor, but the amendments added a provision that automatically suspends any member of the ethics commission who is indicted for a felony and removes from office any member who is convicted of a felony or a misdemeanor involving moral turpitude. MISS. CODE ANN. § 25-4-5 (2001). Also prior to the amendments, the Ethics Commission director did not have the authority to issue written opinions based on prior commission decisions and reported Mississippi court decisions that would be either ratified or rejected by the Ethics Commission at its next meeting. *Id.* § 25-4-17. The Ethics Commission originally had to refer any complaints to the committee or person in charge of regulating ethical conduct for that particular agency or body and wait thirty days for a response rather than starting its own investigation immediately. *Id.* § 25-4-21. The Ethics Commission also originally had to refer any investigations and evidence that had been gathered to the attorney general or district attorney if any civil remedies were sought. *Id.* Because the Ethics Commission could not issue civil penalties of its own, there was also no procedure for appealing those decisions within the legal system. *Id.* The ethics laws before the 2008 amendments also did not cover how public servants needed to deal with blind trusts. MISS. CODE ANN. § 25-4-28 (2001). The ethics commissions previously did not have the authority to fine public servants who failed to file a statement of economic interest after a certain amount of time. *Id.* § 25-4-29. The original ethics laws simply prohibited a public servant from using his official position to obtain pecuniary benefit for him or his family while the 2008 amendments also added a restriction for attempting to obtain pecuniary benefit in those situations. *See id.* § 25-4-105; *Id.* § 25-4-105. Previously, the Ethics Commission did not have the authority to censure a public servant or to order restitution or other legal or equitable remedies in order to recover public property or funds unlawfully taken, and the authority was instead vested in a circuit court. *Id.* § 25-4-107. Previously, only the attorney general or injured governmental entity (rather than the ethics commission) could bring a separate civil action when directly injured by a person violating the provisions of the ethics laws. *Id.* § 25-4-113. The Ethics Commission also did not previously have the authority to enforce the Open Meetings Act with that authority instead vested with the chancery courts. *Id.* § 25-41-15. Finally, the Ethics Commission previously did not have any involvement with

An examination of the five states that have the least amount of public corruption in the nation provides at least some evidence that strong ethics laws can materially help reduce public corruption.⁵⁵ The state of Nebraska, which has less public corruption than any other state, has had strong ethics laws in place since 1976.⁵⁶ Unlike Alabama, Nebraska's Ethics Commission has extensive powers to enforce ethics laws,⁵⁷ which only allows lobbyists to provide public officials very modest gifts.⁵⁸ Most of the

the Public Records Act while the commission now may issue opinions whether a public body would be obligated to turn over public records and those opinions are considered by public record suits within the chancery courts. *See id.* § 25-61-13.

55. *See* Glaeser & Saks, *supra* note 51 at 12. By comparing these figures, the states with the least number of public corruption convictions per capita are Nebraska with 0.7, Oregon with 1; New Hampshire with 1.1, Iowa with 1.2, and Minnesota with 1.3. *Id.* at 18. *See also* U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION FOR 2007, Table III, 68-72 available at <http://www.justice.gov/criminal/pin/docs/arpt-2007.pdf>. The table breaks out the total number of federal public corruption convictions 1998-2007 by U.S. Attorney District. For the 1998-2007 period, Nebraska had 12 convictions for public corruption, Oregon had 36, New Hampshire had 14, Iowa had 35, and Minnesota had 66.

56. The Nebraska Accountability and Disclosure Act (NADA) was originally signed into law on April 13, 1976, and outside of minor changes, additions, and refinements has remained largely unchanged. *See* 1976 Neb. Laws 824, c.f. NEB. REV. STAT. ANN. §§ 49-14,124-49-14,125 (West 2009). The original enactment of the NADA created the Nebraska Accountability and Disclosure Commission (NADC). *See* 1976 Neb. Laws 824. The NADC was granted "the powers possessed by the courts of [the state of Nebraska] to issue subpoenas" and cause them to be served and enforced. *Id.*

57. The Nebraska Accountability and Disclosure Commission (NADC) is required to investigate any complaint of a violation of the Nebraska Accountability and Disclosure Act (NADA) signed under oath by any person, upon the recommendation of the executive director, or upon its own motion. NEB. REV. STAT. ANN. § 49-14,124 (West 2009). The NADC also has "the powers possessed by the courts of this state to issue subpoenas." *Id.* § 49-14,125. In addition, the NADC has a mandate to "make random field investigations and audits with respect to campaign statements and activity reports filed with the commission." *Id.* § 49-14,122. The NADC may impose a violation of up to two thousand dollars for each violation of the NADA. *Id.* § 49-14,126. The NADC may also refer a matter to the state attorney general at any time and if the attorney general declines to prosecute, then his decision is not held confidential. *Id.* § 49-14,133. The filing of a false report under the NADA or committing perjury in a NADC proceeding is a Class IV Felony. *Id.* §§ 49-14,134 to 49-14,135.

58. Unlike Alabama, Nebraska narrowly defines the items excluded as gifts to a public official. *See Id.* § 49-1423 ("Gift shall not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, a gift received from a relative, a breakfast, luncheon, dinner, or other refreshments consisting of food and beverage provided for immediate consumption, or the occasional provision of transportation within the State of Nebraska."). Additionally, Nebraska broadly defines reportable contributions to include "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate . . ." *Id.* § 49-1415(1). The exclusions from the definition of contribution are narrow.

Volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid; . . . Food and beverages, not to exceed fifty dollars in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

Id. § 49-1415(3)(a) & (c). There is also a prohibition stating "[no] principal, lobbyist, or person acting on behalf of either shall within one calendar month give any gifts with an aggregate value of more than fifty dollars to . . . [a]n official or a member of the official's staff" or immediate family in the executive or legislative branch of state government. *Id.* § 49-1490(1).

others similarly have had strong ethics laws for more than fifteen years.⁵⁹ Moreover, unlike Alabama and similar to Nebraska, these states also significantly empower their ethics commissions⁶⁰ and only allow public officials to receive insignificant gifts from lobbyists.⁶¹

Historically Alabama has been the last or one of the last states to enact necessary reforms.⁶² Although many of the states experiencing the highest

59. In 1974, Minnesota passed into law comprehensive definitions and rules relating to the conduct of public officers. 1974 Minn. Laws 1149. This act included the creation of a state ethics commission. *Id.* The ethics commission was granted the power to “make audits and investigations with respect to statements and reports which are filed” within the provisions of the act. *Id.* at 1155. In addition, the ethics commission was granted “the power to issue subpoenas and cause them to be served.” *Id.*

When the Oregon ethics reform act was first passed in 1974, gifts to public officials were limited to \$100 in any calendar year, 1974 Or. Laws Spec. Sess. 176; the ethics commission had the subpoena power necessary to obtain documents and call witnesses when investigating an ethics violation, and there were penalties established for noncompliance with a subpoena, *id.* 180; potential fines for ethics violations were \$1000, rather than the current level of \$5000, and still allowed for criminal and other civil sanctions, *id.* 181; and statements of economic interest had to be provided by public officials, requiring much of the same information to be reported to the ethics commission, *id.* 177. Iowa ethics regulation was enacted in 1992 and is still substantively strong. IOWA CODE ch. 68B (1992).

60. Minnesota, Iowa, Oregon, and New Hampshire’s ethics commissions all have subpoena power to compel the attendance of witnesses and obtain documents needed to complete an ethics investigation. *See* MINN. STAT. ANN. § 10A.02 (West 2009); IOWA CODE ANN. §68B.32B(8); OR. REV. STAT. § 244.260(6)(b) (2009), N.H. REV. STAT. ANN. §14-B:4 (2009). Further, “any person” may file a complaint based on “facts believed to be true” so long as he or she includes sources of those facts and certifies under penalty of perjury that the facts asserted in the complaint are “true to the best of the complainant’s knowledge.” IOWA CODE ANN., § 68B.32B(1) (West 1999). In Minnesota, an individual who makes a false statement or omission in a required filing is guilty of a misdemeanor and may be fined up to three thousand dollars by the CFDB. *See* MINN. STAT. ANN. § 10A.025 (West 2009). As of 2007, the Oregon Ethics Commission is authorized to impose civil penalties of up to \$5,000 for most ethics violations. OR. REV. STAT. § 244.350(1) (2009). Criminal penalties are also available for some ethics violations that “rise to the level of crimes.” Johnson, Sears, & Rice, *supra* note 45, at 408.

61. The Minnesota ethics laws provide that “[a] lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.” MINN. STAT. ANN. § 10A.071 (West 2009). Unlike Alabama, the exceptions to the prohibition against gifts are narrow. *See id.* (excepting allowed contributions, meals at an event where the official is a speaker, and a plaque or trinket of five dollars or less in value from the prohibition against gifts). Iowa public officials may receive “[n]onmonetary items with a value of three dollars or less” during one calendar day. IOWA CODE ANN. 68B.22(4) (1999). New Hampshire public officials may not receive more than \$250 per year per source. N.H. REV. STAT ANN. §14-B:4 (2009). As of 2007, Oregon’s laws now prohibit gifts to public officials exceeding \$50 from one source with a legislative or administrative interest within one calendar year, OR. REV. STAT. § 244.020 (2007), and now completely prohibit gifts in the form of entertainment, such as sporting events, which had been allowed before. *Id.* § 244.040 (2007). Prior to the 2007 reform, Oregon limited gifts to public officials to a \$100 in any calendar year. 1974 Or. Laws Spec. Sess. 176.

62. “Few states other than Alabama were governed throughout the 20th century by a single constitution. Other states updated their governing documents as they modernized. Alabama should have been so lucky. As it was, most if not all the state’s formidable problems had their origins in the 1901 document.” FLYNT, *supra* note 4, at 3. In 1928, Alabama was also the last state to eliminate the practice of convict leasing where prisoners had been leased out to private companies who were then responsible for the prisoners’ care and upkeep but often did not provide safe or clean working and living conditions. *Id.* at 46–49.

Court orders against the state for inadequate or inequitable funding of public schools, mental health facilities, prisons, foster children, and other basic services earned the state increa-

levels of public corruption cases over the past ten years have recently adopted major ethics reform legislation,⁶³ a few of them have not. If our Legislature and Governor act reasonably quickly Alabama does not have to be dead last to take action in the ethics reform area.⁶⁴

Reform of Alabama's ethics laws will improve the social and political climate of the state well beyond the goals of curtailing public corruption and inappropriate influence. It is well known that Alabamians do not trust their government.⁶⁵ The widespread lack of trust in government has been a material factor defeating the reforms Alabama needs to reach its full potential.⁶⁶ Although ethics reform alone will not single-handedly restore this trust, it would be a great place to start,⁶⁷ and hopefully would lead to several more reforms also necessary to restore public trust, including greater transparency as to how money is spent⁶⁸ and campaign finance reform.⁶⁹

singly negative national and international attention. In 1996 Citizens for Tax Justice listed Alabama as one of the 'Terrible 10' states for excessive taxation of poor and middle-class citizens. . . . David Bronner, director of Alabama's retirement system and the nearest thing to a political statesman to be found in state government, denounced the state's system as "the most screwed-up tax system in America, bar none."

Id. at 85.

63. See *supra* note 50. See also N.D. CENT. CODE §§ 16.1-10-01-16.1-10-08 and 54-05.1-01-54-05.1-07(2009).

64. The need for subpoena power has become quite clear and has already gathered many supporters because this current system effectively renders our ethics committee toothless. State representative Cam Ward introduced a bill granting subpoena power to the ethics commission. Although the bill passed in committee, it failed to pass before the full House. Bradley George, WBHM—NPR NEWS, Sept. 21, 2009, available at <http://www.wbhm.org/News/2009/ethicscomm.html>. Representative Jeff McLaughlin has been concerned with ethics laws for a long time now and has introduced legislation banning PAC-to-PAC transfers for over eight years. Sadly these attempts have all failed, but there have been signs of growing success each time. The last time his bill was introduced in 2007 it passed the House with flying colors but it died quietly in the Senate. See Bob Johnson, *Legislators Predict 2007 May be the Year to Pass PAC-to-PAC Ban*, ALABAMA POLICY INSTITUTE, Jan. 22, 2002, available at http://alabamapolicyinstitute.org/legislative_update/legislative.php?ledgeUpdateID=51&dateID=1. Another good sign of things to come is that politicians are starting to realize the importance of supporting these bills. This is evidenced by the fact that top Republicans are promising to make passing these ethics laws a top campaign issue if the controlling Democrats do not succeed in passing these laws this year.

See George Altman, *Election Year Likely to Bring Focus on Ethics Bills*, PRESS-REGISTER (Mobile), Aug. 9, 2009 available at http://www.al.com/news/press-register/metro.ssf?/base/news/12498093261_86700.xml&coll=3; FLYNT, *supra* note 3, at 35

[T]he centralization of power in Montgomery both fed Populist resentment and created a system easily primed against modernization and reform and incredibly susceptible to the influence of powerful interest groups. Coupled with legislative resistance to strong ethics legislation, it is no wonder that, although most citizens trusted their own legislator, they considered the species in general to rank slightly below graverobbers and loan sharks.

See also JACKSON, *supra* note 3, at 290 ("Behind the Republicans were ALFA, committed to low taxes, and the Business Council of Alabama, clamoring for tort reform, while on the Democratic side were AEA, searching for more revenue for education, and the Alabama Trial Lawyers Association, which never saw a tort it didn't like.")

66. See generally, Susan Pace Hamill, *The Book That Could Change Alabama*, 56 ALA. L. REV. 219, 237-46 (2004) (book review); Susan Pace Hamill, *A Tale of Two Alabamas*, 58 ALA. L. REV. 1103, 1133-38, 1140 (2007).

67. *Id.*

68. The Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), requires public disclosure

of records not specifically exempted but does little toward actually making these records publicly available. In order to obtain information, one must make a request. No specific guidelines for requests or request form exists, except that the request is to describe the requested information in such a way that “an employee of the Department of State who is familiar with the subject area of the request can locate the records with a reasonable amount of effort.” 22 C.F.R. § 171.1 (2009). Further, in responding to requests for information, an agency shall make reasonable efforts to search for the records, “except when such efforts would significantly interfere with the operation of the agency’s automated information system.” 5 U.S.C. § 552(a)(3)(C) (2006). These standards leave room for an agency to reject a request for information citing no reason other than interference with the agency’s system or that the request would require an unreasonable amount of effort. Additionally, in the event of litigation, a court “shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility.” *Id.* § 552(a)(4)(B). In other words, an agency will not have to prove that a request required unreasonable efforts.

69. Unlike most states there are no limits on the amount individuals can contribute to a political candidate. See the “Fair Campaign Practices Act” in Chapter 5 of Title 17 of the Alabama Code; see also Edward A. Hosp, *Alabama Campaign Finance Law*, 68 Alabama Lawyer 379, 381 (2007); Bob Blalock, *PAC donations drain public confidence in Alabama’s campaign finance system*, THE BIRMINGHAM NEWS, Feb. 14, 2009 at 8A. Although corporations are technically limited to \$500 that limitation can easily be circumvented by contributing to multiple political action committees otherwise known as PACs. See ALA. CODE §§ 10-2A-70.1–70.2 (1999); see also Attorney General Opinion 99-255, at 5 (explaining that this limit may easily be exceeded because (1) \$500 can be given with respect to any election occurring within the state during the calendar year and (2) the statute does not prohibit \$500 contributions to multiple “candidates, political parties, or PACs”). Although on the surface the campaign finance laws seem to require transparency (donations of \$100 or more must be itemized and individuals are prohibited from making a contribution in the name of another person, see ALA. CODE §§ 17-5-8(c)(2) & -15 (2006)), real disclosure of the source of campaign donations is illusory because the true source of a contribution can be hidden by funneling the money through PACs. See Hosp, *supra*, at 386; Blalock, *supra* (describing how a donor’s identity can be hidden by (1) “depositing money from multiple donors into a single PAC, which then donates the money to multiple candidates” or (2) “take a contribution and move it from PAC to PAC before giving it to a candidate”). See also Vowell, *supra* note 2 (“Banning PAC-to-PAC transfers may be the single most important step we can take toward more ethical and open government”).