



Testimony of VPIRG Executive Director Paul Burns concerning S. 8 – Ethics and Campaign Finance

Testimony before the House Government Operations Committee
April 5, 2017

Introduction

Good morning, Madam Chair and members of the Committee. My name is Paul Burns and I am the Executive Director of VPIRG, the Vermont Public Interest Research Group. For over 40 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy, and so I thank you for this opportunity to share our thoughts on S.8.

I'd like to begin by echoing the sentiments of others who have spoken favorably about the need for an ethics commission and other forms of oversight envisioned by this bill. I also want to underscore our belief that by and large, our elected officials serve the people of Vermont with integrity and decency.

While we agree that the vast majority of public servants behave honorably, this is an age of eroding trust in government, and it is true that the actions of a few can unfortunately reflect poorly upon our institutions as a whole. It is also true that some conflicts or ethical challenges may be avoided by having greater transparency and guidance available.

VPIRG therefore supports the intent and many of the specifics of this proposed legislation.

Section 1 of the bill prohibits legislators and Executive officers from acting as paid lobbyists for one year after leaving office. **Section 2** codifies language from the Executive Code of Ethics that generally prohibits Executive officers from advocating for a private entity in front of a public body regarding matters that the officer had participated in or exercised official responsibility over while working for the State. VPIRG supports these provisions.

Section 3 of the legislation relates to financial disclosure for candidates. Specifically, it requires all candidates for State Office or the General Assembly to file a form with the Secretary of State disclosing:

- ❖ Each source, but not amount, of income over \$10,000 from the candidate and their spouse, including employment, investments, and leases or contracts with the State
- ❖ Any boards, commissions, associations, or other groups on which the candidate serves
- ❖ Any company of which the candidate and/or their spouse owns more than 10%

VPIRG would support an amendment to the bill that would require disclosure of income sources in order to size, though not necessarily disclosing specific amounts. We strongly support the requirement in the bill that candidates for statewide office release their most recent tax return, with certain personal information redacted. We urge the committee to require more than a single year of tax returns, however. Though tax returns have commonly been disclosed by candidates running for governor, there has been no consistency to what information is released and when.

We believe the language in this section generally strikes a balance between the public's legitimate right to know about the financial interests of elected officials and the reasonable privacy interests of those individuals. In particular, VPIRG believes that at a time of eroding public trust in government, more transparency is important. And more detailed information from statewide candidates is essential. Statewide office holders have greater decision making authority over both policies and contracts, and therefore the higher level of disclosure is warranted. Please note, S.8 should be amended to include a penalty for failing to comply with disclosure requirements.

This brings me to one of the most important recommendations we have for your committee: we urge you to require public disclosure of tax returns for presidential and vice presidential candidates in order for their names to appear on general election ballots in Vermont. As you know, a separate bill (H.243) with at least 36 co-sponsors has been filed on this topic. Given the tax return disclosure requirements already included in S.8, the inclusion of this additional requirement makes perfect sense.

The need to address the presidential tax return issue has never been clearer. We can no longer count on tradition to ensure even basic transparency such as this. For the past four decades, presidential candidates from major political parties have voluntarily released tax returns during the campaign, as have recent sitting presidents throughout their terms in office. At least that was true until 2016, when then-candidate Donald Trump refused to release his returns.

It's clear that the public's desire for this information was ignored by the Trump campaign. In January, an ABC News/Washington Post poll found that 74 percent of Americans believed that Mr. Trump should release his tax returns. And since then, the concerns over the president's financial interest and possible entanglements with foreign governments and corporate interests has only grown, to put it mildly.

It may be that the only effective means to ensure that citizens can gain access to the information they need to make an informed choice at the ballot box is to require this disclosure before a candidate can appear on the ballot in a given state. This kind of disclosure can also guard against a possible violation of the 'Emoluments Clause' of the Constitution, Article I, Section 9, Clause 8, that restricts members of the government from receiving gifts, emoluments, offices or titles from foreign states without the consent of the United States Congress.

VPIRG would be happy to provide more detailed testimony on this topic, but I wanted to bring the topic to your attention now as you consider the broad context of S.8.

Section 4 of the bill deals with the so-called "pay-to-play" issue, where a person or corporation may grease the skids for a large state contract by making a political donation to the person who oversees the office issuing the contract.

The bill would prohibit a person who makes a campaign contribution to a candidate for State office from receiving a sole source contract from that same officer or office for one year from the date of the

contribution for current office holders, and for one year from the beginning of the term for new office holders.

It would also prohibit a person who enters into a sole source contract from giving a campaign contribution to the State officer or a candidate for the State office that issued that contract during the term of that contract.

The appearance of corruption that results from pay-to-play arrangements is receiving a great of attention lately because of the actions of the Trump administration. But we are not immune from this problem in Vermont. Furthermore, this is not a partisan issue.

One recent example involved former Attorney General Bill Sorrell, who hired a law firm to assist the State with MTBE litigation in close proximity to the time when he received sizable political contributions from members of the firm.

A similar situation arose when then-Lt. Governor Phil Scott ran for governor while still owning a business that has received very large contracts from state agencies controlled by the office of Governor. It's worth noting that Gov. Scott has taken steps to reduce that conflict by selling his portion of the business. However, since the governor is apparently acting as a personal bank in this case, he retains an ongoing financial interest in the success of the business.

VPIRG urges you to strengthen the pay-to-play section of the bill by 1) Having it apply to all large State contracts, not just sole source contracts, and 2) Going beyond political contributions to address instances where the office holder owns a business that is competing for large State contract. Understandably, citizens detest the notion that a wealthy individual or corporation can game the system by making a generous campaign contribution or providing gifts to state decision makers. Pay-to-play equals corruption, or at the very least the appearance of it, and this bill could do a great deal to root it out in Vermont.

Sections 5 and 6 require the Attorney General or a State's Attorney who receives a campaign finance complaint to report the complaint and any enforcement action resulting from that complaint to the State Ethics Commission.

Section 7 of the bill pertains to the Ethics Commission. VPIRG is broadly supportive of much of the testimony that the Committee has received already describing ways in which this section could be strengthened. If the Commission had greater resources, it could provide more tangible benefits both to the public and to those whose activities fall under its purview. For instance, a Commission that provides more outreach and education to government officials about ethical matters could help those same officials avoid or respond more effectively to challenging situations in the future. This would instill greater public confidence in our officials as well.

Furthermore, a Commission with enhanced regulatory authority and capacity could act as a truly independent body in cases where such a response is warranted. This could help to avoid situations where members of a body or agency are asked to regulate themselves.

Having said that, VPIRG could support the Commission as it was passed by the Senate, as long as other provisions of the bill are improved. This is a modest step forward and a recognition that at a minimum,

Vermonters deserve to have a place to go with their questions or concerns about their elected officials.

What follows is a brief description of the key provisions of S.8 related of the Commission.

Purpose: The State Ethics Commission is an independent commission created to: accept, review, make referrals regarding, and track complaints of alleged violations of governmental conduct regulated by law, of the Department of Human Resources Code of Ethics, and of the State's campaign finance law; to provide ethics training; and to issue advisory opinions regarding ethical conduct.

Code: The Ethics Commission, in consultation with the Department of Human Resources, will create and maintain a State Code of Ethics that sets forth the principles of ethical governmental conduct.

Disclosures: Executive Officers and State Ethics Commissioners must biennially file the same disclosure form as required of candidates under Section 3. Officers will file their forms with the State Ethics Commission, and Commissioners will file their forms with the Executive Director of the Commission.

Membership: The Ethics Commission is made up of five members, with the Chair appointed by the Chief Justice of the Vermont Supreme Court. The four remaining members shall be appointed by: Vermont Chapter of the American Civil Liberties Union (ACLU); the Board of Directors of the Vermont Society of Certified Public Accountants; the Vermont Bar Association; and the Board of Directors of the Vermont Human Resources Association. Appointees must be members or Board Members of these associations. Members serve three-year terms and may not serve more than two consecutive terms. Terms will be staggered.

The Commission will be staffed by a part-time Executive Director, who is responsible for maintaining records, providing administrative support, and any other needs required by the Commission.

Procedure: The Executive Director can receive complaints from any source. He or she first conducts a preliminary review, and then refers complaints to the following bodies based on the complaint type:

- ❖ Violation of governmental conduct prohibited by law → State Ethics Commission
- ❖ Violation of Department of Human Resources Code of Ethics → Commissioner of Human Resources
- ❖ Violation of Campaign Finance Law → Attorney General or State's Attorney of jurisdiction
- ❖ Conduct of State Senator → Senate Ethics Panel
- ❖ Conduct of State Representative → House Ethics Panel
- ❖ Conduct of Judicial Officer → Judicial Conduct Board
- ❖ Any crimes that have been committed in the above areas must also be referred to the Attorney General and State's Attorney of jurisdiction

The Commission requests reports from all bodies regarding the final disposition of each complaint forwarded.

Any violations of governmental conduct prohibited by law shall be reviewed by a meeting of the Commission, which is confidential and not subject to the Public Records Act. If, after review, the Commission finds that they may have been a violation, the complaint is forwarded to the Attorney General and the State's Attorney of jurisdiction. If the Commission finds no violation, it shall close the complaint, which remains confidential.

Meetings held by the Commission are exempt from the Open Meetings Law, and any complaints, findings, reports, etc. from the Commission are exempt from the Public Records Act.

Training: The Commission will collaborate with the Department of Human Resources to make annual governmental ethics trainings available for legislators, State officers, and State employees.

Advisory Opinions: Executive officers or other state employees may request advisory opinions from the Executive Director, who may consult with the Commission to prepare that advisory opinion. Opinions will be confidential unless authorized to be released by the requester.

Issuing Reports: The Commission must report to the Legislature no later than January 15 the number and summary of all complaints by topic and their dispositions, advisory opinions, and any recommendations for legislative ethics regarding government ethics or campaign finance law. Reports will not include any personal identifying information.

Funding: The Commission is funded by a 2.3% surcharge on the per-position charges of the Human Services Internal Service Fund, giving the Commission a budget of \$106,000. This surcharge expires in June 2019.

The bill also requires municipalities to adopt a conflict of interest policy that: defines a conflict of interest, lists all positions covered by the policy, a method to determine whether a conflict exists, action that must be taken in the face of a conflict, and enforcement against violations of the policy.

Conclusion

In summary, VPIRG appreciates the Committee's time and attention to this matter, and we support the passage of S.8. We also encourage you to strengthen the legislation in the areas of disclosure, pay-to-play, and the Ethics Commission itself. Thank you for the opportunity to present this testimony.