

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

STATE GOVERNMENT COMMITTEE
SUBCOMMITTEE ON CAMPAIGN FINANCE AND ELECTIONS

STATE CAPITOL
HARRISBURG, PA

IRVIS OFFICE BUILDING
ROOM G-50

TUESDAY, SEPTEMBER 14, 2021
9:00 A.M.

PRESENTATION ON
LOBBYING REFORM AND DISCLOSURE:
STAKEHOLDER TESTIMONY

SUBCOMMITTEE MEMBERS PRESENT:

HONORABLE RYAN MACKENZIE,
MAJORITY SUBCOMMITTEE CHAIRMAN
HONORABLE DAWN KEEFER
HONORABLE JEFF WHEELAND
HONORABLE MALCOLM KENYATTA,
MINORITY SUBCOMMITTEE CHAIRMAN
HONORABLE JARED SOLOMON

NON-SUBCOMMITTEE MEMBERS PRESENT:

HONORABLE SETH GROVE, MAJORITY CHAIRMAN
HONORABLE FRANK RYAN
HONORABLE SCOTT CONKLIN, MINORITY CHAIRMAN
HONORABLE BENJAMIN SANCHEZ
HONORABLE JARED SOLOMON
HONORABLE BENHAMIN SANCHEZ

MEMBERS PRESENT VIRTUALLY:

HONORABLE BRETT MILLER
HONORABLE KRISTINE HOWARD
HONORABLE JOE WEBSTER
HONORABLE REGINA YOUNG

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*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

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SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

P R O C E E D I N G S

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3 REPRESENTATIVE MACKENZIE: Welcome to the public
4 hearing of the State Government Subcommittee on Campaign
5 Finance and Elections.

6 Today we will hear from a variety of
7 stakeholders regarding a package of reform bills amending
8 the Lobbyist Disclosure Act.

9 The purpose of this hearing is to gain insight
10 and recommendations from regulators, stakeholders and
11 subject-matter experts on the potential impact of these
12 bills and the broader environment of lobbying disclosure,
13 in order to better inform the State Government Committee as
14 it weighs future actions on this issue.

15 This topic is vital to the public interest, and
16 as legislators, it is our duty to ensure that voters have
17 faith not only in the actions, but also in the process of
18 the General Assembly. We have a duty both to the public
19 and to the regulated professions to protect the public's
20 trust in both this institution, and in the work that is
21 done by many professionals working in a variety of roles in
22 this process.

23 We are going to have four panels of testifiers
24 today, including some testifiers and members that will be
25 participating virtually. Because of this, if we encounter

1 any technical difficulties with our virtual meeting
2 software, we will pause the hearing and resume once we have
3 those issues resolved. Additionally, I also want to thank
4 Speaker Cutler for submitting written testimony for this
5 hearing.

6 We would ask that all questions and comments from
7 both testifiers and members focus on the subject of
8 Lobbying Reform and Disclosure. Questions or comments
9 regarding other bills before the State Government Committee
10 or the House that do not pertain to this Lobbying
11 Disclosure Act are not germane to this hearing.

12 With all that, I'd like to begin, and we'll
13 actually call up the first panel of testifiers. They can
14 join us up here. And then I would also -- while they're
15 getting ready, we'll go around and do introductions. I'll
16 start to my left with the Chairman.

17 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
18 you, Mr. Chairman. I just want to say, as we get started
19 here, what you said is absolutely right. Public faith and
20 trust, and how we do the critical work that we do on behalf
21 of the citizens of the Commonwealth is key. And as I often
22 say, we should work just as hard on the areas that we agree
23 as we fight on the areas where we disagree. And, this is
24 an area where I am certain there is a lot of synergy on our
25 side. We want to make sure that everything that is done

1 here is done as transparently as possible, and that the
2 public has faith in the decisions that are made from this
3 body. So, I want to -- looking forward to this hearing.
4 And again, I represent the 181st District in Philadelphia.

5 REPRESENTATIVE SANCHEZ: Good morning, everybody.
6 Thank you for being here today. I'm Ben Sanchez. I
7 represent the 153rd District in Montgomery County.

8 REPRESENTATIVE SOLOMON: Good morning.
9 Jared Solomon representing the 202nd in Northeast
10 Philadelphia. Thank you.

11 MAJORITY CHAIRMAN GROVE: Good morning.
12 Seth Grove, State Representative, 196th District, York
13 Count.

14 REPRESENTATIVE NELSON: Good morning.
15 Eric Nelson representing the 57th District, Westmoreland
16 County.

17 REPRESENTATIVE RYAN: Representative Frank Ryan,
18 101st District, Lebanon County. I would like to wish
19 Representative Grove a happy birthday today.

20 REPRESENTATIVE WHEELAND: 21 again.
21 Representative Jeff Wheeland, Lycoming County, 83rd
22 District.

23 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
24 Well, thank you to all the members that are joining us.
25 The first panel that we are going to be hearing from is

1 from the Pennsylvania State Ethics Commission. We have
2 Robert Caruso, the Executive Director of the Ethics
3 Commission, and Brian Jacisin -- that's correct -- Chief
4 Counsel. If you guys can please join us.

5 All right, and I would also like to note the
6 participation virtually. We have Representatives Howard,
7 Webster, Young and Miller joining us as well. And again,
8 all members are going to be free to participate and ask
9 questions of the testifiers, either virtually or in person.
10 Thank you again, gentlemen. If you would, please feel free
11 to start.

12 MR. CARUSO: Good morning, Chairman Grove and
13 members of the committee. My name is Rob Caruso. I am the
14 Executive Director of the State Ethics Commission. With me
15 today is Brian Jacisin who is the commission's Chief
16 Counsel. And, I have also asked Jeffrey Frankenberg, the
17 commission's supervising investigative counsel who has
18 primary responsibility for lobbying compliance and
19 enforcement to join me up here today.

20 We are here today pursuant to the invitation of
21 the committee to provide testimony and offer any comments
22 and suggestions as the commission -- or as the committee
23 debates the package of lobbying disclosure laws that are
24 before it. The commission is appreciative of the
25 opportunity to appear here today and is -- will offer

1 whatever assistance we can to the committee.

2 In addition to the duties and responsibilities
3 the commission as in relation to the State Ethics Act, the
4 commission has since 2006 been tasked with the enforcement
5 of the registration and reporting requirements of the
6 Lobbying Disclosure Law. In addition, the commission will
7 also issue advisory opinions related to that law.

8 The commission's primary focus in dealing with
9 the registration and enforcement compliance requires that
10 we interact cooperatively with the Department of State.
11 Our compliance process is outlined in our written
12 statement. And I won't go through it here, but we have
13 worked, as I said, very cooperatively with the Department
14 of State and with the amendments to the law which have
15 required the filing of documents online; has been a big
16 help in achieving compliance with these reporting
17 requirements.

18 As we indicated in one of our addendums regarding
19 the warning notices that get sent out, we had a high of 273
20 in 2014, and that has gradually reduced to -- this past
21 year we only had 56 warning notices go out. So, we think
22 that is a testament to the -- getting the message out and
23 getting greater compliance from those in the lobbying and
24 principal community.

25 I think you will also notice in the addendum that

1 there is a sharp increase in penalties that is due in part
2 to -- the penalties themselves have increased as a result
3 of some amendments to the Act. But, the most recent one's
4 you will notice, there was \$375,000 worth of penalties
5 issued by the commission at their last meeting in June.
6 That was a situation where we were surprised we got no
7 response, but this is one of the issues that maybe we could
8 get into. Maybe not at this time, but at a later time,
9 where -- how does the commission then -- once they levy
10 those penalties, how do they collect it? And that's always
11 an issue. And if -- you know, if you have a law with large
12 penalties, substantial penalties, you can issue the
13 penalty, but how do you collect it? So, in a sense we
14 become inefficient if we can't collect these penalties.

15 As we said in our prepared statement, the
16 commission is supportive of the package of bills that are
17 before it, and also any bills where legislation that
18 promotes transparency, limits undue influence and promotes
19 ethical conduct of our public officials and also those
20 doing business with the Commonwealth and attempting to
21 influence passage of legislation.

22 On behalf of the commission, we thank you for the
23 opportunity to appear here today, and we are ready to
24 answer any questions that any members of the committee may
25 have.

1 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
2 you. And, I see that we are joined by a third member of
3 the panel. If you would just like to introduce yourself,
4 please.

5 MR. FRANKENBURGER: Sure, thank you.
6 Jeffrey Frankenburger, Supervising Investigative Counsel
7 for the Investigative Division.

8 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
9 thank you. So, the first question I'll start with is, I
10 see in your testimony and the written testimony -- it was
11 under House Bill 1601 in your remarks here -- that you are
12 looking for a clear definition of what constitutes equity.
13 And so, just wondering if you could provide some more
14 clarity on -- you know, or enforcement considerations you
15 believe that we should consider when defining equity there.

16 MR. CARUSO: Yeah, go ahead.

17 MR. FRANKENBURGER: Sure, I can take that one.
18 Thank you, Representative. As this -- equity reporting has
19 already been passed into law. I think it was Act 70 in the
20 -- passed in the Administrative Code. We've already
21 received probably about a dozen questions from lobbyists on
22 what does equity mean. And, the Ethics Commission worked
23 with the Department of State on getting their form up and
24 running on their website, and we just received questions
25 from all over the lobbying community on what does equity

1 mean. And so, we have worked with them to try to get a
2 good definition up, but it seems like everyone has a
3 specific hypothetical that breaks whatever we tell them in
4 the previous definition. So, guidance from the committee
5 on that I think would be really helpful.

6 And then in regards to enforcement, I don't think
7 it's clear in what's passed now under Act 70 how that
8 equity reporting would be enforced. The way that I look at
9 it is it would be enforced under the Notice of Alleged
10 Noncompliance in Section 13A09 of the current lobbying
11 disclosure law. And I think in the event that we start
12 moving towards enforcement on these things and what's
13 currently passed, that's how we would approach it, but I
14 don't think it's clearly spelled out. And so if some were
15 to be clearly spelled out, I think it would make
16 enforcement of that easier. Thank you.

17 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
18 right, thank you. I would like to note the participation
19 of Representatives Keefer virtually and Representative
20 Conklin joining us here in person. I am going to turn the
21 first questions to the chairman.

22 REPRESENTATIVE KENYATA: Thank you. And I guess
23 this might be a question for you or for the chair. What
24 sort of issues are you seeing mainly or routinely come up
25 in terms of lack of compliance.

1 MR CARUSO: Go ahead.

2 MR. FRANKENBURGER: Sure. Thank you,
3 Representative. I think in terms of lack of compliance, we
4 see issues where principals who have registered to lobby on
5 an issue that is done in a short period of time and then
6 they stop lobbying that they don't terminate their
7 registration, and then they -- their registration is
8 ongoing. And they file an expense report for the quarter
9 that they're actually lobbying, but then they stop
10 lobbying, and they don't file expense reports for the rest
11 of that registration period, and they end up getting large
12 fines when they're not actually lobbying.

13 So, some mechanism -- I think we included that in
14 our addendum, some mechanism where either the lobbyist who
15 is lobbying for the principal can terminate or, since 1606
16 kind of flips the script on who is registering, that may
17 assist in negating some of these large fines you see when
18 some unsophisticated principals, I may say, who aren't that
19 familiar with the lobbying law start lobbying and then just
20 don't know how to stop their registration.

21 REPRESENTATIVE KENYATA: Thank you.

22 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
23 you. Next we'll go to Representative Wheeland.

24 REPRESENTATIVE WHEELAND: Thank you. I notice --
25 and I guess this is to Mr. Caruso -- the -- in your

1 Addendum #2 under House Bill 1602. Can you expound upon
2 your concerns that H.B. 1602 could constitute contingent
3 compensation under the Act?

4 MR. CARUSO: These guys are the experts. I'm
5 not.

6 REPRESENTATIVE WHEELAND: Nice handoff.

7 MR. JACISIN: Thank you, sir. If I could respond
8 to that; Brian Jacisin. Actually, this was a issue that we
9 discussed briefly. The concern is under 13A07E contingent
10 lobbying is prohibited. And, our thought on this was that
11 potentially a third party is rewarding, or it appears as
12 though they are rewarding a lobbyist for the successful
13 acquisition of grant money. And our concern was, in trying
14 to promote reform and transparency, what would be the
15 purpose for that payment? And, why would a third party be
16 issuing that to a lobbyist? Why would it not just be
17 either the principal or an entity associated with the
18 principal, not a third-party entity?

19 REPRESENTATIVE WHEELAND: Okay, thank you.

20 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
21 right, next Representative Solomon.

22 REPRESENTATIVE SOLOMON: Thank you, Chairman.
23 So, I wanted to follow up on Chairman Kenyatta's question.
24 So, you just had mentioned the one point about someone
25 lapses and then they don't terminate. But, can you just

1 talk more, right? So we've had the Ethics Act. Can you
2 talk about concerns you have had and you have seen in terms
3 of lobbyist disclosure and transparency to ensure that what
4 we are doing is reflecting what you are actually seeing on
5 the ground day to day since '06?

6 MR. CARUSO: Wow. Our greatest concern to
7 increase the transparency is, we don't audit. We don't see
8 -- we don't conduct the audits of what the principals and
9 the lobbyists are submitting as their expenses. And I see
10 that perhaps as one of the larger issues, that if the
11 committee was going to tackle something, you know, what's
12 being spent, and how is it being spent? And with what our
13 compliance -- what we do is, we basically look. Is
14 somebody -- are they registering, and are they filing
15 quarterly expense reports? That's really the extent of it.

16 So, if you don't have some mechanism to really
17 get into how the dollars are being spent, and probably,
18 perhaps looking at -- you know, you have the threshold
19 reporting limits, the \$3,000. Perhaps it should be
20 first-dollar reporting. That -- you know, if the concern
21 is really being totally transparent, that's total
22 transparency.

23 REPRESENTATIVE SOLOMON: So, Mr. Caruso, just to
24 pause on that. So, there is a bill -- I think it might be
25 Chairman -- I can't remember who it is -- on auditing.

1 What do you all think of that bill? And do you think,
2 would you make specific changes to it?

3 MR. CARUSO: We are supportive of the auditing
4 bill. And changes? I don't see anything that jumps out at
5 me that we would change. The issue, I guess if there would
6 be, is are the numbers readily available? Who's doing the
7 audits? You would have to ensure that the -- if audits are
8 being done, are they being made available remotely or in
9 paper for someone to file a Right to Know to get the look
10 at them.

11 REPRESENTATIVE SOLOMON: And then on the other
12 point, first-dollar reporting. Can you talk about what
13 exactly that -- how would that work? How would the
14 operation change from what you currently do right now?

15 MR. CARUSO: For what we do, it's so much --
16 really, what our process is, is if someone files. We just
17 have to ensure that they file. We don't really check, is -
18 - if someone's fine -- is the information accurate that's
19 being disclosed?

20 So, we don't even -- you know, we don't look at
21 any of the reporting. I'm just saying those who would
22 regulate it, which would probably be more the Department of
23 State and as far as what the principals would be disclosing
24 when they file these quarterly reports. Yeah. And, Brian
25 would like to add something.

1 MR. JACISIN: If I may expound on that a little
2 bit. So, what Mr. Caruso was explaining, right now, the
3 way the lobbying law is drafted, you have this exempt from
4 registration area. So, lobbyists that spend less than a
5 certain number of hours, or less than the threshold of
6 \$3,000 or more during that quarter are exempt from
7 lobbying.

8 And again, not making any accusations or
9 insinuations that people are not accurately reporting, but
10 a very simple thing to do is to divvy that money up that
11 you are spending amongst multiple principals. So you may
12 have a very large lobbying firm, or you may have a lobbyist
13 that represents a number of individuals, and they could
14 very easily take their expenditure and segregate that out
15 amongst many principals. Therefore they never cross that
16 \$3,000 threshold, even though they may be spending ten, 15,
17 20, \$100,000 during that quarter by allotting that
18 expenditure of less than 3,000 per quarter. They don't
19 have to report that. It never hits the radar.

20 So, as Mr. Caruso was saying, we are -- we as the
21 State Ethics Commission are not aware of what actually is
22 being spent, because it's all exempt from registration. If
23 there would be a bill introduced or amended that would
24 require first-dollar reporting, then the first time any
25 lobbyist or principal spends a dollar, or even a nominal

1 amount of, you know, maybe ten, 15, \$20 reduced somewhat
2 from that \$3,000 threshold would require reporting,
3 therefore more accurately disclosing where money is being
4 spent and how that is attempting to influence legislation.

5 Because it is all a self-report law, it's very
6 difficult to be able to match up dollar for dollar or, as
7 Mr. Caruso said, you know, enforce the accuracy of the
8 filing of these reports. It's -- we don't have the access
9 to a lobbyist's credit card so we can match up what is the
10 actual expense report versus what have you reported. And
11 even if we did, again, there could be instances where it
12 would be exempt from being reported.

13 REPRESENTATIVE SOLOMON: Could I have one more?

14 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE:
15 Quickly, yeah.

16 REPRESENTATIVE SOLOMON: Okay.

17 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
18 you.

19 REPRESENTATIVE SOLOMON: So you mentioned just
20 audit function, first-dollar reporting. In the universe of
21 reforms that -- in the many years that you have been
22 looking at this issue, what -- any other issues that you
23 would want to see us implement?

24 MR. CARUSO: We think training is imperative,
25 both when -- in filling -- how to fill out the forms. You

1 know, that's something that could be split between, you
2 know, the Department of State and the commission.
3 Department of State would take the ball with how to fill
4 out the forms, you know, to make sure that they get that
5 kind of compliance. And then on the actual nuts and bolts
6 of the law commission issues of the advisory opinions that
7 they should be required to hour, half hour, whatever,
8 annually -- like a CLE credit.

9 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
10 you. And, I'm going to go back to the democratic chair for
11 just a moment. I think we're having a good conversation on
12 this point, but would like to note for the members that we
13 do have a lot of testifiers today, so we do want to move
14 through them quickly.

15 REPRESENTATIVE KENYATA: Thank you, Mr. Chairman.
16 Mr. Caruso -- and this point, I don't know how it slipped
17 my mind. You said it in your opening here. You talked
18 about actually recovering the penalties that you levy.
19 What is the current mechanism by which you try to recover
20 those penalties, and what can this committee do to give you
21 the ability to recoup the penalties that you levy more
22 quickly?

23 MR. CARUSO: What the current process is, if a --
24 if the penalty isn't paid, the commission will issue an
25 order directing the payment within 30 days. If that isn't

1 -- if there isn't compliance, our recourse is to file an
2 action in Commonwealth Court. And, there are times that
3 when Jeff does all of our compliance before the courts,
4 they will ask if we can get together to, you know, reach a
5 dollar figure that might not be the maximum of what was
6 levied by the commission.

7 There are times that, you know, we can't get
8 compliance. If we can't get service on a principal -- the
9 last ones that I had mentioned in the testimony, several of
10 them are out of state. So, to get service, good service,
11 to get them into court is a problem. We would like to see
12 some kind of a mechanism or something in the Act that we
13 can give the commission the oomph to go after someone who
14 is located out of state.

15 REPRESENTATIVE KENYATA: And is -- and thank you,
16 Mister -- my last quick follow-up. And so, when you talk
17 about the process through which you have to go to the
18 Commonwealth Court and what I'm hearing from you is that
19 the judge may routinely, or different judges may routinely
20 ask you to settle. Do you think it's a pattern in practice
21 of lobbyists to ignore your initial outreach knowing that
22 they can go to court and actually pay less than what you
23 have penalized or --

24 MR. CARUSO: I don't think we've really seen
25 that.

1 REPRESENTATIVE KENYATA: Okay.

2 MR. CARUSO: And I think that it's more of some
3 of the groups that are located out of the area, out of
4 state where we're having, really, the biggest areas with
5 compliance.

6 REPRESENTATIVE KENYATA: Okay, thanks.

7 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
8 right. We have Committee Chairman Grove:

9 CHAIRMAN GROVE: Thank you. Thank you,
10 gentlemen. This just brings back memories of the first
11 oversight investigation we did on lobbying disclosure law,
12 so I appreciate that, specifically your questions on
13 auditing.

14 Within the package of legislation, one of the
15 most important things is agencies' abilities to actually
16 implement them. So, kind of based on the scope of the
17 packages, do you have any implementation issues with any of
18 the legislation, or any recommendations to assist you in
19 doing that?

20 MR. CARUSO: Boy.

21 CHAIRMAN GROVE: Small question.

22 MR. CARUSO: Nothing very specific, but if -- as
23 technology advances -- you know, I don't think we're
24 dinosaurs over at the commission with what we have;
25 technology. But, I'm sure we're not up to date on

1 everything.

2 If we were added more responsibilities, probably
3 a little bit of funding for technology would be the biggest
4 thing. And if we were involved in auditing, the commission
5 doesn't employ any accountants or anything like that. We
6 would have some staff to do it, but maybe some minor
7 considerations that way.

8 CHAIRMAN GROVE: Got you. Specifically on two
9 bills, 1603, your testimony suggested that a definition of
10 staff be included. What did -- and do you have any
11 additional specificity which you would like to see as
12 beneficial beyond the definition of state employee used in
13 the Lobbying Disclosure Act currently?

14 MR. JACISIN: No. Our concern really was just
15 how wide sweeping is the definition, staff? Does it
16 include direct-line staff? Does it include interns? Would
17 it include, you know, other employees, not necessarily the
18 House. A stepping stone we thought was something similar
19 to the definition of public employee that's contained in
20 the Ethics Act.

21 CHAIRMAN GROVE: Okay. And then on
22 implementation of 1606, it includes a machination under
23 Section 13A04 for principals or firms to file a Notice of
24 Termination when necessary. Do you believe the system is
25 capable to support in-term terminations outside of the

1 normal biannual cycle?

2 MR. FRANKENBURGER: I can talk about that. It
3 already kind of does. And by the system, do you mean the
4 Department of State's --

5 CHAIRMAN GROVE: Yeah.

6 MR. FRANKENBURGER: -- filing system? So, that's
7 going to need to be updated with this, no question. And
8 I'm sure they're going to tell you all about that. Since I
9 deal with that on a day-to-day basis in terms of --
10 Department of State has been incredibly cooperative in
11 giving me access to be able to go in and see when I need to
12 go in and look at something. It needs an update pretty
13 significant. And, for all these extra reporting
14 requirements throughout this package, it's going -- it is
15 going to be pretty significant.

16 But, in terms of the question about termination,
17 it does -- the system now does allow for termination in the
18 middle of a registration period. It's just not intuitive,
19 and I think that's where a lot entities get in trouble.

20 CHAIRMAN GROVE: Got you. And your interaction
21 with the Department of State online, how does that work for
22 you? Is it easy access and convenient? And, do you need
23 any additional authority to be able to access Department of
24 State's lobbying disclosure website or online tools?

25 MR. FRANKENBURGER: With the staff that's there

1 now, I have a -- I think we have a pretty good relationship
2 with them, and they have been helpful. Sometimes when they
3 do things with their website it will kick me off, and I
4 have to ask them to allow me back in; that kind of thing,
5 but it hasn't been a problem thus far. You never know with
6 changes in staff or administrations if that relationship
7 could change. So, something statutorily granting us access
8 I think would be helpful, but right now we have a good
9 relationship. And it makes our job -- it makes everybody's
10 job easier, the more access that we have.

11 CHAIRMAN GROVE: Great. It is good to have good
12 relationships and work together. Thank you.

13 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
14 you. And, I believe the last question comes from
15 Representative Ryan.

16 REPRESENTATIVE RYAN: Thank you so much for being
17 here today. Truly appreciate it. You know, we have a
18 House Bill 1609 which is related to the training which you
19 address in your remarks. And so I would kind of like to
20 ask you somewhat of a twofold question.

21 I'm a former chair of the Ethics Committee for
22 the Pennsylvania Institute of CPAs, and when we did our
23 ethics analyses, we saw two different types of complaints,
24 those that were bad actors and those that just made
25 mistakes and were not bad actors. How do you make sure

1 that the training properly reflects that so that we can
2 minimize the number of people who just want to comply but
3 just for -- through some fault -- as an example the one
4 case you mentioned, the person was actively engaged in
5 lobbying for a quarter then wasn't; didn't know they didn't
6 have to file, so now they're getting penalized
7 significantly. How do you distinguish between the two, and
8 should that be incorporated into training?

9 MR. CARUSO: Oh, absolutely. I believe it should
10 -- that type of situation needs to be incorporated in the
11 training.

12 And as far as us looking at bad actors, I can say
13 -- I'm thinking of the number of actual investigations we
14 have initiated for violations of the lobbying law. We've
15 only had two in 15 years, so I think that's pretty good as
16 far as looking at whether -- you know, how many bad actors
17 might be out there.

18 But the training itself, I think the repetition
19 -- what we're seeing -- and I'll draw a comparison to what
20 we do with the Ethics Act. We saw a reduction in the
21 number of Ethics Act complaints that we have received over
22 the years when we increased the number of trainings that we
23 do of public officials. And I think it's just the
24 reinforcing of the provisions of the law and trying to
25 stress accountability, integrity, transparency. And I

1 think maybe the more someone hears it the better effect it
2 seems to have.

3 REPRESENTATIVE RYAN: The Commonwealth of
4 Virginia has a two-hour mandatory training that's very
5 prescriptive in nature. The Department of State basically
6 says, here is the type of training you will do, and it's
7 based upon the ethics violations that have happened in the
8 preceding few years. Do you recommend something like that
9 to keep the number of, you know, for lack of a better term,
10 reporting those innocent mistakes down? And by the way, I
11 would agree with you. In the CPA world we found very few
12 bad actors, so I agree with your comment.

13 MR. CARUSO: Yes. And I think -- you know, we
14 call -- when we do training, we try to point out and bring
15 to the front decisions, whether there are opinions or
16 actual orders issued by the commission, of the issues that
17 arise. Because, you know, we do get the common things, the
18 nepotism and basic conflicts of interest that we discuss,
19 but by reinforcing it through the orders -- and we call
20 them war stories when we get before a group. But it does.
21 I think it has a great effect.

22 REPRESENTATIVE: Fantastic. Thank you very much.
23 Mr. Chairman, that's the last question I had.

24 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
25 Thank you, Representative Ryan. I think that was the last

1 question that we have on specific bills, but we actually do
2 have some other questions relating to lobbyist disclosure
3 law just in general, and so I will turn to Representative
4 Nelson for that.

5 REPRESENTATIVE NELSON: Thank you, Mr. Chair.
6 And, I appreciate, you know, you all being here today and
7 sharing your information and perspective. It's really
8 valuable. I was able to be part of the oversight committee
9 process from in the past and learned a good bit there.

10 My question is for Mr. Jacisin. If you can
11 expand a little bit on the -- you had mentioned the
12 first-dollar reporting, or what I refer to as the
13 first-dollar reporting and that \$3,000 threshold. If we
14 were to implement first-dollar reporting. How much
15 additional workload would you -- or additional reporting,
16 enforcement workload. How would that impact your office?

17 MR. JACISIN: I think we -- it would be a very
18 minimal impact on our office. I think the -- what that
19 would do is it would just require the lobbyists and
20 principals to keep better track of where their dollars are
21 being spent, and then to report that on the Department of
22 State's form that they do right now.

23 Again, they do report once it crosses that
24 threshold of the \$3,000. It would be starting with, again,
25 dollar one or some other amount smaller than 3,000. I

1 don't believe that it would create any additional workload
2 though for the State Ethics Commission.

3 REPRESENTATIVE NELSON: And would there, or could
4 there be a possibility that -- because there is the act of
5 lobbying, and there is the act of financial investment
6 through lobbying. Would the -- like an annual registration
7 of when somebody is engaging an active lobbyist. You know,
8 is there a need to be financially focused, or would it be
9 able to shift on the effort of lobbying itself?

10 MR. JACISIN: I guess perhaps the best way to
11 answer the question would be, there really would not need
12 to be a change in -- much of a change in the way the
13 registration reporting process is currently being
14 conducted. It would just be lowering the threshold again
15 from that \$3,000 threshold down to a zero dollar or
16 first-dollar reporting.

17 REPRESENTATIVE NELSON: Okay, great. Thank you.
18 Thank you, Mr. Chair.

19 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
20 you. Gentlemen, I see in your testimony, in Addendum 3 you
21 mention 13 -- Section 13A05B. And so, I guess my question
22 there would be, do you think that written notice should be
23 required under that section to be provided to the Ethics
24 Commission in addition to the Department of State? And, is
25 there an issue with current compliance?

1 MR. FRANKENBURGER: I can take that one from you.
2 We don't see, necessarily, an issue in compliance that
3 leads to any kind of enforcement. We get a lot of
4 questions and calls from lobbyists, just on a day-to-day
5 basis, on all parts of the lobbying disclosure law. And I
6 think that's a great thing, because they want to know how
7 to file their things correctly. And sometimes there's
8 questions about this kind of notice requirement. And then
9 we get questions from members of the General Assembly as
10 to, hey, I received this notice, what does it mean, what
11 does it do? And I think sometimes, if it were to come to
12 us like financial disclosure statements do, that we would
13 be better able to connect the two parties and make sure
14 that everything that needs to be filed is filed. Because,
15 nobody wants to get a notice from a lobbyist and then not
16 enter that correctly on their statement of financial
17 interest. And so I think if it were to come to us, we
18 could facilitate that, in the way that we do now, just
19 without it being in the statute.

20 MR. CARUSO: Yeah. I might add on that, we have
21 had instances where lobbyists or principals have reported
22 that Public Official A received tickets to a sporting
23 event, and they may have valued them at, you know, \$1,000,
24 whereas the public official sees the face value of the
25 ticket which is substantially less and doesn't get

1 reported.

2 And so you have the lobbyist reporting it and the
3 public official filing a state -- annual statement of
4 financial interest and doesn't disclose the tickets as
5 transportation, lodging and hospitality, and it gives the
6 appearance that there was a nondisclosure -- you know, and
7 someone could assume that there was something negative, or
8 they're trying to hide something. So, I think these
9 written notices could help with that, so that both the
10 public official and the lobbyist are on the same page.

11 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Okay.
12 All right, thank you. One other quick question there. So,
13 there are potential enforcement benefits of an alternative
14 suggestion for quarterly expense reports to include the
15 identity of each official or employee who received gifts,
16 travel, lodging, et cetera. Can you just go into a little
17 more detail on that?

18 MR. CARUSO: Boy, I'm not -- go ahead, Jeff.

19 Mr. JACISIN: Sure. So, I think that's something
20 that you see a lot in other states. They have the names of
21 the actual public officials who are being lobbied and given
22 gifts or given transportation, lodging, hospitality. And
23 so, that is just a suggestion that we threw onto that is
24 something that other states are doing that we've seen that
25 increases transparency and openness in government. And so

1 that's why we included that on there.

2 Once again, it would create the need to update
3 the expense report form to be able to include that
4 information, but that's something that we felt could be
5 appropriate.

6 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Okay,
7 great. Well, we are going to continue with questions, but
8 I do want to commend you. I appreciate the suggestions
9 that you are offering proactively to the Lobbyist
10 Disclosure Act. I think that's very helpful in our work,
11 so thank you for that. Next up, Representative Wheeland.

12 REPRESENTATIVE WHEELAND: Thank you. You suggest
13 that registration information be reaffirmed each quarter,
14 and notice provided upon separation of a principal. Is
15 there currently an issue with outdated registrations and or
16 principals that it has to be updated quarter -- or, you
17 know, reaffirmed quarterly?

18 MR. CARUSO: Well, there have been, but Brian --
19 yes. We have found that, in trying to -- if we need to
20 send notifications that some of these addresses are
21 outdated -- but, Brian, if you have more information on
22 that.

23 MR. JACISIN: Yes. That's what Mr. Caruso and
24 Mr. Frankenburger were talking about earlier, where you may
25 have an entity that registers for a specific issue; you

1 know, House Bill 100. Once that bill has been entertained,
2 that principal will sever or discontinue the relationship
3 with the lobbyist or lobbying firm. The lobbyist or the
4 lobbying firm will then disassociate on their filing and
5 state we are no longer associated with this principal;
6 however, that principal doesn't terminate their
7 registration. So, for the next two years they are required
8 to file quarterly expense reports.

9 What we were hoping to be able to do is, once
10 that relationship was terminated the lobbying firm or the
11 lobbyist could then terminate the registration, so we don't
12 have these -- a negligent non-filing as opposed to a bad
13 act, someone who is intentionally not filing, someone who
14 simply says -- we have received multiple times, well, we
15 discontinued our relationship with the lobbyist, we thought
16 we were done, and the response is, no, you're still
17 actively registered, you still are required to file
18 quarterly expense reports.

19 REPRESENTATIVE WHEELAND: So the burden would be
20 on the lobbyist to update these records and not on the
21 individual?

22 MR. JACISIN: I don't believe the burden would
23 shift to the lobbyist. What we were hoping, would be able
24 to allow the lobbyist the tool to be able to terminate that
25 registration on behalf of the principal.

1 Sometimes these relationships, when they are
2 terminated it's amicable. We have hired you, our issue is
3 done, we want to stop lobbying in Pennsylvania. It would
4 just allow the lobbyist or the lobbying firm to then be
5 able to, again, terminate a principal's registration on
6 their behalf.

7 REPRESENTATIVE WHEELAND: I think that's a good
8 suggestion, so thank you.

9 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
10 you. All right, back to Committee Chairman Grove.

11 CHAIRMAN GROVE: Thank you. You suggest that
12 registration information be reaffirmed each quarter, and
13 notice provided upon separation of a principal. No, not --
14 sorry, sorry. How would the inclusion of direction
15 communication in quarterly expense reports impact the
16 reporting and enforcement of the lobbying disclosure law?
17 Would you recommend this extend to conversations in
18 meetings where no financial benefit was exchanged?

19 MR. JACISIN: I believe again this goes to a
20 first-dollar reporting. It's very difficult, again, to
21 enforce the law where we don't have any information to be
22 able to gauge what is actually occurring. So, where there
23 is direct communication, there are no notes of that. There
24 are -- there is no reporting. Members of the General
25 Assembly are very busy, and a lot of times they may not be

1 taking notes of who is this person I'm talking to. We do
2 not believe the burden should be on members of the General
3 Assembly to have to keep of track of who stopped them in
4 the hallway, or may be provided 15 minutes of a statement
5 to them in their office. But, the lobbyists should be
6 keeping track of who are they communicating with, and on
7 whose behalf are they communicating, disclose that to
8 members of the General Assembly, and also to be able to
9 report that in the event that the lobbyists are crossing
10 the thresholds for registration reporting requirements.

11 CHAIRMAN GROVE: Got you. Thank you.

12 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE:

13 Representative Solomon?

14 REPRESENTATIVE SOLOMON: Thank you, Chair. Can
15 you talk about our current definition of lobbying and
16 possible changes? I know we tinker around a little bit in
17 these -- this package of bills. But specifically, do you
18 think that current we capture shadow lobbying, counseling,
19 giving strategic advice that would not be categorized,
20 defined as lobbying?

21 MR. JACISIN: If I can, we'll talk on the
22 investigation we had. Without disclosing any
23 confidentiality, at one point prior to Chief Counsel I was
24 involved with the Investigative Division, and we conducted
25 a investigation for a failure to register as a lobbyist.

1 And, we were being told was that a lobbyist or an
2 individual who we believed was engaging in lobbying would
3 have a conversation with a member of the General Assembly.
4 It would be a one-hour friendly conversation talking about
5 kids, what they did over the summer, you know other things,
6 not talking about specific bills. And then as they're
7 leaving the door they would say, oh, by the way, you know,
8 we support House Bill 123.

9 So, the evidence that we were getting, or the
10 information we were receiving was that that one -- that 59
11 minutes of conversation was not lobbying. That was just a
12 friendly banter between individuals, and I only spent one
13 minute lobbying, so that one minute then doesn't get
14 anywhere close to the -- at the time the hours of lobbying.

15 So, we believe that the definition of lobbying is
16 probably appropriate where you're attempting to influence
17 legislation, but that the concept of lobbying is more than
18 just talking specifically about a bill. It's any face time
19 that an individual would have with those decision makers,
20 either the General Assembly or administrative agencies.

21 REPRESENTATIVE SOLOMON: So thank you, but in
22 that definition, and in that particular case our current
23 statutory definition would probably capture that behavior,
24 right?

25 MR. JACISIN: We believe it did. Perhaps a

1 strengthening though of -- this may be something that maybe
2 we would want to provide additional commentary on, maybe at
3 a later time, maybe some -- with proposed language.

4 REPRESENTATIVE SOLOMON: Yeah, I would really
5 like to see that. Yeah, thank you.

6 MR. FRANKENBURGER: I think I can add something,
7 too. I think that direct and indirect communication is so
8 binary that it's either a zero or a one, and not all
9 communication is necessarily either a zero or a one. In
10 the world that we are in now with online and all the
11 different technological communications that you can have, I
12 think maybe an update into adding social media or different
13 types of technological communications may be appropriate.

14 MR. CARUSO: No, I think that's right.

15 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
16 Representative Ryan?

17 REPRESENTATIVE RYAN: I take that comment to mean
18 that you want me to register my TikTok account. I don't
19 have a TikTok, just so you're aware. The -- I just heard
20 that such a thing exists. There's kind of a gray area.
21 And first of all again, I want to really thank the Ethics
22 Committee for the help. I know, as a representative I have
23 called occasional; just said I'm curious about some advice,
24 and you have been great about giving prescriptive
25 information.

1 But, with this disclosure of lobbying
2 representation enforcement and lobbying, how do you make
3 the distinction? First of all, how can it be strengthened?
4 And, how do you make the distinction between citizens
5 groups that just get formed up that want to add -- you
6 know, want to defeat a particular type bill or sponsor a
7 typical type bill? How do you know when one part is
8 lobbying versus one is a citizen coming in from your
9 district that's asking kind of the same thing? How do you
10 make that distinction, and how can we better monitor and
11 enforce it?

12 MR. CARUSO: Wow. You know, it's primarily the
13 -- if there's compensation --

14 REPRESENTATIVE RYAN: Okay.

15 MR. CARUSO: -- being paid out that we would --
16 that's how we would look at it, whether it was lobbying --
17 are they -- or are you just specifically referring to if
18 the three of us lived in a town, and we were trying to --

19 REPRESENTATIVE RYAN: Kind of the -- actually,
20 the nature of your clarifying question is actually the
21 nature of my question as well, because I'm not 100% certain
22 either. And how do we make that distinction?

23 As an example, let's take something that's near
24 and dear to my heart, property tax elimination. We're
25 getting groups that are formed up all the time, and they're

1 primarily done without compensation. We would not
2 necessarily know whether they're being compensated or not
3 as lobbyists and things of that nature.

4 And so, is -- like in the -- with CPAs, if I need
5 to take a CPE, I can go in the state website and determine
6 that the Department of State has approved them to be an
7 approved vendor to provide CPE. And you do that in so many
8 other areas. Your advisor rulings that you have provided
9 in some cases that I have been working with have been
10 extremely helpful.

11 So, I guess the question I'm asking is, how would
12 we know, since in order to properly enforce this it kind of
13 requires everybody to be involved? We need to be aware, is
14 this person a lobbyist, or is this person a constituent?
15 And sometimes knowing that distinction can be a little bit
16 tricky, particularly when you start talking about social
17 media.

18 I mean, one of the things that I come to -- have
19 to come to grips with all the time is, if people are
20 contacting me on social media, is this a lobbyist that's
21 contacting me on social media? Because I may not know, and
22 it may not be their real name. They may not be use -- and
23 so -- and how do we make those kinds of distinctions in the
24 21st Century with the technology that currently exists?

25 MR. JACISIN: I believe it's twofold question.

1 The first one would be, some responsibility in proposing
2 legislation, some responsibility on a lobbyist or principal
3 to have to disclose that, to disclose their interest in
4 this matter to, you know, a representative that I am a paid
5 lobbyist, or I am a registered principal.

6 Certainly, the lobbying law and the great
7 freedoms that we have, First Amendment Right to Petition
8 the Government, we do not want to remove that from the
9 citizens, and they certainly have a right to do that. I
10 believe that a group of citizens or a civic interest group
11 that would be petitioning the government would be exempt
12 from the lobbying laws. That's not lobbying, that's
13 petitioning your government. But where I'm being paid by
14 an outside organization, and the ideas that I am, as a
15 lobbyist, proposing to you as a member of the General
16 Assembly may not be my own. They are of my paid client, so
17 I believe that should be disclosed, in that the whole
18 purpose of the lobbying disclosure law is for the people to
19 know who is being paid to influence the government as
20 opposed to the citizens influencing the government.

21 REPRESENTATIVE RYAN: And I appreciate it.
22 Thanks, that's very helpful. My last comment is
23 compensation. In the world I live, compensation is
24 included in reimbursement for expenses. Would that be
25 considered compensation for the person who might be that

1 petitioning-the-government type person who has got a
2 collective group of people together, or is that not
3 considered to be compensation?

4 MR. JACISIN: I would cautiously say, if you have
5 a legitimate citizens' group and they're giving their main
6 speaker -- they're going to, you know, pay for his parking
7 and his mileage on the turnpike, I would say that's -- you
8 know, that's just reimbursement.

9 REPRESENTATIVE RYAN: Got you. Thank you. You
10 have been very helpful. Thank you so much.

11 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
12 you. And, final question from Representative Nelson.

13 REPRESENTATIVE NELSON: Thank you, Mr. Chair.
14 And, my question is in two parts, one building of
15 Representative Ryan's question, more in the macro about
16 lobbying disclosure as it -- you know, there are political
17 entities in my opinion that do invest to lobby for bills,
18 but they may invest in supplying buses to be able to come
19 out, or paid protesters. As I understand it in listening
20 and talking with paid protesters, they are given, you know,
21 a stipend for the day. They are given a meal stipend, the
22 bus is paid for. Does that currently have to be disclosed?
23 Or should that be as we move forward, making these --

24 MR. CARUSO: That should be. That's -- I think
25 that would -- the question -- we would believe it should be

1 disclosed, because that's the -- you know, their attempt to
2 influence and, particularly, the expenses that would be
3 associated with it.

4 MR. FRAKENBURGER: It also very likely could be
5 counted under personnel expenses in the definitions under
6 13A02. It lists a whole laundry list of things that are
7 under personnel expenses. And, personnel and office
8 expenses are part of direct communication and in direct
9 communication.

10 So theoretically, although we have never been
11 asked that question in advice or an opinion, that's
12 something that we may look at as a personnel expense.

13 REPRESENTATIVE NELSON: So, if as we're moving
14 forward the clarification that wages, meals and let's say
15 bus expenditures that would be intended in a certain -- we
16 could maybe vet that out a little bit more and maybe have
17 some additional communications. It would be, I think, an
18 area of disclosure that, you know, both the citizens and
19 individuals that are involved in this could be helpful. I
20 think it kind of falls under that transparent consistency.

21 MR. CARUSO: Yes.

22 REPRESENTATIVE NELSON: My next question was
23 following up on the Name and Expense Report form, like
24 adding the name to the report form. I've only been here a
25 short number of years, but logistically the challenge for a

1 lobbying entity -- oftentimes, you know, people who attend
2 an information dinner may change at the last minute. Some
3 people show up, other people don't show up. There may be
4 larger events. How would that accountability work?
5 Because there's such flux, particularly during a session
6 week. How would that really be implemented, particularly
7 with an audit function, to be able to hold somebody
8 accountable? Because a member's name could be added to a
9 list that they didn't attend. And, you know, how do you
10 balance the, you know, considerable flux of attendance at
11 an information event or a dinner?

12 MR. CARUSO: We have never really had to deal
13 with that, because we don't get a large number of people --
14 a flux of -- coming to any of our events. But -- people
15 generally avoid us. But, I would say that the -- that's
16 some work that a lobbyist and then the principals would
17 have to work out.

18 I don't know. I don't think we have a good
19 answer to that. I think the logistics of that in getting
20 it reported, I think it would take a lot of work, whether
21 it's sign-in sheet or whatever, how they would do it. I
22 would think that, with the passage of these bills that it
23 would require, you know, some changes in the way the
24 lobbyists do business.

25 REPRESENTATIVE NELSON: Thank you, Mr. Chair.

1 Thank you for your questions.

2 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.

3 REPRESENTATIVE NELSON: Or your answers.

4 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
5 right. Well, thank you, gentlemen. That concludes all the
6 questions that we have for you today, so I appreciate you
7 being here.

8 And, we are going to move on next to Panel #2
9 which is the Pennsylvania Association for Government
10 Relations. And we are joined by Justin Fleming who is the
11 current president and Judy Eschberger who is a board member
12 and past president. If you can, please join us.

13 MS. ESCHBERGER: Justin is joining us virtually.

14 MR. FLEMING: Good morning. Can everybody hear
15 me?

16 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: We can
17 hear you. I think we're going to turn up the volume just
18 slightly, but we can hear your microphone. All right.
19 And, I will turn it over to the two of you. You can feel
20 free to start whenever you are ready.

21 MR. FLEMING: Thank you so much. Honorable
22 members, we appreciate the opportunity that you have
23 provided the Pennsylvania Association for Government
24 Relations, also known as PAGR, to testify on the important
25 topic of lobbying reform and disclosure.

1 My name is Justin Fleming, and I currently serve
2 as president of the organization. I have worked in and
3 around state government for more than 17 years, including
4 the last 11 as a government relations professional with
5 three different nonprofit organizations. I currently serve
6 as Director of Government Affairs for Pennsylvania
7 Partnerships for Children, a statewide child advocacy
8 organization.

9 PAGR is an organization of lobbyists that really
10 trace their beginning back to November of 1991, following
11 the passage of a lobbying services tax as part of the
12 budget negotiations in June of that budget season.

13 PAGR's mission is to promote the purpose and
14 effectiveness of the lobbying profession consistent with
15 the public interest. Further, association members
16 encourage high standards of personal and professional
17 conduct among all lobbyists.

18 PAGR's bylaws provide for four membership
19 categories for lobbyists, with each category having at
20 least one board representative. The categories include
21 corporate lobbyists, association lobbyists, independent
22 lobbyists and lawyer lobbyists.

23 Currently, PAGR has 151 members representing 115
24 varied organizations. These categories are important,
25 because lobbyists in each category work slightly

1 differently, which makes regulating the profession a
2 challenge.

3 As many of you know, the word, lobbyist, is
4 traced to many -- is traced by many to a legend of
5 President Ulysses S. Grant meeting with businessmen in the
6 lobby of the Willard Hotel in Washington D.C. in the
7 mid-19th Century. However, it is more likely that it comes
8 from a 16th-Century practice where individuals would
9 approach members of the House of Lords and House of Commons
10 in the lobbies, hallways and galleries of the legislative
11 body in England to conduct business and private information
12 to individuals prior to a vote.

13 Lobbying is generally understood, as we heard
14 from the Ethics Commission, to be an attempt by individuals
15 or private interest groups to influence the decisions of
16 government. Whatever its origins, today lobbyists play a
17 vital role in the working of our system of government.

18 The demands placed on you all as legislators
19 personally and professionally have never been greater.
20 Lobbyists help guide members and staff in policy
21 development due in part to the overwhelming number of
22 subjects one must consider when governing the Commonwealth
23 of Pennsylvania.

24 Prior to becoming a legislator members have had
25 varied occupations. We heard Representative Ryan talk

1 about accounting. We have had members who are -- who have
2 been teachers, nurses, farmers, insurance salespeople, just
3 to name a few. But, when you arrive in the legislature,
4 you all are expected to quickly become experts on every
5 subject.

6 Prior to the passage of Act 134 of 2006, the
7 Pennsylvania Lobbying Disclosure Act, during every two-year
8 session lobbyists were required to register with the
9 Secretary of the Senate each month the names and addresses
10 of the clients represented by each lobbyist, lobbying firm,
11 corporation and association. There was no reporting of
12 expenses.

13 In the late 1990s and early 2000s however, in an
14 effort to increase transparency, then-Senator
15 Robert Jubelirer and then-Representative Paul Clymer each
16 introduced legislation requiring principals to disclose
17 what they spent on direct and indirect lobbying, gifts,
18 entertainment and lodging.

19 Pennsylvania has worked to represent the
20 interests of government relations professionals across the
21 Commonwealth, including keeping lobbying registration fees
22 reasonable for all professionals. PAGR has also worked
23 collaboratively with the Department of State to ensure that
24 systems in place for lobbying disclosure are functional and
25 allow for our members and others to comply with the law.

1 PAGR certainly recognizes it is the role of the
2 General Assembly to make policy, and acknowledge that the
3 goal of the legislative package of bills being discussed
4 today are an effort to make Pennsylvania government more
5 transparent and accountable. We want to be part of that
6 process to make these bills as good as we possibly can to
7 achieve that goal. Without placing an undue burden on
8 government relations professionals, unnecessarily
9 encroaching on the profession itself or, as was discussed
10 late in the last panel, interfering with the right of
11 citizens to petition their government for redress of
12 grievances.

13 And with that said, I would like to introduce my
14 fellow board member who is there in person who is a past
15 president of PAGR and serves on our public affairs
16 committee, Judy Eschberger, to both introduce herself and
17 discuss the proposed legislation within the package. She
18 will highlight some of the questions and concerns raised by
19 our members. Judy?

20 MS. ESCHBERGER: Good morning. My name is
21 Judy Eschberger, and I am a lawyer graduate from Duke Hain
22 University School of Law. After graduation I practiced
23 insurance defense litigation for four years in Pittsburgh,
24 prior to accepting a position as counsel to the Senate
25 leader in 1993, where I provided counsel to five

1 legislative committees for the members of the caucus.

2 In the spring of 1997 I left the Senate to become
3 a contract lobbyist. I have worked for several firms in
4 Harrisburg prior to starting my own firm in 2015.

5 I have represented small and large corporations
6 as well as nonprofits throughout the Commonwealth of
7 Pennsylvania since 1997 on issues ranging from agriculture
8 to zoning and everything in between.

9 As an attorney I am a trained advocate ethically
10 bound to zealously represent my clients and to avoid
11 conflicts of interest. On any given day I can be found
12 lawyering, drafting legislation or amendments, monitoring
13 legislation and regulations, formulating grassroots and
14 grass-tops programs and strategically planning how to
15 accomplish my clients' goals, including developing any
16 number of contingency plans in order to make that happen.

17 When the cosponsor memo and subsequent
18 legislation on lobbying reform was introduced in mid-June
19 of 2021, PAGR's public affairs committee took those bills
20 and analyzed them in order to determine how they would
21 affect our membership. Additionally, we sought input from
22 our members and surveyed them.

23 The good news is that the members largely support
24 increased transparency to the General Assembly and
25 accountability from the lobbying community. However, there

1 are some bills that raise concerns among our members. I
2 will briefly run through the package.

3 House Bill 1599 requires lobbyists to seek a
4 waiver from clients regarding a conflict of interest in
5 order to disclose that they sought a waiver from clients
6 within five days of seeking that waiver. While this may
7 not seem like a cumbersome task, a waiver may not present
8 itself in an initial bill. A waiver may not occur until an
9 individual files an amendment in the House or Senate to a
10 bill or a package of amendments that may create a conflict.

11 During a busy budget season, an individual may
12 have multiple conflicts because of amendments that are
13 filed, which we have no idea whether those conflicts will
14 ever really occur, because we don't -- we have no way of
15 knowing whether those amendments will be considered by the
16 body.

17 Having to do a conflict check and constantly file
18 paperwork with the Department of State every five days
19 reporting potential conflicts will become very cumbersome.
20 Perhaps a filing every 30 days that a waiver was sought
21 would be more reasonable.

22 House Bill 1600 requires campaign consultants to
23 register, but does not provide a filing fee. This would be
24 an unfunded mandate requiring the Department of State to
25 implement a registration system without any funding to

1 support that effort and may lead to the increased filing
2 fees for lobbyists who do not do any campaign consulting.
3 We would therefore request that you consider a filing fee
4 from those campaign consultants if in fact you are going to
5 regulate them.

6 House Bill 1601 requires lobbyists to report an
7 equity interest that they may have on a client they are
8 lobbying on behalf of. Two weeks into its introduction,
9 and without any discussion from the lobbying community, the
10 bill which does not define equity interest was included in
11 the administrative code which is now known as Act 70 of
12 2021.

13 Had we been consulted, we would have told the
14 General Assembly that most lobbyists do not have an equity
15 interest in the corporations we represent. On the rare
16 occasion that an individual has an ownership of stock in
17 the corporation they represent, it may be included in their
18 401-K plan, and those amounts may fluctuate.

19 To the extent that a few corporate lobbyists may
20 receive stock options in a corporation that they represent,
21 the amount of their shares that they hold is negligible
22 when compared with the number of shares that the
23 corporation has issued to the public at large.

24 Perhaps the only registered lobbyist that might
25 have a substantial equity interest would be if a company's

1 owner or the president and CEO has substantial stock
2 interest in the company, and they are also a registered
3 lobbyist for that company. We are unclear what problem the
4 bill is attempting to solve. A number of PAGR members has
5 suggested that a better way to address the issue would have
6 been to require registered lobbyists to file a statement of
7 financial interest annually.

8 House Bill 1602 requires a lobbyist to register
9 with the Department of State and report whether they have
10 lobbied for a client to receive financial assistance or
11 money through grant programs. First, how many separate
12 registrations are necessary? Under Act 134, lobbying and
13 financial assistance or grant programs for clients remain
14 an attempt to influence legislative and executive action
15 and are already captured on lobbying reports.

16 Second, many nonprofits apply for grants from a
17 variety of state and Federal sources in order to meet their
18 budget needs and provide services. Some of those grants
19 are annual. Many of them are need based, and there is an
20 ever changing combination of funding sources for those
21 associations. Clients may apply for grants unknown to
22 their lobbyist, and tracking the actions of those -- of the
23 grant arm of an association would become cumbersome.

24 Additionally, grant funding is typically
25 restricted so that monies must be used for program funding,

1 not lobbying. For a 501-C3, monies for lobbying must be
2 raised separately by the nonprofit association. Again, we
3 are unclear what problem this legislation is attempting to
4 solve.

5 House Bill 1603 as drafted prohibits campaign
6 consultants from lobbying a state official whose campaign
7 they worked on for the term of office that the individual
8 is elected to. While all lobbying firms do not provide
9 campaign consulting services, this would prohibit a
10 campaign consultant from lobbying for two or even four
11 years depending on whether they worked on a House, Senate
12 or gubernatorial or row office campaign.

13 Does this include lobbyists who represent labor
14 unions? Is it the legislature's intent to require
15 individuals to either lobby or work on campaigns, but not
16 both? We wonder whether such legislation would even
17 survive a legal challenge, since it restricts an individual
18 from earning a living.

19 House Bill 1604 framed as a third-party
20 inducement appears to prohibit from charging a client more
21 than \$10,000 to get state funds or grants awarded. Much
22 like lawyering, independent or contract lobbyists charge a
23 client for the time it will take to accomplish a client's
24 goal, and for their expertise and experience at
25 successfully accomplishing a client's stated goal. If a

1 lobbyist is working intensively on a project, engaging in
2 many hours of work and meetings, it means they cannot sell
3 their time and expertise to another client.

4 Additionally, if multiple staff people are
5 engaged on a project, or a media campaign to educate the
6 public as to the benefits of obtaining a particular grant
7 is included in the project, it is conceivable that that
8 project could cost more than \$10,000 to accomplish.

9 Although a lobbyist is prohibited from charging a success
10 fee, also described earlier as a contingency fee, for their
11 work, in a capitalist system, shouldn't the market be
12 permitted to determine what it will bear?

13 If a potential client chooses not to pay the fee
14 proposed by a lobbyist for a particular project, that
15 client can simply take the work to another lobbyist who may
16 be willing to perform the services for a lower fee. It's
17 unclear whether this legislation would survive a legal
18 challenge.

19 House Bill 1605 prohibits lobbyists and/or firms
20 from receiving referral payments from another lobbyist firm
21 or campaign consultant. Nearly half of our members
22 surveyed oppose or strongly oppose this bill. Referral
23 payments are common in the practice of law, so that in the
24 event that a lawyer has a conflict they can refer to the
25 client to another competent attorney with similar

1 expertise. It is not uncommon for that firm working on a
2 matter receive 70 to 90% of the fee and provide the
3 referring attorney anywhere from 10 to 30% of the fee. The
4 terms of the agreement are worked out amongst the parties
5 contractually. Again, it's unclear whether this bill
6 survives a legal challenge.

7 House Bill 1606 changes the primary reporter of
8 how much is spent on lobbying from the principal to the
9 lobbyist, and would institute an additional 1.8% tax for
10 lobbying services on entities that already pay the Sales
11 and Use Tax of 6%. This proposal will lead to greater
12 confusion and less transparency, because some principals
13 retain more than one lobbyist, and only they know what they
14 truly spend on lobbying.

15 If the lobbyists are the primary reporters of
16 expenses, they will be only able to report and account for
17 what they are paid by a principal for lobbying. This may
18 not accurately capture what a principal spends on lobbying.
19 If there are other corporate employees regularly
20 interacting with Senate and House members unbeknownst to
21 the independent or contract lobbyists, or if there are
22 expenditures for media campaigns that are paid directly by
23 the principal, those will be not -- will not be captured by
24 the lobbyists doing the reporting, because the lobbyist is
25 not making the expenditure. The principal is making the

1 expenditure.

2 This scheme was arrived at after a period of time
3 in Harrisburg when the utilities were deregulating. There
4 were billboards along the roads. There were full-page
5 newspaper ads in members' districts calling out members who
6 were not voting the way various sides of the deregulation
7 issue wanted them to vote.

8 Members wanted to know who was paying for those
9 ads. All of that was being paid for by the principals, not
10 the lobbyists. That's how it evolved into having the
11 principal report, because the principal was making the
12 spend. Principal in some instances will tie up two or
13 three lobbying firms, sometimes more, just to keep them
14 from representing the other side and give them something to
15 do. The principal is the one that spends the money.

16 The principal typically reimburses for
17 entertainment expenses. Sometimes the principal -- when
18 you have events in your districts for seniors or for
19 children that require ambulance service at your senior
20 fair, you may as a corporation in your district to support
21 that event, and they do, and in supporting it they paid for
22 the ambulance service to be provided throughout the day of
23 your senior event. That's all considered a lobbying
24 expense for them. It's not paid by the lobbyist or the
25 lobbying firm, it's paid by a corporation. And so, that's

1 why the principal reporting makes sense, because they are
2 the primary spender of the money.

3 Additionally -- and for the record, the \$300
4 biennial lobbying fee is already one of the largest fees in
5 the country. Almost 70% of our members surveyed oppose or
6 strongly oppose this proposal.

7 House Bill 1607 does not permit Commonwealth
8 entities to hire outside lobbyists to influence other
9 Commonwealth entities. What is a Commonwealth entity? As
10 the bill is currently phrased, a Commonwealth entity
11 includes but is not limited to the General Assembly,
12 judiciary or executive departments and agencies. The
13 question arose amongst our members: does this include
14 quasigovernmental units such as municipal authorities like
15 the Pennsylvania Convention Center Authority, or the Cities
16 of Philadelphia, Pittsburgh, Harrisburg, Scranton, Erie,
17 York and Lancaster?

18 House Bill 1608 prohibits lobbying firms or
19 lobbyists from lobbying an individual who was previously a
20 lobbyist but has been hired by the General Assembly for a
21 period of one year after their status as a registered
22 lobbyist expired. More than 58% of our members surveyed
23 strongly oppose this effort. Again, it impairs an
24 individual from earning a living, and it's unclear whether
25 it would survive a legal challenge.

1 House Bill 1609 requires lobbyist ethics training
2 annually. PAGR supports ethics training for both lobbyists
3 and members of the General Assembly. If not annually, then
4 once during each two-year session. PAGR would also be
5 interested in providing training for the lobbying community
6 on the part -- as part of our annual lobbying seminar.

7 The earlier panel discussed training. At our
8 lobbying seminar we already invite the Department of State
9 to speak, and they have spoken on any number of topics,
10 including how to properly fill out lobbying forms, and how
11 and who is required to register. So, that's part of what
12 we are already doing and have been doing for years.

13 We would like to take this opportunity to thank
14 you for asking us to provide the subcommittee with our
15 testimony here today. We stand ready to assist you in
16 crafting legislation that creates greater transparency and
17 works for all of the parties involved. We are happy to
18 take questions you have.

19 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
20 Well, thank you, and we appreciate your extensive review
21 and feedback on all of these bills. We do have a series of
22 questions from committee members on all of the different
23 bills. And, I am going to try to propose to the members
24 that we go in order of the bills just like you have laid
25 out in your testimony, so that we can provide feedback or

1 ask questions on your specific comments that you have
2 offered here today.

3 So with that in mind, the first question is from
4 Representative Nelson on House Bill 1599.

5 REPRESENTATIVE NELSON: Thank you, Mr. Chair.
6 And, Mr. Fleming, it's good to see you again. And, thank
7 you very much, both of you, for your testimony. It was
8 pretty detailed and involved, so I am going to try to break
9 down and focus just on that first -- the 1599 that would
10 change the timeline, you know, from five days.

11 The first part of that, how common are such
12 conflict of interest situations, particularly those with
13 little or no notice? You mentioned in your testimony about
14 the amendment process and how that can -- can you --

15 MS. ESCHBERGER: Well, that may cause a conflict
16 to arise, because sometimes in an association, a smaller
17 association member may deal with an issue one way, and a
18 larger association member may deal with it another. So,
19 there may be a split within an association as to whether
20 they support legislation or not, which leads an association
21 overall not to take a position. If certain amendments come
22 in, that could change, and it could change rapidly.

23 And I am going to leave Justin to comment
24 further, because he has been in house for an association
25 for years.

1 REPRESENTATIVE NELSON: And, Justin, with your --
2 if you can touch on any of those prior enforcement notices,
3 you know, or enforcement actions if they involve conflict
4 of interest.

5 MR. FLEMING: Yeah. This is an area in which I
6 have had particular expertise. As Judy mentioned, I think
7 it is -- this may -- this issue may arise for either a
8 corporate entity or a larger lobbying firm that has a
9 multitude of different interests and organizations that it
10 lobbies for.

11 In my experience -- again, I have lobbied for
12 three nonprofits. There was one situation when I first
13 started with the National Association of Social Workers'
14 Pennsylvania chapter where as I was just coming on we had
15 another person -- I was in house, but we had another person
16 lobbying as well to help get me up to speed. I believe it
17 was an engagement of about my first six months on the job.

18 And so, you know, I had to -- at that point I was
19 filling out the lobbying disclosure forms, so I had to make
20 sure that we were connected and in sync in terms of the
21 folks that he spoke to, and that it meshed with the folks
22 that I spoke to, and that we were capturing everything for
23 the purpose of the report.

24 When you talk about conflict of interest
25 specifically, again, that never arose in my situations,

1 because I have always represented one entity. Essentially,
2 the nonprofit that I have lobbied for has been my client.
3 Now, we may certainly advocate and lobby on a number of
4 different issues, but as far as a conflict of interest from
5 my standpoint that really hasn't arisen.

6 But, Judy is absolutely right. It could present
7 serious problems for a larger corporate entity, or a larger
8 lobbying firm that represents a multitude of different
9 clients.

10 REPRESENTATIVE NELSON: So just to clarify --

11 MR. FLEMING: And I think --

12 REPRESENTATIVE NELSON: -- is this process -- so
13 this process is or would be online, but is the 30-day
14 lookback kind of -- there would still be timely notice to
15 the client, and then the 30-day lookback would be more of a
16 larger documented audit function that the lobbyist did
17 provide the appropriate conflict of interest notice to the
18 principals? Is that --

19 MS. ESCHBERGER: Right.

20 REPRESENTATIVE NELSON: Seeing this relationship?

21 MS. ESCHBERGER: Right. Typically, when a
22 conflict arises for an attorney, a lot of law firms deal
23 with first in right -- first in time, first in right,
24 meaning the first client you represented you go to first,
25 and you say to them, we have a potential conflict. Here --

1 and you lay out what that conflict would be. So-and-so has
2 introduced legislation or has introduced an amendment to a
3 bill we're monitoring on your behalf, and if it passes this
4 is what's going to happen. I am also representing X
5 client, and they are on the opposite side of the issue from
6 you. You oppose it, they support it, or vice versa. And
7 you give the client -- the client is the determiner of
8 whether or not they want you to pull out. They may say to
9 you, what is the likelihood of the amendment occurring? I
10 don't know.

11 If the legislature takes the bill up, if they
12 decide to pursue the amendment, it may become a problem for
13 me to work for both you and them. If that's the case, they
14 may say to you, I want you to withdraw from representing
15 them. I want you to -- I -- you've -- I've been with you
16 for years, I want you to represent -- or they may say, you
17 know what? If it's not likely, we'll just let it ride. If
18 you don't think the amendment is going to go into the bill,
19 if you don't have a lot of confidence it's going into the
20 bill -- and sometimes we just don't know.

21 So, we'll constantly check back with that client:
22 looks like it's going to go. What do you want me to do?
23 But, to continually have to file every five days with the
24 Department of State sort of creates busywork on top of an
25 already busy situation. If we could come back after the

1 fact and just tell you we did it, and you're going to get
2 that verification from either of the clients -- I think the
3 five days is the issue, having to file something with the
4 Department of State every five days.

5 REPRESENTATIVE NELSON: Great. Thank you. Thank
6 you very much. Thank you, Mr. Chair.

7 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Yeah.
8 Representative Solomon, continuing on this bill?

9 REPRESENTATIVE SOLOMON: Thank you, Chair. Well,
10 as you mentioned, lawyers have similar requirements about
11 conflicts. And oftentimes, especially class-action
12 lawyers, there are a lot of moving pieces. Have you heard
13 any group of attorneys complain about the conflicts of
14 interest requirements that lawyers have to abide by?

15 MS. ESCHBERGER: Lawyers don't have to file with
16 the department -- with the Supreme Court every five days,
17 and you don't have that emerging ability to change -- you
18 know, to have that problem pop up, because there's not --
19 like with you guys, there's an amendment process, and your
20 amendments -- you know, you may not have an amendment
21 today.

22 I might not have a problem -- like if you're
23 representing two associations. Maybe they both deal with
24 healthcare but deal with it slightly differently. You
25 could have one that's going to support something if an

1 amendment occurs or not support. Maybe it's a licensure
2 issue. Maybe it -- you know, it could be anything. But,
3 the conflict could occur with -- during an amendment
4 process, and all of those moving parts, and in addition
5 having to file with the Department of State to tell them,
6 oh, by the way, I told my client I might have a conflict,
7 and then, oh, I told -- you know, they told me it was okay.
8 I could still stay representing both of them, and then five
9 days later, you know, having to report again, oh, I had to
10 tell them now that the amendment went in in the House that
11 the conflict is looking like it's really going to matter.
12 You know, it's just a constant filing of -- it's the
13 constant, every five days having to give that notice.

14 REPRESENTATIVE SOLOMON: Do you believe there are
15 ever non-waivable conflicts?

16 MS. ESCHBERGER: I try very hard to stay away --
17 you know, I represent a -- you know, some -- like I said,
18 I've done agriculture, I've done liquor, I've done gaming,
19 but I don't take two clients in the same issue, and I do
20 that purposefully.

21 REPRESENTATIVE SOLOMON: No, but as a policy
22 matter.

23 MS. ESCHBERGER: Yeah.

24 REPRESENTATIVE SOLOMON: Do you think there
25 should be non-waivable conflicts?

1 MS. ESCHBERGER: It's up to the client to decide.

2 REPRESENTATIVE SOLOMON: So that's a never?

3 MS. ESCHBERGER: Yeah.

4 REPRESENTATIVE SOLOMON: Never?

5 MS. ESCHBERGER: I really think it's the client's
6 decision to make.

7 REPRESENTATIVE SOLOMON: Okay, because in the
8 legal world there are some conflicts that are non-waivable.

9 MS. ESCHBERGER: That are non-waivable? Yeah.

10 REPRESENTATIVE SOLOMON: Yeah. You made the --

11 MS. ESCHBERGER: I get that.

12 REPRESENTATIVE SOLOMON: You made the analogy.
13 The issue -- and you came back to this a lot in terms of a
14 lot of issues being cumbersome to lobbyists. And you
15 mentioned the fast paced amendment process during budget
16 season. Do you believe there is heightened attention and a
17 heightened obligation that lobbyists and we as elected
18 officials have to the public during that fast paced period
19 of time, during budget season?

20 MS. ESCHBERGER: I mean, there's a notice that
21 you -- that we have in the House that we don't get in the
22 Senate. You guys, your amendments are -- appear online 24
23 hours prior to being considered. We don't have that luxury
24 in the Senate. We don't have that notice luxury of an
25 amendment, of knowing that an amendment is going to be

1 offered. So, when --

2 REPRESENTATIVE SOLOMON: My question is about the
3 lobbying community. Do you --

4 MS. ESCHBERGER: Right.

5 REPRESENTATIVE SOLOMON: -- all feel there is a
6 heightened responsibility in the fast paced cycle of filing
7 amendments during the budget process that you have in terms
8 of public transparency?

9 MS. ESCHBERGER: But I guess -- and my answer to
10 you is, while -- there is more transparency in the House.
11 You have a 24-hour amendment filing process in the House
12 that we do not have in Senate. So, we don't have that
13 notice that the amendment is even going to be offered. It
14 -- we may find out that there is an amendment pending to a
15 bill at the appropriations meeting. So --

16 REPRESENTATIVE SOLOMON: If a lobbyist has
17 provided a maker of an amendment during the budget season
18 25 to \$30,000, do you think that's a potential conflict
19 that the public should know about?

20 MS. ESCHBERGER: That the lobbyist has provided
21 who?

22 REPRESENTATIVE SOLOMON: A maker of a particular
23 amendment during the budget process. Do you think that's a
24 potential conflict that the public should know about?

25 MS. ESCHBERGER: Has provided you a campaign

1 contribution?

2 REPRESENTATIVE SOLOMON: Of \$25,000.

3 MS. ESCHBERGER: That's --

4 MR. FLEMING: I mean, I think --

5 MS. ESCHBERGER: That's not considered -- go
6 ahead, Justin. I was going to say --

7 MR. FLEMING: Yeah. No, I was just --

8 MS. ESCHBERGER: -- that's not really considered
9 a conflict of --

10 REPRESENTATIVE SOLOMON: You don't believe that's
11 --

12 MS. ESCHBERGER: Well --

13 REPRESENTATIVE SOLOMON: -- a conflict?

14 MS. ESCHBERGER: I think the appearance of --

15 MR. FLEMING: What I --

16 MS. ESCHBERGER: -- impropriety is right -- is
17 there, but it's -- in the tradition term of conflict of
18 interest where you would have to withdraw because you
19 represent clients on two different sides, that's not what
20 this amendment is about. This does --

21 MR. FLEMING: But in the -- I think the important
22 thing though, Representative Solomon, is in the
23 hypothetical you raised there is already a mechanism to
24 capture that. Now, it's not at that moment certainly, but,
25 you know, there still has to be a disclosure on both the

1 campaign finance report of the legislator as well as the
2 filing report of the principal or lobbyist who is making
3 the contribution.

4 So, there is a mechanism to capture it, though
5 it's not -- to your hypothetical, it's not in a real time
6 -- it's not in real time, but there is currently a
7 mechanism for that to be captured.

8 MS. ESCHBERGER: I don't think it falls into the
9 definition of conflict of interest for this particular
10 bill, as conflicts of interest are typically, you know, as
11 we addressed. Like, we are talking about conflicts of
12 interest as subject matter conflicts. The appearance of
13 impropriety of campaign finance overlapping the lobbying
14 world is a whole different kettle of fish.

15 REPRESENTATIVE SOLOMON: Thank you, Mr. Chair.

16 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
17 thank you. And again, we do want to be conscious of time,
18 so we're going to try to keep moving. I -- and I know the
19 Democratic Chair has one question that we are going to get
20 to in a second, but I think it seems like there is a lot
21 more discussion on House Bill 1599.

22 MS. ESCHBERGER: Oh, yeah.

23 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE:
24 Certainly, you know, I think, the way that I was reading
25 it, it seems like when a conflict arises, that's when the

1 requirement to report to the Department of State is
2 triggered within that five days. So, it's not necessarily,
3 you know, an all the time, every five days type of
4 requirement. It's really just when that conflict arises.

5 MS. ESCHBERGER: Right, but it -- I might have my
6 first hint that there is a potential conflict when I see
7 your amendment list come out, but it's a possibility. It
8 becomes more probable if it goes -- that amendment goes in
9 somewhere, on the floor, or in the Appropriations
10 committee, or in the Rules committee, or when it goes back
11 to the Senate. So, you know, at -- that -- you know that
12 process moves quick, so that update can continue. It can
13 be an ongoing notice.

14 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Yeah,
15 and understood. And so again, I think we can continue the
16 conversation on that point --

17 MS. ESCHBERGER: Right.

18 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: -- and
19 see if we can gain some greater clarity and a way to do it
20 in a workable fashion for everybody. The Democratic Chair
21 did have an additional question on this bill, though.

22 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Yeah.
23 Thank you for your testimony. I want to understand more,
24 if you could, about the cumbersome nature of this process.
25 Because, it's not -- what you have described here about the

1 amendment process, that is a real-time reporting
2 requirement which this does not suggest. This suggests
3 five days. So can you tell me, first of all, like how long
4 -- I know it's an online form process. How long of a form
5 is it to fill out?

6 MS. ESCHBERGER: Well, there currently is no
7 form. We have no idea what it will look like, going
8 forward, because it hasn't been developed.

9 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: But all
10 the other things that you do are currently online.
11 Anything you have to report online, what is the most
12 cumbersome form? How long, the most cumbersome form that
13 currently exists online, is it taking you to fill it out?

14 MS. ESCHBERGER: It doesn't take a long period of
15 time. It's having to have the staff person to do it. And
16 if you are a small staff and it -- during a busy time, it
17 is going -- it's just going to be a lot of -- a lot -- it's
18 a lot of things to track.

19 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Well, I
20 -- you know, I would just make -- thank you. And I'll just
21 make the -- you know, the comment to say, you know,
22 obviously all of these bills that's why we're having this
23 hearing today are going to need tweaks and fixes and other
24 things. But I will say, I think a five days -- doing an
25 online form that has not yet been designed, to say that

1 that is too cumbersome to do, I don't know if I necessarily
2 buy that. So, I just wanted to make that point.

3 MR. FLEMING: Well, I think --

4 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
5 you --

6 MR. FLEMING: Chairman, I --

7 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE:
8 Justin, go ahead.

9 MR. FLEMING: -- I apologize.

10 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Yeah.
11 That's okay.

12 MR. FLEMING: Yeah, I apologize. It really is a
13 matter of scope and scale of the firm. I think larger
14 firms certainly have people dedicated. So you -- I mean,
15 you -- and I have experience in smaller organizations. You
16 know, when I had -- when I was in organizations that had
17 political action committees, I would do the campaign
18 finance reports. You know, depending on how much you're
19 giving in a given reporting period, that can be cumbersome
20 if you are the only person doing it, or if you are in a
21 small shop. It can take away time and -- maybe cumbersome
22 is not the right word.

23 I think -- and I just want to clarify this. What
24 Judy was saying relative to the cumbersome nature with the
25 five days is if that conflict is ongoing. And I think

1 Representative Mackenzie got to this, to kind of, you know,
2 make it a one-time report rather than continuous. If it is
3 a continuous report, I think if that conflict still has the
4 potential to exist due to an amendment or other language
5 that's been adopted, then that's when it becomes
6 cumbersome, if it has to be done over and over and over
7 again, I think. I just wanted to clarify that point.

8 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
9 Thank you. And, we are going to continue. Again, we do
10 have a lot of questions remaining, and obviously we are
11 covering a lot of ground today on a number of different
12 bills. So, I am going to go to Representative Wheeland
13 next.

14 REPRESENTATIVE WHEELAND: Thank you,
15 Mr. Chairman. And, just a real quick question. Whichever
16 want to field this, for H.B. 1601, what would be the
17 comparative benefits or burdens of putting the -- putting a
18 definition of equity interest versus establishing an annual
19 statement of financial interest as you alternatively
20 suggested? You're both so anxious.

21 MS. ESCHBERGER: The Department of State has
22 determined that they would take the *Black's Law Dictionary*
23 of equity interest, and ownership interest in is typically
24 how equity is seen. Now, most people think of equity, they
25 think of how much of my house do I own? You know, how much

1 equity do I have in it? Well, this isn't much different.
2 What is your ownership interest in a corporation you
3 represent? And as I said, I have represented any number of
4 corporations. If my 401-K has a combination of shares in
5 one of those clients -- you know, in -- I don't know that.
6 I don't have any way of knowing it, but I'm being asked to
7 sign under penalty of perjury whether I've got an equity
8 interest in any of my clients. I mean, think about your
9 401-K plan.

10 REPRESENTATIVE WHEELAND: I'm thinking of a
11 mutual fund.

12 MS. ESCHBERGER: Right. And if it's got shares
13 in it of something, how would you know?

14 REPRESENTATIVE WHEELAND: So there would not be a
15 threshold, or you would recommend a threshold if we went
16 down that path --

17 MS. ESCHBERGER: Well, and then you think about
18 some of the larger corporations in Pennsylvania. You know,
19 you've got Comcast or Verizon. I don't know whether of
20 them have the ability to purchase shares in the corporation
21 they represent, but think of Verizon nationally. If their
22 lobbyist has less than a tenth of a -- of 1% of all the
23 shares that Verizon has issued, how much of an equity
24 interest in that corporation do they have?

25 And even if, say I was representing them as a

1 contract lobbyist, I may not have any shares that I know of
2 unless they're contained in a 401-K -- or, you know, plan
3 that I've got. So, I don't have an ownership or equity
4 interest in any of them. An in-house lobbyist for a
5 corporation that has shares of stock may have an equity
6 interest in that corporation, but I wouldn't, so I'm going
7 to file the form to say I don't have any interest. And, I
8 would venture to guess that that's really what's going to
9 happen with that filing. A lot of people will file and say
10 I don't own, that I know of, any equity interest in any
11 corporation I represent.

12 REPRESENTATIVE WHEELAND: Okay, thank you.

13 MR. FLEMING: I think -- Representative Wheeland,
14 I think Judy is right. And I just want to say there, I
15 think as we move forward with this, as it's already in
16 place now, I think establishing a threshold can only help.
17 It can't hurt as we look to clarify more of what the
18 General Assembly is trying to glean from those filings and
19 that information. So thank you.

20 REPRESENTATIVE WHEELAND: Okay, thank you. Thank
21 you, Mr. Chair.

22 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
23 thanks. Representative Solomon, I think you wanted to
24 continue on House Bill 1601.

25 REPRESENTATIVE SOLOMON: Thank you, Chair. So

1 just to clarify, if you're a lobbyist representing Amazon,
2 and you as the lobbyist have stock ownership interest in
3 Amazon, does the public have a right to know about that?

4 MS. ESCHBERGER: I bought Amazon, you know,
5 shares. Sure. Maybe I own ten shares of Amazon stock,
6 and --

7 REPRESENTATIVE SOLOMON: Or maybe you own a lot
8 more?

9 MS. ESCHBERGER: Or maybe I own 100, or --

10 REPRESENTATIVE SOLOMON: 1,000?

11 MS. ESCHBERGER: Right.

12 REPRESENTATIVE SOLOMON: Yeah.

13 MS. ESCHBERGER: And -- sure. But if it's in my
14 401-K plan and I don't even know it's there, I'm -- I have
15 a hard time swearing under penalty of perjury that I don't
16 own shares of something just because I don't know about it.

17 REPRESENTATIVE SOLOMON: What if that lobbyist is
18 pushing specifically for special tax treatment for Amazon
19 in the Commonwealth? Does that change your analysis at
20 all?

21 MS. ESCHBERGER: No. I think they should
22 disclose. If they own -- if they know they own stock,
23 disclose it.

24 REPRESENTATIVE SOLOMON: And what if that -- if a
25 different lobbyist -- I don't know -- is pushing for a

1 resolution on Taiwan, and that lobbyist has a relationship
2 with a foreign -- that foreign government? Should that be
3 disclosed?

4 MS. ESCHBERGER: I would think so.

5 REPRESENTATIVE SOLOMON: Is that a yes?

6 MS. ESCHBERGER: Yeah.

7 REPRESENTATIVE SOLOMON: Okay. Thank you,
8 Mr. Chair.

9 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
10 thank you. Next I'm going to go to Representative Ryan. I
11 believe you are moving on to House Bill 1602.

12 REPRESENTATIVE RYAN: Mr. Chairman, that's
13 correct. And I -- Mr. Chairman, I just sent you a message
14 asking if I could just -- if at the end of my question if I
15 could just add a broader question to a comment that she
16 provided in testimony. Is that acceptable to you?

17 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Yeah.

18 REPRESENTATIVE RYAN: Judy, first of all, thank
19 -- and, Justin, thank you both so much for being here. In
20 House Bill 1602 -- I'll start with that one first. And I
21 looked at the fact pattern that you presented in your
22 testimony relative to the additional reporting obligations,
23 whether or not they worked in pursuit of particular
24 successful award. But when you look at the text of the
25 bill, it includes some of the lobbyist collection of -- for

1 economic consideration for the successful award.

2 Can you explain from your perspective why you
3 think that that bill appears to establish a broader
4 reporting requirement?

5 MS. ESCHBERGER: I'm not sure I know what you
6 mean.

7 REPRESENTATIVE RYAN: Well, if you look at your
8 fact pattern on your testimony relative to 1602, register
9 with Department of State, and it specifically refers to
10 not-for-profits in the second part of it, in your fourth
11 line -- or fifth line down. Subcommittee not for --

12 MS. ESCHBERGER: Right.

13 REPRESENTATIVE RYAN: -- profits. So, what's
14 your perspective about why that provides an additional
15 reporting requirement for you as opposed to what's outlined
16 in the bill? And I actually --

17 MS. ESCHBERGER: Well, because --

18 REPRESENTATIVE RYAN: -- don't see it.

19 MS. ESCHBERGER: -- you say -- you -- requires a
20 lobbyist to register with the Department of State and
21 report whether they have lobbied to receive financial
22 assistance or money through a grant program. We already
23 register to --

24 REPRESENTATIVE RYAN: Okay.

25 MS. ESCHBERGER: -- report influencing both the

1 legislative or executive action on a matter. This is
2 included that, so if we have to register separate to report
3 that we lobby for grants when we're already registering to
4 report that information, it's like a double reporting.

5 REPRESENTATIVE RYAN: Yeah. Again, I want to go
6 back to something that Representative Kenyatta had said.
7 Is it -- we haven't actually designed any forms yet, so
8 it's really not saying. So, it's a good question to bring
9 up, but I'm not really sure with the one reporting filing
10 could actually trigger --

11 MS. ESCHBERGER: Well, we already report that.
12 Like, I guess I'm not sure --

13 REPRESENTATIVE RYAN: So you --

14 MS. ESCHBERGER: I think we already -- like if I
15 -- if someone retains me and says, we want you to help us
16 get an RCAP --

17 REPRESENTATIVE RYAN: So I think --

18 MS. ESCHBERGER: -- I consider that --

19 REPRESENTATIVE RYAN: -- I can make this --

20 MS. ESCHBERGER: -- lobbying, because that's an
21 attempt to influence --

22 REPRESENTATIVE RYAN: Right.

23 MS. ESCHBERGER: -- legislative or executive
24 action.

25 REPRESENTATIVE RYAN: Yeah, I think I can make

1 this easier.

2 MS. ESCHBERGER: Okay.

3 REPRESENTATIVE RYAN: What you're really saying
4 is, if the legislation isn't clear that when you file the
5 first time it covers both issues. Is what you're saying,
6 just be careful that it doesn't require a separate
7 reporting requirement?

8 MS. ESCHBERGER: Correct.

9 REPRESENTATIVE RYAN: Okay. If I could just go
10 back to something you made -- and it dovetails on what
11 Representative Solomon said. In the world I live in as a
12 CPA, we have very specific issues relative to contingency
13 fees and referral fees. And have -- I'm the Vice Chair of
14 the Public School Employee Retirement System Pension Fund.
15 And being on the other side of the client engagement, do
16 you think that the client should be aware when there are
17 issues where contingency fees and referral fees are being
18 paid?

19 MS. ESCHBERGER: I wouldn't be uncomfortable
20 disclosing that to my client.

21 REPRESENTATIVE RYAN: But do you think that they
22 should be disclosed?

23 MS. ESCHBERGER: As a requirement? I mean, I
24 think that's a good way of doing business. Like if --

25 REPRESENTATIVE RYAN: No, I'm not saying that. I

1 -- again, because I -- the problem that I run into in
2 hearing your comment is that when referral fees -- and I'm
3 familiar that referral fees are being paid. In the CPA
4 world you can't do that. We're prohibited. But when those
5 things are being done, the public disclosure of it so that
6 the client is at least aware of what they're paying, and
7 that it's that part of that fee structure in there, because
8 it lets me know. Because frequently one attorney or one
9 CPA will give one piece of advice, and if I know that that
10 person is also getting a contingency fee or a referral fee
11 of ten to 30%, that would helpful -- be helpful for me to
12 know that, so I can help determine if there is a potential
13 conflict. In my own mind, what's the motivation?

14 In the accounting world we have a standard called
15 AU314, Consideration Ailment of Fraud and Financial
16 Statements, which is the opportunity, the incentive and the
17 pressure and the rationalization to commit fraud. And
18 whenever you deal with contingency fees or referral fees
19 based on outcomes, those are issues that we -- not -- that
20 doesn't mean that someone is committing fraud. It just
21 means you want to have your antenna --

22 MS. ESCHBERGER: There's a potential there.
23 Yeah.

24 REPRESENTATIVE RYAN: You want to have your
25 antenna up that something could be going on. And so in my

1 mind, the question from me to you is, do you think that
2 that type of arrangement should be disclosed to the client,
3 so that at least the public is aware of these types of dual
4 issues?

5 MS. ESCHBERGER: Yeah. Like if I were to refer
6 someone to another -- I mean, I have a client that I
7 currently deal with. If I had a conflict come up on an
8 issue, and I needed to refer that client, that client would
9 say to me, I only want to be referred to a lobbyist who is
10 a lawyer, because I like working with lawyer lobbyists. I
11 don't want to work with non-lawyer lobbyists.

12 REPRESENTATIVE RYAN: Right.

13 MS. ESCHBERGER: And that's their preference.
14 And I would refer that to another lawyer lobbyist, and I
15 would say, you know, I'm going to get a portion of the fee,
16 just so you know, full disclosure.

17 REPRESENTATIVE RYAN: And I -- so --

18 MS. ESCHBERGER: And I'm happy to do that.

19 REPRESENTATIVE RYAN: Okay. So, and do you think
20 it should be mandated to be disclosed?

21 MS. ESCHBERGER: I just think if we're going to
22 have transparency it would have to be.

23 REPRESENTATIVE RYAN: Okay, great. Well, that's
24 all -- really the only point I wanted to make. And
25 literally, I really appreciate that, because it is

1 something I think is unbelievably important. And I know
2 Jared well enough after all these years that --

3 MS. ESCHBERGER: Yeah, and I --

4 REPRESENTATIVE RYAN: -- he would probably --

5 MS. ESCHBERGER: -- I mean, I've --

6 REPRESENTATIVE RYAN: -- agree with that.

7 MS. ESCHBERGER: That's what I would tell my
8 client.

9 REPRESENTATIVE RYAN: Fantastic. Thank you very
10 much. Mr. Chairman, thank you for the latitude.

11 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
12 you. We are going to move to Representative Keefer on
13 House Bills 1603 and 1604.

14 REPRESENTATIVE KEEFER: Thank you, Mr. Chair.
15 So, starting with 1603. So, that only requires lobbyists
16 that lobby officials -- that -- or I'm sorry -- lobbyists
17 that are actually providing campaign --

18 MS. ESCHBERGER: Right.

19 REPRESENTATIVE KEEFER: -- services, okay? So if
20 you --

21 MS. ESCHBERGER: Understand.

22 REPRESENTATIVE KEEFER: So, okay. So, if you
23 provide the campaign services, you can't lobby. It's just
24 those officials that you worked for, and that's just for a
25 period for one election -- one term after that election

1 that you worked on. So --

2 MS. ESCHBERGER: Right, but --

3 REPRESENTATIVE KEEFER: But --

4 MS. ESCHBERGER: -- see, you continue -- you may
5 work on their campaign, but you may have -- part of your
6 firm raises money for that person for the next campaign. I
7 mean, I don't do this. You know, I don't do campaigns and
8 lobbying. I just do lawyering and lobbying.

9 REPRESENTATIVE KEEFER: Okay.

10 MS. ESCHBERGER: So --

11 REPRESENTATIVE KEEFER: I only ask because in --
12 your question was that -- you said they'd have to pick one
13 or the other, they couldn't do both. But it says, you
14 know, that if you campaign -- you know, if you provided
15 campaign services --

16 MS. ESCHBERGER: Right.

17 REPRESENTATIVE KEEFER: -- it's just those
18 individuals for whom you provided the services to.

19 MS. ESCHBERGER: Yeah, but I guess I consider
20 that an ongoing relationship. If --

21 REPRESENTATIVE KEEFER: Right.

22 MS. ESCHBERGER: -- you're raising money for them
23 to continue their next campaign, then aren't you
24 continuing?

25 REPRESENTATIVE KEEFER: Yes, you would be.

1 MS. ESCHBERGER: So, you know, essentially you'd
2 have to pick, especially if you do it for a number of
3 members. If you have a fundraising arm of your firm that
4 does campaign fundraising for a number of members and
5 you're working on those campaigns, it kind of, really
6 restricts -- you know, when you're trying to count to 102
7 and 26 -- if you're working on a half dozen campaigns in
8 the Senate and maybe two dozen in the House, then you're
9 restricting where your votes are coming from. And
10 sometimes you really can't afford -- you need every vote.
11 So --

12 REPRESENTATIVE KEEFER: Right. No, no, I
13 understand that. So, what would your alternative to that
14 language be, then? I mean, because it's a slippery slope.
15 When you're -- you've just helped somebody get over the
16 finish line and they've come into office, now -- I mean, I
17 know you're familiar with --

18 MS. ESCHBERGER: Yeah.

19 REPRESENTATIVE KEEFER: -- Campaign Works. And
20 so they have -- not only -- I mean, it could go both ways,
21 right? They have all --

22 MS. ESCHBERGER: -- the dirt on you, because you
23 have done all this intel work, and they have -- you know,
24 they've helped you. They are, you know, very intimate with
25 your operation. You're coming into office now, and they

1 want some specific piece of legislation. That's an
2 inherent influence that they would have, no?

3 MR. FLEMING: Representative, I would say there
4 -- and I -- you know, there is a current precedent for a
5 one-year prohibition on, you know, whether you are either
6 leaving government service or entering. You know, the
7 Ethics Commission testified earlier. And, I remember when
8 I received my first lobbying job, I wrote to the Ethics
9 Commission for an opinion on who I would be restricted on.
10 Now, I came from -- I was the Press Secretary at the
11 Department of Agriculture immediately before I started
12 lobbying, and they came back with an opinion of, you cannot
13 lobby the Department of Agriculture for one year. And it
14 was okay because I was representing social workers. So --

15 REPRESENTATIVE KEEFER: Right.

16 MR. FLEMING: There weren't many ag --

17 MS. ESCHBERGER: You weren't going to meet a lot
18 of farmers.

19 MR. FLEMING: Right, right. There weren't any ag
20 issues that coincided there. But I think, you know, there
21 is already an established precedent of a one-year
22 prohibition. I think that is -- I think that would be
23 appropriate in this case.

24 REPRESENTATIVE KEEFER: So --

25 MR. FLEMING: That would be my thought.

1 REPRESENTATIVE KEEFER: So that -- okay. So, but
2 we're talking about lobbyists doing campaigning --

3 MR. FLEMING: Yes.

4 REPRESENTATIVE KEEFER: -- and that. So this --
5 you're saying apply the same thing?

6 MR. FLEMING: Right.

7 REPRESENTATIVE KEEFER: So as the -- that's how
8 the bill is currently written.

9 MS. ESCHBERGER: No, it says for the term.

10 MR. FLEMING: No, for the --

11 REPRESENTATIVE KEEFER: No, it says --

12 MR. FLEMING: -- term of office.

13 MS. ESCHBERGER: It says for the term --

14 REPRESENTATIVE KEEFER: Oh, for the term of
15 office.

16 MS. ESCHBERGER: -- of office.

17 REPRESENTATIVE KEEFER: Right, right. Okay. So
18 it's --

19 MR. FLEMING: Yes.

20 REPRESENTATIVE KEEFER: It would be two years --

21 MS. ESCHBERGER: It would -- at least --

22 REPRESENTATIVE KEEFER: -- or possibly four.

23 MS. ESCHBERGER: -- two, possibly four.

24 MR. FLEMING: Two years --

25 REPRESENTATIVE KEEFER: Four years --

1 MR. FLEMING: -- for a House member, and four
2 years for a Senate member. And especially -- to Judy's
3 point, I mean, especially if you worked on a campaign of a
4 very high profile member, say, you know, speaker, majority
5 leader, et cetera. You know, that is a lot of time to not
6 be able to access a key influencer in the General Assembly
7 or their staff.

8 So I -- again, I would posit, if we are going to
9 move in this direction, I think we have an established
10 precedent of the period of one year, and I think that would
11 be appropriate in either case, in this case as well.

12 MS. ESCHBERGER: Plus, I think we would need to
13 clarify, you know, does that include if someone volunteers?
14 Like, what if someone volunteers to work a poll for you?
15 You need help, but, you know, 5:00 to the end of the
16 election, and --

17 REPRESENTATIVE KEEFER: Actually, the language
18 says employed by.

19 MS. ESCHBERGER: Oh, employed by?

20 REPRESENTATIVE KEEFER: So it doesn't say
21 volunteer in there. It says employed to do -- you know,
22 employed --

23 MS. ESCHBERGER: Okay.

24 REPRESENTATIVE KEEFER: -- to provide campaign
25 services. Okay. So, and then moving -- okay. No more

1 question -- okay. Sorry. My time is up. Thank you.

2 Thank you, Mr. Chairman.

3 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE:

4 Thanks. I think the Democratic Chair has a follow-up
5 question on this bill.

6 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
7 you. You know, once again, like, I am open to changes,
8 amendments on many of these bills, but I'm having trouble
9 with a lot of what has been brought up as concerns here.

10 So, to your point, Judy, about volunteering, this
11 specifically speaks to folks who have received
12 compensation.

13 MS. ESCHBERGER: Compensation. Okay.

14 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: And
15 then secondly, do you not think it's a problem, a
16 perceptual problem, but also a practical problem to have
17 somebody who worked on your campaign then go be a lobbyist
18 for -- insert company right after working on your campaign?
19 Do you not see that as a public perception problem that
20 leads people to have a lack of faith in what is happening
21 in this building?

22 MS. ESCHBERGER: I don't disagree the appearance
23 of impropriety. But, is a two or four year --

24 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: But
25 ethically --

1 MS. ESCHBERGER: -- ban --

2 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: -- do
3 you not think it's improper?

4 MS. ESCHBERGER: Ethically?

5 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Yeah.

6 MS. ESCHBERGER: Do I not --

7 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: If I
8 just worked on your campaign, and now I am coming back in
9 this room and, you know, wink, wink, nod, nod, I now have a
10 person who wants to get a certain bill passed, and I was
11 just an advisor on your campaign? I think ethically that
12 is a problem, as well as perceptually, no?

13 MS. ESCHBERGER: I think perceptually it is. I
14 don't --

15 MR. FLEMING: Yes.

16 MS. ESCHBERGER: -- that -- I --

17 MR. FLEMING: Yes. And I think we -- just from a
18 personal standpoint, that is not the way I have chosen to
19 conduct business. And I do agree, Representative --

20 MS. ESCHBERGER: Yeah.

21 MR. FLEMING: -- Kenyatta, that it is an issue.
22 But -- from a perception standpoint, and it -- you know,
23 unfortunately it leads people to lose faith in their
24 government. I do agree. You know, I think, just speaking
25 as the entity who has to represent the interest of, you

1 know, lobbyists --

2 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: You've
3 got to lobby for the lobbyists.

4 MR. FLEMING: -- varied -- well, I mean,
5 represent those interests of a varied, diverse profession.
6 Again, I think there is already -- this has already been
7 thought about. And again, I just go back to -- separate
8 and apart from the ethical and perception issues, I just go
9 back to, the one-year prohibition is pretty well
10 established, and I think it would fit here as well.

11 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Yeah, I
12 would just make the point that I am not sure the one-year
13 prohibition is long enough even if it is established. And
14 I think it would go a long way -- and I know we're not
15 discussing it today -- to not allow lobbyists to contribute
16 to campaigns at all. That would help a bit.

17 MS. ESCHBERGER: We'll sign on for that tomorrow.
18 I got members -- I've got members who have pushed for
19 campaign finance reform for years.

20 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Well,
21 don't tell them they're lobbying [INAUDIBLE].

22 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
23 you. We're going to go to Representative Solomon with one
24 additional question on this bill --

25 MS. ESCHBERGER: And it's one of the reasons I've

1 never -- I don't do campaigns, because I don't like that
2 perception.

3 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
4 right, thank you. We're going to go to Representative
5 Solomon with one additional question on this legislation,
6 then we are going to go to Committee Chairman Grove on
7 House Bill 1606, and then we will need to wrap up this
8 portion to continue to stay on schedule here. Any
9 additional questions members have we can certainly submit
10 to the panel --

11 MS. ESCHBERGER: Yeah, and we're happy to --

12 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: --
13 after this hearing.

14 MS. ESCHBERGER: -- continue to engage with you.

15 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Okay.
16 Representative Solomon?

17 MS. FLEMING: Absolutely. Thank you, both.

18 REPRESENTATIVE SOLOMON: Thank you, Chair. On
19 House Bill 1603 and 1604, you say that you wonder whether
20 such legislation would even survive a legal challenge. So,
21 on 1603 you mentioned that industry standard is one year.
22 What legal challenges have been filed for that standard, to
23 that standard?

24 MS. ESCHBERGER: Well, I mean, I go back to a
25 traditional non-compete situation. I liken --

1 REPRESENTATIVE SOLOMON: What legal challenges
2 have been filed for the one-year prohibition?

3 MS. ESCHBERGER: Oh, there haven't been. That's
4 why --

5 REPRESENTATIVE SOLOMON: So what legal --

6 MS. ESCHBERGER: -- we said we --

7 REPRESENTATIVE SOLOMON: -- precedent are you
8 citing that would apply here?

9 MS. ESCHBERGER: We're just saying that the
10 one-year prohibition -- currently, if someone leaves the
11 General Assembly, the House or the Senate, and they're a
12 non-lawyer, they are prohibited from lobbying the House
13 where they came from for one year following their leaving.

14 REPRESENTATIVE SOLOMON: So there are no legal
15 precedents.

16 MS. ESCHBERGER: And we think that that should
17 likewise be applied to this situation.

18 REPRESENTATIVE SOLOMON: Okay. Thank you,
19 Mr. Chair.

20 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
21 you. We'll go to Committee Chairman Grove.

22 MAJORITY CHAIRMAN GROVE: Thank you. House Bill
23 1606 was the legislation created from the oversight
24 committee's report. Part of that re-envisioned how
25 Department of State lobbying disclosure is actually funded.

1 Currently, lobbyists are already taxed under the Sales Tax.
2 That money would come back into the Department of State for
3 lobbying disclosure. And then part of it was -- the
4 discussion as the fee. And you mentioned, you know, \$300
5 is one of the highest in the entire country.

6 MS. ESCHBERGER: Yeah. In some states it's
7 nothing. In other states it's \$25.

8 MAJORITY CHAIRMAN GROVE: Got you. Getting rid
9 of that and putting a percentage based on, basically,
10 profitability of the entity to say larger firms would pay
11 more, smaller firms starting out would pay a lesser amount
12 based on how much lobbying and what they're actually doing;
13 based on the actual activities of that lobbying firm. So,
14 it would end up eliminating the fee structure to a flat tax
15 based on that. I didn't see a real discussion about that
16 switching concept away from a fee, flat fee, to a -- kind
17 of a flat tax based on profits.

18 MS. ESCHBERGER: Yeah, I think -- I know we
19 haven't surveyed our members at all. We haven't discussed
20 that internally at all.

21 MAJORITY CHAIRMAN GROVE: Okay. If you could
22 have that discussion.

23 MR. FLEMING: And the only thing --

24 MAJORITY CHAIRMAN GROVE: Because again, I'm --

25 MR. FLEMING: -- I would say, Representative

1 Grove that -- I apologize. I didn't mean to cut you off.
2 The only thing I would ask there is, would that be -- would
3 that be applicable to nonprofits as well? Which is where
4 I've sort of spent my career.

5 MS. ESCHBERGER: Yeah, because they don't -- you
6 know --

7 MR. FLEMING: [INAUDIBLE] --

8 MS. ESCHBERGER: -- and then you've got in-house
9 corporate --

10 MR. FLEMING: -- for example.

11 MAJORITY CHAIRMAN GROVE: Uh-huh. It'd be for --
12 yes, as someone who would file, it would be on the portion
13 of lobbying disclosure you would have, or the amount you
14 were using in that lobbying realm. Because I know you have
15 a certain percentage you can use.

16 MR. FLEMING: [INAUDIBLE] lobby --

17 MAJORITY CHAIRMAN GROVE: Yes.

18 MR. FLEMING: -- would be taxed.

19 MAJORITY CHAIRMAN GROVE: Yes.

20 MR. FLEMING: Got it.

21 MAJORITY CHAIRMAN GROVE: Yeah.

22 MR. FLEMING: Okay. So, the amount you would
23 report would then be subject to the --

24 MAJORITY CHAIRMAN GROVE: Right.

25 MR. FLEMING: -- to the 1.8%.

1 MAJORITY CHAIRMAN GROVE: Right.

2 MR. FLEMING: Okay.

3 MAJORITY CHAIRMAN GROVE: Yeah.

4 MR. FLEMING: Okay, thank you.

5 MAJORITY CHAIRMAN GROVE: The other aspect you
6 brought up in 1606 is the switch from the principal to the
7 lobbyist. One of the things we did find in the report is
8 how much is non-reportable. There is the amount reported,
9 and then there's everything else, right? The goal is to
10 get after that. Would the appropriate alternative rather
11 than that mechanism -- and it was great to hear, actually,
12 the history of why it was switched to --

13 MS. ESCHBERGER: Yeah, that's --

14 MAJORITY CHAIRMAN GROVE: -- principal, because
15 it makes sense. Would it be dollar-one reporting? Would
16 that be the alternative to go after that scope as an easier
17 mechanism and a better mechanism than switching from
18 principal to lobbyist?

19 MS. ESCHBERGER: You know, dollar one was --
20 dollar-one reporting was previously discussed in the -- in
21 2006, before -- well, in the early 2000s. And, there was a
22 feeling amongst a lot of members that smaller associations
23 would not participate if they had to do dollar-one
24 reporting, because they just couldn't afford to. I don't
25 know whether that's true or not. I mean, again, experience

1 will only tell with time. So --

2 MAJORITY CHAIRMAN GROVE: Got you. Okay, thank
3 you.

4 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
5 right. Well, thank you to both of you for joining us. And
6 again, if any additional questions do arise, we'll make
7 sure to pass them along to you as well. So, thank you
8 again. All right, Panel --

9 MR. FLEMING: Thank you.

10 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: -- #3.

11 MR. FLEMING: Thank you for the opportunity.

12 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Panel
13 #3 is the Pennsylvania Department of State. We are going
14 to be joined by Jonathan Marks, Deputy Secretary for
15 Elections and Commissions. And as soon as you are
16 situated, feel free to get started when you are ready.

17 MR. MARKS: Good morning. Thank you, Chairman
18 Mackenzie, Minority Chairman Kenyatta, also Chairman Grover
19 and Chairman Conklin, for the opportunity for me to be here
20 today to provide testimony on behalf of the Department of
21 State.

22 I understand that you don't want me to read
23 through my written testimony, so I won't. I do want to
24 point a couple of things out before I take questions from
25 the committee members. As a preliminary matter, changes in

1 several of the bills in this package, particularly 1600,
2 1602, 1606 and 1609, would require significant operational
3 changes to the departments. The IT infrastructure,
4 lobbying disclosure database, that would come with cost,
5 and it would also take time.

6 So, I guess my point of bringing that up is just
7 to let the committee know that the 60-day effective date
8 within this legislation is not doable. It's -- you know,
9 we're asking for something more along the lines of a
10 minimum of 180 days to give us the time necessary to make
11 these changes. But, we still have to address the cost, at
12 least in the short term. I understand that part of this
13 legislative package would change how lobbying disclosure is
14 funded, how the department lobbying disclosure activities
15 are funded. But, in the short term there would be
16 immediate cost to make those IT changes, as well as some
17 staffing -- short-term staffing cost as well.

18 The only other point I want to make before I take
19 questions -- and I think you've heard that. There seems to
20 be a theme in the expert testimony provided by the State
21 Ethics Commission as well as PAGR. You've kind of heard
22 the theme that a lot of this legislation can use some
23 additional clarification, and I think you acknowledged
24 coming in that, and that's really the point of this hearing
25 and, perhaps, additional hearings.

1 We right now are dealing with -- House Bill 1601
2 we've gotten a lot of questions about, and you heard this
3 from PAGR as well. We've gotten a lot of questions about
4 what equity means and how broadly that is to be construed;
5 what the exceptions are, if any. And, we would ask for
6 some additional clarity, not only on that point, but also
7 on things like campaign consultant. There was a discussion
8 also -- last testifier, you know, brought up that issue.
9 And certainly, it certainly means a paid campaign
10 consultant doesn't mean a paid volunteer who is knocking on
11 doors. Where is the limit? Is there a limit? And I think
12 perhaps clarifying that or providing explicit language in
13 the statute would be helpful.

14 And the last point I'll make, specifically
15 regarding House Bill 1609, the department certainly would
16 be happy to take on the challenge of providing training on
17 ethics. And we would, in any event, consult with the State
18 Ethics Commission to do that training, but it is not
19 explicitly identified, or the State Ethics Commission is
20 not explicitly identified in the legislation. So, I think
21 it would probably be, in my opinion anyway, a good idea for
22 the legislature to mandate that the department consult with
23 the State Ethics Commission to provide ethics training as
24 they are certainly the expert on the matter. Now I'm happy
25 to take any questions the committee has.

1 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
2 Thank you. First up we have the Democratic Chairman.

3 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
4 you, Mr. Chairman. And welcome back. It feels like you --

5 MR. MARKS: Thank you.

6 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: --
7 spend so much time with us. My question is about something
8 the State Ethics Commission had offered as a comment
9 earlier, talking about being able to engage with your
10 systems, have access to your systems to do the work, and
11 they said they have a great relationship, it's all good,
12 but there might -- that it might be a good thing to give
13 them statutory access to do that in a statutory way. Would
14 your office be opposed to that?

15 MR. MARKS: I do not foresee a circumstance under
16 which we would be opposed to that. Obviously, all of our
17 systems are managed in part by the Office of Administration
18 IT. There are security considerations, but I am certain if
19 that were mandated by legislation we would be able to work
20 through any of those security considerations.

21 And we do -- as the State Ethics Commission said,
22 we do trade a lot of information with them right now and
23 give them accesses as much as we are able to.

24 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: And
25 then in terms of the scaling up that would be necessary in

1 terms of the current IT systems to do this, how -- what do
2 you think would be necessary in terms -- do you think
3 additional appropriation would be necessary to execute
4 that?

5 MR. MARKS: I believe so, certainly immediately.
6 Again, I understand this package comes with a mechanism
7 that changes how lobbying disclosure activities are funded
8 at the Department of State. But, to make the IT changes
9 and to implement some of these immediate changes, yes, I do
10 believe at the very least that would be necessary
11 immediately.

12 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: And
13 then, Mr. Chairman, if you -- again, I would just make the
14 final point that I think I've made too before Deputy
15 Secretary that I think one of the things -- because, you
16 know, we're talking about lobbyists lobbying us in a big
17 way that the public gets to see the engagement is through,
18 as we discussed, campaign finance.

19 And so I will again just make the point that our
20 website, in terms of the public being able to access
21 campaign finance reports is certainly lacking, and it is
22 something that I think making it more friendly to the
23 public -- every time I see you I'll make that point until
24 we have a better website.

25 MR. MARKS: No, I --

1 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
2 you.

3 MR. MARKS: -- I cannot disagree with you, and it
4 is part of our -- I've testified by our shore modernization
5 efforts. Those modernization efforts also include campaign
6 finance, elections management system and even the lobbying
7 disclosure database. Certainly, we want to be able to keep
8 up with the technology and provide as much access online at
9 people's fingertips as possible.

10 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
11 thank you. Representative Wheeland?

12 REPRESENTATIVE WHEELAND: Thank you, Mr. Marks.
13 Welcome back.

14 MR. MARKS: Thank you, sir.

15 REPRESENTATIVE WHEELAND: Your testimony notes
16 substantial concerns with the cost burden of additional
17 required reporting frequency, or newly covered entities.
18 Are there any current requirements or expenditures required
19 by the Department of State's role in enforcing the Lobby
20 Disclosure Act that seem like less necessary or not as
21 beneficial to transparency than those -- than these
22 proposed reforms? And so that's Question 1. And, would it
23 be possible to look at reprioritizing current enforcement
24 funding rather than just simply raising fees?

25 MR. MARKS: It's a difficult question for us to

1 answer alone in terms of enforcement, because the State
2 Ethics Commission actually does the enforcement piece. The
3 one area where we are involved, or, you know, the two areas
4 we're involved of course is on the reporting side. We turn
5 over information. We give access to data to the State
6 Ethics Commission so that they can do necessary
7 investigations.

8 We also do the random audit. Right now it's
9 random, and I understand that part of this package would
10 also change the mechanism for determining who is audited.
11 But that's really where I -- and I wouldn't even call that
12 enforcement. I think that's really where our role ends, is
13 overseeing that audit. We get the reports from the
14 auditors, then we share those with the State Ethics
15 Commission. In terms of enforcement, they take it from
16 there.

17 REPRESENTATIVE WHEELAND: But again, is there --
18 in your experience, what you have seen, are there some
19 rabbit holes that you're chasing that aren't worthwhile,
20 and you just basically would like to see them go away
21 because they -- there is no benefit?

22 MR. MARKS: I don't believe so, because again,
23 our primary function is the reporting side and maintaining
24 the reporting database, ensuring that lobbyists, that
25 principals are reporting quarterly as they are required to

1 do.

2 I guess I may -- you know, one thing that came up
3 earlier -- I don't know that it necessarily would save us a
4 whole lot of work, but it would save us a lot of
5 aggravation. And I believe Mr. Jacisin from the State
6 Ethics Commission brought it up. There's no mechanism for
7 someone to terminate a relationship right now, so there are
8 reporting requirements that continue on beyond that
9 relationship. And I agree with that, and I think that is
10 -- because we often end up having to notify a registrant
11 that they have failed to comply, and they're confused
12 because they believe the relationship ended some time ago
13 and weren't aware that there were additional filing
14 requirements.

15 REPRESENTATIVE WHEELAND: So in that particular
16 case with the Department of State, that eats up a lot of
17 man hours that could be corrected. That's what we're
18 looking for.

19 MR. MARKS: It does, yes. Certainly it --

20 REPRESENTATIVE WHEELAND: So that's the type of
21 ideas --

22 MR. MARKS: Certainly -- you know --

23 REPRESENTATIVE WHEELAND: -- that we're looking
24 for.

25 MR. MARKS: Right, chasing down people who

1 otherwise -- I mean, the only reason that we're sending
2 notices to them or contacting them is because they weren't
3 aware that they had to file beyond when that relationship
4 ended.

5 REPRESENTATIVE WHEELAND: And I think that's an
6 excellent example, and I would say as we move forward if
7 you come up with another suggestion, if you could share it
8 with the committee would be most helpful.

9 MR. MARKS: Certainly.

10 REPRESENTATIVE WHEELAND: Because we are
11 concerned about the fees, especially in comparison to other
12 states. And if we can save money by eliminating some of
13 this busywork --

14 MR. MARKS: Yeah.

15 REPRESENTATIVE WHEELAND: -- it would be helpful.
16 So, thank you.

17 MR. MARKS: No, I agree. And I think -- I do
18 think that changing the fee structure will be beneficial as
19 well. Right now it is a fee that, you know, whether you're
20 a small nonprofit lobbying on your own behalf or a large
21 corporation the fee is the same. I think basing it on how
22 much activity makes a lot of sense, you know, policy-wise,
23 and I think it will also streamline the process.

24 REPRESENTATIVE WHEELAND: Thank you very much.
25 Thank you, Mr. Chairman.

1 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
2 thank you. So let's see. On House Bill 1603 which
3 generated a lot of conversation on the last panel, you
4 mentioned that it could be beneficial to have a cooling-off
5 period between campaign work and lobbying. You also
6 mentioned some concerns around the definition. So, can you
7 just speak to that and kind of give us your thoughts on
8 that?

9 MR. MARKS: Yes. I think there are probably
10 circumstances under which exceptions could be made. I
11 mean, campaign consultant, depending on how broadly you
12 read that, I think maybe just tightening up the definition
13 to explain. I believe, anyway. I certainly won't speak on
14 your behalf, but I believe the intent there is to prevent
15 paid campaign consultants, people who are doing significant
16 campaign consulting from then lobbying, you know, on behalf
17 of the interest of a client, you know, to that official
18 that they consulted for.

19 I don't know that it's necessarily the intention
20 of the legislature to prevent somebody who is doing
21 grassroots campaigning, knocking on doors, whether they
22 were paid or not, from perhaps taking a job as a lobbyist,
23 you know, subsequent to that activity.

24 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
25 right, thank you. Yeah, I think that's an important

1 distinction that we can try to clarify. And I do know that
2 Representative -- okay. We have an additional question on
3 legislation from Representative Ryan regarding House Bill
4 1606.

5 REPRESENTATIVE RYAN: Deputy Secretary Marks, how
6 are you?

7 MR. MARKS: I am very good. I wanted to tell
8 you, I stand in solidarity with you, Representative Ryan.
9 I, too, do not have a TikTok account or an Instagram
10 account.

11 REPRESENTATIVE RYAN: Well, and I commend you for
12 both of those. They wanted to see me do the shuffle dance,
13 and I didn't think that would be a particularly good idea
14 for a 70-year old to be engaged in that without my walker.

15 I am getting stereotyped here as the audit
16 question person, so 1606 is coming up. And I did want to
17 ask you a question, because I think your concerns about
18 1606 are pretty interesting and substantive. But, I want
19 to delve a little bit more detail on it.

20 You've got a concern as we eliminate some of the
21 requirements for filing a registration about the proposed
22 auditing changes. Do you think there is an alternative
23 approach that you might suggest for the audit rather than
24 the 3% random selection? What would you recommend?

25 MR. MARKS: So, I'll first answer with, you know,

1 our comment. You know, focusing on risk of noncompliance,
2 again, that would need some clarity. I'm not sure what --
3 you know, certainly we could compare lobbying disclosure
4 filings against say campaign finance filings to determine
5 if there may be, you know, something, some overlap there.
6 I don't know how much further we could go, ourselves, in
7 determining that.

8 So, you know, the random audit I think perhaps
9 may be putting a -- and, you know, the complaint about the
10 random audit now is that -- and this is just how the luck
11 of the draw works out sometimes. We pull names randomly,
12 and sometimes the same organization or the same principal
13 will be pulled for an audit, you know, twice in a row.

14 I think maybe perhaps putting some limit on how
15 often somebody is pulled for the random audit -- I
16 understand what the intent is. And I guess, maybe the best
17 way to say it is we might need to empower either the
18 Department of State or the State Ethics Commission to go
19 looking for it.

20 If I -- you know, I think your goal here is to --
21 look, we don't want these audits to be reliant entirely on
22 luck. If there is some apparent violation, we want -- you
23 know, or the risk of violation. We want the department to
24 be able to pull that principal or that lobbyist for audit.

25 It just -- it kind of makes it subjective. And,

1 you know, putting the department in that position of
2 subjectively choosing without necessarily empowering us or
3 the State Ethics Commission to go look for other pieces of
4 information.

5 I remember. I recall, a couple of years ago we
6 talked to staffers of the legislature about some of these
7 issues with lobbying disclosure, and we did kick around
8 some ideas about perhaps having access to, you know, tax
9 filings of principals, other things that we may be able to
10 utilize to determine whether those things are syncing up,
11 and whether maybe they have spent money on lobbying but
12 haven't reported it; ideas like that. But that's -- that
13 becomes sort of complex, and right now the framework is not
14 in place.

15 REPRESENTATIVE RYAN: I would encourage you to
16 look at that, because I concur with your concerns. The
17 Accounting Standards Board and -- the AICPIN as well as the
18 Governmental Accounting Standards Board does a really nice
19 job about risk-based auditing, so it gives you a little bit
20 better perspective.

21 And if it's okay with the Chair, I would very
22 much like to get your feedback of what your thoughts are on
23 the types of standards that they recommend for those types
24 of risk-based audits. And thank you. That's all the
25 questions I have, Mr. Chair.

1 MR. MARKS: Thank you.

2 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
3 you. We're going to go to the Democratic Chair with
4 questions followed by Representative Wheeland and myself to
5 close out this panel. Thank you.

6 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
7 you. And thank you, Deputy Secretary, again. So, what is
8 the process right now of trying to determine if someone
9 that was submitted on lobby inform is also not present on a
10 campaign finance report particularly as it relates to
11 donations? What is the process right now?

12 MR. MARKS: There isn't a process necessarily for
13 doing that comparison directly. You know, we're primarily
14 a filing agency, so we serve as the filing agency for both
15 campaign finance and lobbying reports. But, somebody could
16 file. Somebody certainly could file a complaint with the
17 State Ethics Commission. There isn't necessarily a
18 proactive opportunity right now. It's not a statutory
19 mandate, and, you know, I'm not sure that the department
20 could proactively do it without perhaps being challenged on
21 its authority to do so. I am not the department's counsel,
22 so I'll defer to them.

23 But, you know, that was -- when we were teasing
24 out, you know, what are the risk of compliance, and what do
25 we have access to that might tell us that there is a risk

1 of noncompliance, that's really the only other records we
2 have that may be relevant.

3 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Do you
4 think, whether it's the department or whether it is the
5 State Ethics Commission, that we would benefit, that the
6 public would benefit from having an easier way to draw the
7 lines between potential conflicts that might exist?
8 Because to your point, it just seems like we have records.
9 And in case there is a news article about it or there is an
10 investigation, you can go back and check. But there --

11 MR. MARKS: Right.

12 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: -- is
13 no -- but there is nothing that we're doing right now that,
14 to your point, would proactively deter this type of
15 behavior and potentially nefarious dealings.

16 MR. MARKS: Right. And that's my understanding.
17 I believe that is the intent of the legislation, and I
18 certainly would be happy and look forward to working with
19 you to determine what is the best mechanism. But, right
20 now it is really luck of the draw. If your name is pulled
21 for audit, and during the audit somebody finds -- or the
22 auditor finds lack of compliance, then it goes to the State
23 Ethics Commission. Otherwise it's up to some third party
24 or someone externally to file a complaint to have the state
25 Ethics Commission look into it.

1 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: And a
2 final short follow-up, Mr. Chairman. And so right now
3 these audits are being done manually, or are they assisted
4 by some computerized system that is allowing the auditors
5 to very quickly match the data and find inconsistency?

6 MR. MARKS: We turn over -- so the audit -- the
7 audits themselves are being done by a certified public
8 accounting firm. That's a requirement of the statute.
9 But, we turn over information. All of the reports filed by
10 the -- you know, by the principal or --

11 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: So that
12 accounting firm --

13 MR. MARKS: -- by the lobbyist.

14 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: -- is
15 doing it manually, though?

16 MR. MARKS: I can't speak for how they're doing
17 it in terms of the methodology. I know that we turn over
18 all of the information. They also seek additional
19 information from the registrant who is being audited. But
20 I don't know. I don't know exactly what their methodology
21 is. I do believe they are probably using some, you know,
22 technology to assist with that, but they're also manually
23 looking at records as well, I would imagine.

24 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Well,
25 Mr. Secretary, if you could get back to me and to the

1 broader committee on further ideas from your team about how
2 to be more proactive, and about what statutory authority
3 would be necessary, and to what agency, either you or State
4 Ethics. But, I think that everything that, just in this
5 back-and-forth here, is for me deeply troubling that we --
6 there is not a mechanism by which we are super proactively
7 limiting behavior that diminishes the public trust and
8 faith. And, that is something that I hope we can figure
9 out sooner rather than later. Thank you.

10 MR. MARKS: Thank you.

11 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
12 you. Representative Wheeland?

13 REPRESENTATIVE WHEELAND: Thank you. A previous
14 testifier suggested that the elimination of the reporting
15 threshold for expenditures -- how do you believe that this
16 would impact the volume of the reporting required? Total
17 elimination of a threshold.

18 MR. MARKS: It's hard to say with certainty,
19 because obviously we don't know how much activity is
20 occurring below the threshold. We did see -- when we
21 raised the threshold, we did see a slight lowering of the
22 number of registrants, but it was not significant. So,
23 that's really the only frame of reference I have.

24 You know, I would expect -- you know, \$3,000 is
25 not a lot of money, not these days, so, you know, I guess

1 it depends on, you know, what you're -- what the -- you
2 know, what your policy goal is, what you're trying to
3 eliminate, or what you're trying to further restrict.
4 Because, \$3,000 in a quarter probably doesn't amount to a
5 whole lot of lobbying. That's --

6 REPRESENTATIVE WHEELAND: Right.

7 MR. MARKS: That's just my personal opinion, but
8 I think that's -- you know, the threshold I think, you
9 know, makes some logical sense, so that you're not picking
10 up, again, a small nonprofit that may be lobbying on its
11 own behalf that is -- you know, doesn't have the money to
12 pay for professional lobbyists, et cetera and burdening
13 them with the registration fee and the filing requirements
14 that come along with it -- may reduce, you know, or
15 diminish their voice, I guess.

16 REPRESENTATIVE WHEELAND: Okay. Another
17 testifier also suggested that it may be desirable to
18 provide for interim terminations -- termination outside of
19 the biannual renewal period. Are there any logistical
20 concerns for the department in such a shift?

21 MR. MARKS: You know, I'd have to talk to our IT
22 folks and find out if there's any -- I don't think that
23 would necessarily be complicated logic to terminate. You
24 know, by comparison 1606 sort of shifts the filing from the
25 principals onto the lobbyists. That is going to be a

1 significant change, because it basically reverses the logic
2 that the system currently uses.

3 But, terminating an entity I don't -- I doubt
4 would be a heavy lift, at least the act of terminating.
5 And I guess where the logic would come in is if we're
6 assigning dates into the future, will we be able to turn
7 those off, or will we have to do that manually until we
8 change that trigger?

9 REPRESENTATIVE WHEELAND: Again, I think the --
10 if I could speak for the whole committee, I think our
11 concern is the unintended consequences of any of these.
12 And this is -- again, purpose of the hearing to --

13 MR. MARKS: Right.

14 REPRESENTATIVE WHEELAND: -- hear from all
15 entities in it. So once again, if you think of something
16 --

17 MR. MARKS: Yes. And I --

18 REPRESENTATIVE WHEELAND: -- have a concern, if
19 you could please share it --

20 MR. MARKS: Yeah, I --

21 REPRESENTATIVE WHEELAND: -- with us.

22 MR. MARKS: I will say, you know, that -- and
23 again, that logically makes sense to allow for that interim
24 termination. Again, once the relationship has ended, no
25 additional lobbying is occurring, I'm not sure what policy

1 goal you're achieving by requiring filings beyond that
2 point.

3 REPRESENTATIVE WHEELAND: Okay, thank you. Thank
4 you very much.

5 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Thank
6 you. And just in closing I'll ask, do you have any
7 concerns beyond what's written in the testimony here that
8 you would like to share with us today?

9 MR. MARKS: You know, it's a large package of
10 bills, so I always reserve the right to -- you know, for
11 the lightbulb to go on and say, oh, I didn't think of this
12 as well.

13 I -- you know, the concerns really are not so
14 much with the -- you know, I understand the purpose of the
15 package. I understand the policy goals, and we are
16 certainly in agreement with those. It's really just making
17 sure that we have the time, the resources and the money to
18 make these changes before they have to be imposed upon the
19 regulated community.

20 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
21 right. And, do you think that there is anything that we're
22 missing that you would like to see additionally beyond
23 what's in this legislation?

24 MR. MARKS: Officially, on behalf of the
25 department? No, I think it mostly achieves those goals,

1 other than the things we have talked about here is in
2 providing clarity. You know, making sure that whatever is
3 put in place provides robust transparency without punishing
4 small individuals who are simply trying to make their voice
5 heard before their elected officials.

6 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Okay.
7 I will just conclude by saying I thought it was very
8 helpful, the Ethics Commission, that they had provided some
9 commentary and suggestions outside of the legislation. I
10 think that it will help inform our work here as well. So,
11 if you do have anything additional that comes up, we would
12 love to hear it. Again, I think both --

13 MR. MARKS: Absolutely.

14 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: --
15 you, the Ethics Commission, the outside stakeholders all
16 have valuable input that we want to include in our
17 legislative package. So, anything additional comes up,
18 feel free to let us know.

19 MR. MARKS: I would be happy to do so. Thank you
20 very --

21 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.

22 MR. MARKS: -- much again for the opportunity.

23 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
24 right, thank you. Okay. We have a fourth and final panel
25 for this hearing, and that is the National Conference of

1 State Legislatures, or NCSL. We are joined by Mark Quiner,
2 if I got that correct.

3 MR. QUINER: You did.

4 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: All
5 right, thank you. He is the Director for the Center for
6 Ethics in Government through NCSL. And, I will note that I
7 am on the executive committee of NCSL, so I just want to
8 make that clear to everybody before we start his testimony.
9 So, with that, Mark, I will turn it over to you.

10 MR. QUINER: Thank you. Thank you very much,
11 Mr. Chair, and thank you for this opportunity to talk to
12 you all this morning. Yeah, it is early this morning in
13 Denver. Welcome to my humble dining room.

14 But, I just wanted to talk to you a little bit
15 about some of the principals. And I -- you know, as a
16 lawyer I always hate to start with a disclaimer, but I'm
17 really not the lobbying regulation expert. I have been
18 involved in the state legislatures for 30-plus years. My
19 background is with the Wyoming State Legislature, which is
20 the smallest state in the country as you all know, and I
21 was the acting director of the Legislative Service office
22 there for 26 years.

23 So, I actually drafted the bill that was the
24 first lobbying disclosure act in Wyoming. So, I don't know
25 if that was a popular thing for me, but it certainly made

1 my phone light up on occasion. And so, I've had lots of
2 experience, I think, you know, working with state
3 legislatures and lobbyists.

4 I -- my main role at NCSL as the Director of the
5 Center for Ethics in Government is to facilitation and
6 training for all 50 state legislature. As you know,
7 Mr. Chairman, all 50 states belong to our organization. We
8 are certainly honored to have Pennsylvania as an honored
9 member and valued member of our organization.

10 And, I do a lot of ethics and civility training;
11 however, our website at the Center for Ethics in Government
12 -- and I am happy to provide links to that. We track all
13 50 state laws on lobbyists, lobbyist regulation, et cetera.

14 So having said that, as you all know, we are a
15 nonpartisan, I guess, organization, so I can't really
16 comment specifically on legislation and say hey, this is a
17 good idea or this is a bad idea. And I'll give you an
18 example of, kind of, the, I guess, uncomfortable position I
19 am put in sometimes.

20 I get calls from the media. Not so much your
21 state, but I do get calls from the media, and they say,
22 well, Mr. Quiner, really, as someone with some national
23 perspective, do you -- and they'll start in on a scenario
24 in their state and say things like, well, you know,
25 Representative or Senator So-and-So is doing this. Is that

1 okay? And, you know, I wouldn't have a job real fast if I
2 weighed in on those kinds of questions.

3 And then the second question they will ask me is,
4 well, tell us about this law, and this law in this state.
5 Is this good? And what suggestions do you have for, like,
6 model legislation? And again, I would not be employed if I
7 said, well, hey, look at this state or that state. But, I
8 will tell you currently involved in an effort with the
9 American Law Institute, ALI. Some of the lawyers in the
10 audience will be familiar with them. They do the
11 restatement of like torts and criminal law, et cetera, and
12 I am privileged to serve on a panel that's actually -- we
13 are coming up with a model ethics code, and it would be for
14 any government that might be interested, whether it be
15 state, local like county or city, or frankly any country
16 that is interested. And I actually do get called and have
17 been privileged to travel to other countries to provide
18 information on just some general principles.

19 So, having said all of that, I thought I would
20 just talk to you about maybe some of the trends we're
21 seeing at NCSL at the ethics center, given the fact that we
22 are in a rather challenging period. And I really
23 appreciated some of the comments by Speaker Cutler to you
24 all. And I especially like the sentence that he said: I
25 appreciate the efforts of the subcommittee to look at ways

1 to ensure the voices of the people of Pennsylvania are not
2 silenced by the presence of any undue access or influence.
3 I think that's a good principle to keep in mind, that
4 really what we're talking about here is the right of the
5 citizens to have access to the legislative process. And as
6 you all know, it can be very confusing and very difficult
7 for John Q. Public to engage meaningfully in the
8 legislative process sometimes.

9 You know, I hail from the smallest state in the
10 country and, believe it or not, it was very hard for people
11 that would come to Cheyenne, come to our capitol building
12 and look for the committee meet. First of all, it was very
13 hard in our labyrinth of committee meeting rooms to even
14 find stuff, and then to know when the bill was up, what --
15 you know, what amendments were being proposed, and how to
16 provide valuable input into that process. And I remember
17 thinking -- I would sit in those committee hearings just as
18 your staff is doing, and I would think, you know, if that
19 were me, I don't know that I would be able to, A, figure
20 out where this bill is, where it is in the process, where
21 it's going after this committee hearing and how to provide
22 meaningful input. And then of course if it was reported
23 out of the committee, as you all know, and went to the --
24 onto the floor and had three hearings in the House, then
25 three hearings in the Senate, another committee hearing in

1 the Senate. It was nigh to impossible for them to track
2 the process of that bill. And even though we put
3 everything on the web, you still really kind of had to know
4 the game to provide meaningful process. So, I think that
5 that's an important principle to keep in mind.

6 The other thing I want to make sure that I tell
7 you all is that, you know, each state is different. And
8 what's appropriate in Pennsylvania might not be appropriate
9 in other states.

10 And I'll give you an example. When I first was
11 asked to draft the ethics and disclosure law in Wyoming, we
12 put in there -- and it wasn't me. It was the leadership;
13 put in there a \$5 limit on gifts, and that included like
14 meals. And in the interim, between the enactment of that
15 first version of that law and then the next legislative
16 session, there was major outcry. And it didn't come from,
17 you know, the legislators. It didn't come from lobbyists.
18 It came from the citizens of Wyoming who said, you know, we
19 have a citizen legislature here. If you are going to say
20 that I can't have a meal because it will be -- even in
21 Wyoming meals cost more than \$5 -- of that it will be over
22 \$5, you are essentially denying access to our -- for us to
23 our members. And if you say we can't provide for travel
24 and lodging to, you know, the myriad of conferences that
25 you all are asked to attend and participate in, then you

1 are also limiting our right to have information about
2 what's going on. You know, we'd always hear the phrase,
3 down there in Cheyenne. I'm sure you hear, you know,
4 what's going on in Harrisburg, et cetera.

5 And, my favorite comment was the salty former
6 chair of -- chairwoman of the Joint Agriculture Committee,
7 and I called her the modern-day Calamity Jane. I
8 absolutely loved her. And she is no longer with us, but
9 she looked at me when this first law came out, and she
10 goes, I'm going to tell you something, Mark. And I go,
11 okay. Yes, Madame Chair? And she goes, if any lobbyist
12 thinks they can buy my vote for a steak and shot of whisky
13 -- and she wasn't kidding -- they're the dumbest -- and I
14 won't give you the complete vernacular she used. But,
15 that's the dumbest person I've ever dealt with. So, I
16 said, yes, Madame Chair.

17 So those were the kinds of comments we heard.
18 So, the next round of amendments to that ethics and
19 disclosure lobbying law we eliminated the meals. There
20 were -- there are no limits to beverages and -- food and
21 beverage that you can have. There are limits on the
22 registration, but they've upped them significantly from
23 where they were. And, I have not heard -- I've been -- I
24 have not heard any outcry again from that, in that you are
25 inviting corruption or anything like that. So, I was very

1 interested to hear your Ethics Commission testify this
2 morning about, you know, that there haven't been that many
3 incidence of outright intentional corruption in the history
4 of this law.

5 So, I just think those principles are relevant.
6 And, you know, I went from Wyoming where there are no
7 limits on food and beverage to, here in Colorado, we are,
8 in Colorado, considered a no-cup-of-coffee state, meaning
9 there -- you cannot provide any food or beverage whatsoever
10 at no cost to the legislators in general. Now, if it's an
11 educational program or something like that, but that's a
12 different matter.

13 But anyway, I -- that -- I say all that to say,
14 hey, what's appropriate in Cheyenne, Wyoming is probably
15 not appropriate in New York City and some of these other
16 states. It just -- you have to do what's appropriate. And
17 so, I am really impressed that you have had the full
18 panoply of testimony and, I guess, panels that you have had
19 this morning, and I applaud your efforts.

20 And if there is -- I don't know if there is a
21 citizen group that could also weigh in on saying, hey, this
22 is how we see lobbying and lobbying regulation just from
23 our standpoint. I think that would be valuable for the
24 committee as well.

25 So, I thought Speaker Cutler did a nice job of

1 saying, hey, this is what lobbying is. But we also -- we
2 have many definitions from all 50 states, and basically we
3 define lobbying as an attempt to influence government
4 action through written or oral communication. Generally
5 it's for some sort of economic compensation, and when you
6 talk about -- before you talk about that compensation, in
7 Wyoming we don't list anything. You have to say the
8 sources of your income, but you don't have to say how much.
9 You have to say -- when you report as a lobbyist, you have
10 to say I spent over \$500 in a calendar year. So, some of
11 you might find that funny, but you basically can't host an
12 event for all 90 legislators in Wyoming's case for under
13 \$500. So, Arkansas is 400 or more per quarter. Georgia is
14 1,000 or more per calendar year. And I think I am correct
15 in saying Pennsylvania is 3,000 per reporting period which
16 is every quarter.

17 And, you know, there are exceptions to lobbying,
18 and I think the definitions are important. I used to draft
19 a lot of bills. Definitions were always an extremely
20 important part of those bills and how they would be
21 administered and/or enforced. Several of you have
22 discussed the -- what we call the revolving door, and I
23 guess in your case you're talking about state employees who
24 used to work for a state agency, and then going out and
25 being lobbied or, I guess, even lobbying. And I don't know

1 all the ins and outs of your laws, but the -- we find the
2 trends to be anywhere from six months to two years in
3 states that have revolving door prohibitions where an
4 elected official ends his or her term and then goes out to
5 lobby.

6 I will tell you just -- this is just a personal
7 comment and personal opinion, not reflecting in any way of
8 NCSL. But, it did raise eyebrows in Wyoming where we have
9 no revolving door prohibition where let's say -- and this
10 happened. A chairperson of a committee overseeing the
11 regulation of a certain industry overnight would step down
12 and become, you know, a very highly paid lobbyist for that
13 industry.

14 So, I think that your one-year revolving door
15 prohibition I think is right in the middle and, as we see,
16 right in the range of what's unique and what's typical, I
17 guess is what I would say.

18 And then limiting public funds, I don't know that
19 that's being a -- been a big issue for you all, but there
20 is also, we also have information on using public funds for
21 lobbying, especially in the case of state agencies of the
22 executive branch. That's always -- oh, it can raise
23 eyebrows in saying you're using the people's taxpayer money
24 to lobby for a position.

25 And then registration, I think I talked a little

1 bit about that. The reporting requirements are always --
2 that's always an important part of any lobbying law, and
3 certainly you have discussed it in depth. And, I defer to
4 the experts in your state that talk about the ins and outs
5 of that and the nuances thereof, and I appreciate that.
6 I've actually learned a lot. I've been listening since you
7 started this morning. And, all states require lobbyist
8 reports of some sort.

9 And then the personal financial disclosure is
10 always a big deal. My gosh, I think I got more calls about
11 this in Wyoming than any other thing, and I would always
12 just -- A, I would defer to the Secretary of State's
13 office, because they're the ones that take those reports
14 and put them online. But B, I would always say in our case
15 it was you have to report sources of income, not amounts of
16 income, and that always -- that was an important
17 distinction to make. So, that's always an important
18 concern.

19 And then I think that -- overall, the trends I
20 think we're seeing at NCSL for the nation are -- I think
21 lobbying restrictions are becoming more uniform, believe it
22 or not. And even states where I hail from where we have
23 just minimal everything are saying, hey, we need to do this
24 in the interest of transparency.

25 And I get asked a lot about that, about

1 transparency, and what I would tell you is I always look at
2 it as the -- just the considerations of basic fairness. If
3 you are a constituent and you are living in your town, and
4 you are not a part of the legislative process, if you want
5 to find out a certain issue or certain transactions that
6 are going on in the state government, can you reasonably
7 find them without going through, oh my gosh, I'm so sorry,
8 there is no way you'll figure this out on your own? So,
9 those kinds of wet works.

10 And, I would be remiss if I didn't address the
11 big elephant in the room which is the pandemic. And oh my
12 gosh, I mean, the mere fact that, what, we're doing this
13 today as a hybrid -- some are in person and some, like me,
14 are presenting virtually. I think -- and by the way, we're
15 putting -- one shameless plug if I can, Mr. Chairman. We
16 are putting on a little program at our summit, which will
17 be in Tampa in November on this very thing: what's it been
18 like for ethics and lobbying and during the pandemic? And
19 obviously it's changed quite a bit.

20 One of the people that used to work for me at
21 NCSL is now a national-level lobbyist and has told me what
22 it's like to, you know, even have basic access issues when
23 we're talking about living in a virtual world. And,
24 virtual lobbying has been done by necessity, but in my
25 humble opinion, a lot of it I don't think is going to

1 change. I think that a lot of people like me -- here I am
2 in Denver -- are able to be a part of the process even
3 though traditionally they are not in the capitol building,
4 and they are not sitting in a hearing room.

5 So, I think that that's going to be an
6 interesting trend that I don't think is going to go away.
7 It's certainly not going to go away overnight. Somebody's
8 talked about the new abnormal or something like that. I
9 think that's a reality.

10 And several of you have talked about social media
11 and TikTok. I too am not on TikTok. No one wants to see
12 me, whatever you do on TikTok, dance or sing or something.
13 But, there are trends on how do we regulate that if that is
14 lobbying? And you are all very familiar with the ads on
15 very large social media platforms; political ads, and
16 attempts to influence laws and lawmakers through those
17 channels, and how do you regulate that. And again, every
18 state is different, but my gosh. I think those -- the
19 social media platforms are ubiquitous, and they are in
20 everyone's world. They're front and center all the time.
21 And so I think that's something to also be concerned with.

22 And the -- one of the last things I want to say
23 is, even though I am not the expert on all the trends that
24 are happening -- that we're seeing in lobbying and lobbyist
25 regulations, I am happy to work with your staff when it

1 comes down to drafting bills and point them to the
2 resources that we have NCSL on this topic. And so having
3 said that, I really appreciate the opportunity, and I hope
4 that some of that has been helpful. I am happy to try to
5 answer questions given my limited, I guess -- limited
6 knowledge of all of the national trends. I certainly have
7 experience, but not -- I'm no national expert. So anyway,
8 hope that's helpful, Mr. Chairman.

9 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
10 Well, thank you. It is helpful. As you are well aware,
11 one of the things that we do in state government is to look
12 around at what other states are doing across the country
13 and see if there are things that we can learn from other
14 states when we're introducing new laws or regulations. So,
15 appreciate you being here, and the first question we have
16 is from Representative Wheeland.

17 REPRESENTATIVE WHEELAND: Thank you so much for
18 visiting with us here today. How is the weather out there?

19 MR. QUINER: You know, that's actually a good
20 question. I was telling your staff this morning that the
21 sun wasn't up, but I was. Well, the sun is still not up,
22 so it's cloudy, but we're happy. It's been hot, hot in
23 Denver, so we're ready for fall. I don't know how you guys
24 are in beautiful Harrisburg, but --

25 REPRESENTATIVE WHEELAND: It's real toasty out.

1 MR. QUINER: But we're ready --

2 REPRESENTATIVE WHEELAND: It's toasty outside.

3 Well, I -- your testimony mentions that some states
4 prohibit agencies from using public funds to retain
5 lobbyists. And of course one of the bills in our
6 package's, House Bill 1607, would establish such a
7 prohibition. How widespread across the nation is this
8 rule? And does it typically cover all levels and types of
9 government entities in the states? That is beyond state-
10 level agencies, including quasigovernment entities. I'm
11 thinking of like an airport authority, counties,
12 municipalities. What do you see across the nation?

13 MR. QUINER: Thank you, Mr. Chairman. And,
14 Representative Wheeland, that is an excellent question. I
15 don't have the answer like X number of states do this and X
16 number of states do that. I will tell you that some of the
17 trends that we have seen is that there has been some
18 concern expressed over, you know, let's say a state agency
19 gets a certain appropriation to do their work, and then
20 they turn around and start lobbying -- this was a big issue
21 for us -- of -- they start lobbying for things they didn't
22 get. And we had -- we intercepted some pretty nasty
23 messages from our former governor in Wyoming about telling
24 agencies to stop doing that, that their appropriation was
25 their appropriation, and it was not to be used to lobby the

1 legislators to get what they didn't get in their budget.

2 Having said that, one of the compromises I think
3 that I have seen with state agencies is that even if they
4 are not allowed to use public funds for lobbying efforts
5 that they will designate a person in their agency to handle
6 questions and sort of be a liaison to the legislative
7 branch, and that as staff we were told to only contact the
8 liaison, not even the director, or not even the -- you
9 know, the man at the head at the agencies, but to only talk
10 to the liaison.

11 So, I don't know the trends. I am happy to
12 follow up with you and our staff to see what trends there
13 might be and maybe give some examples of those on
14 prohibiting those types of things.

15 REPRESENTATIVE WHEELAND: Yeah, and thank you.
16 And again, I -- the focus I think we're looking at, does it
17 affect lower, you know, like counties, municipal
18 governments and entities such as commissions and
19 authorities? I would be very --

20 MR. QUINER: Okay. Yes --

21 REPRESENTATIVE WHEELAND: -- interested in. And
22 if you could share that with the committee I would be very
23 appreciative. Thank you. Thank you --

24 MR. QUINER: Happy to --

25 REPRESENTATIVE WHEELAND: -- Mr. Chairman.

1 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
2 thank you. Next up we have Representative Solomon.

3 REPRESENTATIVE SOLOMON: Thanks, Chair. I
4 understand, sir, that -- and your wheelhouse is more
5 training. And we have a bill here on training. As an
6 attorney -- and we have to do continuing education
7 training, and some of the programs are frankly just really
8 poorly done. You see lawyers typically reading newspapers,
9 on their phones, and yet they're racking up continuing
10 legal education credits. And if you ask some of these
11 lawyers what they learned, you'd get a lot of blank stares
12 after the training.

13 I'm wondering what your proposal is for best
14 practices to make sure that whatever required lobbyist
15 training we implement that it's effective.

16 MR. QUINER: That is a good question. In fact, I
17 think the -- I think some of the discussion earlier with
18 the Ethics Commission regarding training and, you know, how
19 do you know -- and I -- it reminded me of a verse in the
20 Bible about the rain falls on the just and the unjust.

21 I do a lot of facilitating and training on ethics
22 and civility, and with lobbying groups as well. And, you
23 know, you never quite know, right? You hope -- you do your
24 best, and then you hope they get it, but you don't know.

25 But, I will say the trend is -- that we are

1 seeing anyway, is to require regular training. Now,
2 whether that's every biennium, at the beginning of a
3 legislative term or what. I've done a lot of training with
4 states, and the trends we're seeing is that it is going to
5 be -- that it's regular, it's required. And I don't know
6 so much about the lobbyist groups that I have been
7 privileged to speak to. And by the way, did you know that
8 there is an ethics code? There is a national ethics code
9 from a lobbying group, and I always love reminding people
10 of that and pointing it out, et cetera.

11 But I'm -- that's really kind of on an ad hoc
12 basis, and I don't know, you know, what lobbying
13 organizations and how many states are requiring lobbyists
14 to undergo regular training. I -- it sounded like your
15 panels were all in favor of that and happy to help with
16 that, as am I, but I really don't know how many are doing
17 that and those kinds of trends.

18 And I'm sorry. Some of that -- some of your
19 question was broken up in my audio, and it's probably me,
20 and I apologize. So, I don't know if I caught all of that.
21 I am happy to do a follow-up if that --

22 REPRESENTATIVE SOLOMON: Sure. Thank you for
23 that. What I'm asking is, I understand that training is
24 important, but what should the training look like to ensure
25 that lobbyists leave the room and they have -- they're --

1 they've been engaged during whatever the training is, an
2 hour or two hours? What are best practices in the training
3 world?

4 MR. QUINER: Oh, okay. All right, so what kinds
5 of training? Well, I'll tell you the approach that I take,
6 and you can agree or disagree. But I always like, very
7 similar to your hearing today, to have the local Ethics
8 Commission director, et cetera -- the typical training I do
9 is I have -- especially after a general election, and you
10 have all these new legislators, and I am often asked to
11 come in and do part of the orientation process on ethics
12 training. And, I pretty much insist that the local -- like
13 in your case the State Ethics Commission or the director
14 come in and give -- provide an overview and update of the
15 specific ethics laws, and for those that are attending as
16 returning legislators to know of any new recent
17 developments. Like this package would be a major change,
18 and you would certainly want to, you know, do some training
19 to let everyone know.

20 But, and then I talk more of a more values based
21 approach on why is it important? Are you just doing it so
22 that you know what you can get away with? Or, are you
23 doing it to leave a legacy? And, are you actually doing
24 the right thing for the right reason, I guess is what it
25 comes down to.

1 So, I like to do some values-based leadership
2 training, and I think the combination -- in my humble
3 opinion, the combination of those two, meaning the specific
4 law in the specific jurisdiction, any new developments, et
5 cetera, and then a larger picture on, well, why does it
6 even matter? Why are we even doing this? I think that is,
7 in my humble opinion, the most effective way to do it. And
8 I've heard -- you know, I've received good feedback for
9 that approach. But, that's my opinion.

10 REPRESENTATIVE SOLOMON: Thank you.

11 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great,
12 thank you. Next we are going to Representative Ryan
13 followed by Representative Nelson.

14 REPRESENTATIVE RYAN: Mr. Quiner, thank you so
15 much for being here today. I really appreciate it. And, I
16 was going to suggest to Representative Solomon that as
17 someone who -- I teach CPE -- that a good thing to do would
18 be to have all attorneys retake the Bar exam every five
19 years. And, I'm just curious for the attorneys in the room
20 if there's a unanimous -- okay, I'll move on to my
21 question, seeing the commentaries and the cold stares I'm
22 getting back.

23 No, but I -- to dovetail one of his comments, it
24 really is important. How do we make sure that we get this
25 information across to folks so that they're picking it up?

1 Because we have CPE requirements as CPAs as well, and it's
2 not uncommon that someone will just sit in the room, and
3 the measure of effectiveness is time. It's not material
4 learned.

5 So with that in mind, we have been hearing some
6 of the comments in today's material relating to the
7 legality and enforceability of some of the components of
8 the various bills that we have, one of which I have brought
9 up previously in a previous question about the ban on
10 referral fees or contingency fees. How do other states
11 stack up on those types of issues? And not just the two
12 that I mention now, but the legality and the enforceability
13 of the different components of the packages we are
14 proposing?

15 MR. QUINER: Thank you, Mr. Chairman and
16 Representative Ryan. I would say that they literally are
17 all across the board. For instance, I just did 18 hours of
18 training in the State of Alaska. They decided that one of
19 those trainings they could just film and that people could
20 take that on their own. And I'm -- the lawyers in the room
21 will say, you know, there's a lot of -- you can do a lot of
22 self-training CLEs now, continuing legal education. And we
23 can argue about the efficacy thereof.

24 I don't personally want to just sit in my office
25 and watch a video of whatever, but I know that a lot of

1 states because of their annual training requirements do
2 allow that. And, you know, if it works, it works. I guess
3 I would defer back to, you know your state much better than
4 certainly I would. And the way to get the word out -- and
5 I thought it was very interesting, certainly on the
6 commission's enforcement and compliance, that it took a few
7 years, it looks like, on the level of fines to let everyone
8 know, hey, there's kind of a -- you know, there are new
9 rules for this lobbying and reporting, and the enforcement
10 and compliance.

11 And so, you know, I would give it time. You
12 might look at reduced fines while, you know, the law is
13 beginning to take effect, et cetera. Things like that just
14 to make sure that, hey, let the world know what we're up
15 to. But, in terms of the effectiveness, man, I think there
16 would be a lot of CLE companies and probably CPA companies
17 that do a lot of this training and enforcement that would
18 say, hey, we think we know what's best on training and
19 making it effective versus what's not. Again, the rain
20 falls on the just and the unjust, and sometimes you don't
21 know who is actually tracking and going to get it, or who
22 is just sitting there because they have to and looking for
23 loopholes. You know, you just don't know. So, I don't
24 know if that answers your question. I'm sorry. I don't
25 know that I know the answer to that.

1 REPRESENTATIVE RYAN: It does. If I could just
2 encourage or you just ask you, does at anyone -- does NCLS
3 or others have a best practices that you are starting to
4 look at? As an example, I am a fiduciary, and fiduciaries,
5 we have a list of best practices. I am a -- I used to be a
6 member of NASB, National Association State Board of
7 Accountancy, when I was an ethics chair, and we had best
8 practices as CPAs.

9 So the question I have is, in this realm for
10 disclosure, do we have a best practices anywhere?

11 MR. QUINER: Again, good question. We don't. We
12 track, probably what people do, but we don't know about the
13 best practices because, again, what would work for you
14 might not work for another state at all, and they might
15 hate it. I don't know. But, so I am sorry to tell you
16 that I don't think we -- that I have an answer to that.
17 Best practices? Best practices are what works, you know,
18 for --

19 REPRESENTATIVE RYAN: Sure.

20 MR. QUINER: -- for you all.

21 REPRESENTATIVE RYAN: Okay.

22 MR. QUINER: And I -- like I say, I give a lot of
23 those trainings, and I used to brag that, well, in the
24 states I've done ethics training in, I don't think there
25 have been any ethics scandals. Well, you know, that may or

1 may not be a valid thing to even say, so we don't even
2 track in terms of metrics, like oh, well hey, if we go do
3 training at this time and this date, you know, we see these
4 kinds of results. We don't. We put on lots of trainings,
5 put on lots of webinars as you know, lots of seminars.

6 And so we're always looking for that -- you know,
7 that magic pill. Well, try this, or try that. So, always
8 bringing in experts, but to say what's, you know, best
9 practices? I'm sorry. It would be what works for you
10 guys.

11 REPRESENTATIVE RYAN: Well, fair -- sir, thank
12 you so much for your time. Mr. Chairman, thank you for
13 allowing me to ask the questions.

14 REPRESENTATIVE NELSON: Thank you, Mr. Chairman.
15 Sir, digging in a little bit deeper into your testimony,
16 you had touched on, you know, the acknowledgment that some
17 things are becoming more uniform in the regulation of
18 lobbying activities that you are seeing across the country,
19 but at the same time you have mentioned you have to do what
20 is appropriate for your region. New York is not the same
21 as Cheyenne I think was the example you gave, and I would
22 agree with you. You know, my ethical threshold in New York
23 would not be held the same as in, let's say, other areas.

24 Can you expand on that a little bit? Because, it
25 is -- you know, I think everybody can agree that we want to

1 have uniform regulation, but, you know, we are -- even in
2 Pennsylvania we are an extremely diverse state. You know,
3 how do you balance that appropriate nature without
4 overregulation?

5 MR. QUINER: Again, very good question,
6 Mr. Chairman and Representative. Very good question.
7 Believe me, I wish I knew. I think that my role at NCSL
8 would be much -- you know, I -- maybe I'd make more money
9 -- I don't know -- if I knew the answer to that. I
10 honestly don't know. And I'm not trying to dodge the
11 question. Just given my experience from being -- from
12 hailing from the smallest state in the country to, you
13 know, working in Colorado now and working with all 50
14 states, it is astounding to me what works in some states.
15 And I say works in a -- I don't know. I don't keep of
16 track of who's gone to -- actually, we do keep track of who
17 has gone to prison. But anyway, I am not allowed to put
18 that in my news blog.

19 I do read with interest when someone gets in
20 trouble. And obviously this is a legislative member or
21 staff. When they get in some sort of ethics trouble, and
22 it -- you know, obviously hits the news like it does,
23 whether it's New York or Cheyenne or somewhere in between,
24 that I am always interested in, not so much the violation.
25 Because usually -- and some of your panels have pointed

1 this out, but it's not so much violating the law -- not
2 really the letter of the law. It's really violating the
3 spirit of the law, and that's what you try to stop, and
4 that's usually what gets reported.

5 In those cases I get, and I read with interest,
6 and what I read -- and by the way, just a side note. I am
7 involved in a project called the Dishonest Project. I
8 know. And you can go on dishonesty.org, and you have to
9 tell a lie to get entrance to this website. And I am
10 helping them come up with -- they do training videos and
11 questions on facilitating a discussion, et cetera, et
12 cetera. Again, what works in these states, what may or may
13 not work, but this is really trying to get to the heart of
14 the matter, which is do you care enough to know about the
15 law, to follow the law in the letter of the law and the
16 spirit of the law? And again, the one -- the cases we hear
17 about are those that just, you know, sort of blatantly --
18 whatever. And I thought it was encouraging that your
19 Ethics Commission I think only said there were a couple of
20 cases they were familiar with where it really was sort of a
21 blatant, I will violate the spirit of the law, whereas a
22 lot of them -- and you just heard many panels testify
23 about, well, when the -- we thought the relationship of
24 lobbyist, you know, to principal was over. Why must we
25 keep filing these reports? I didn't know we needed to.

1 Well, that generally is just, hey, I didn't know. So,
2 whatever you can do to promote that.

3 And, you know, I think nowadays everyone is
4 somewhat comfortable with finding out questions on the
5 internet. So, whatever the state agencies that oversee all
6 this can do to promote the information on their website I
7 think is most helpful.

8 So, I don't know. I'm sorry. I don't know the
9 answer to that again.

10 REPRESENTATIVE NELSON: Well, let me -- I'll try
11 to make an effort to press you a little bit harder on the
12 -- because you also mentioned about the effectiveness, or
13 if it's worth it, if the investment is worth it, and the
14 millions of dollars and countless man hours of reporting
15 time. You know, just in the State of Pennsylvania, 56
16 cases with three enforcement actions.

17 So, as we are looking at contemplating a
18 potentially controversial expansion of that ethics act, are
19 we going to be getting the bang for the buck? Because,
20 just in my short time in the legislature we have -- you
21 know, we have three enforcement actions, but I've seen more
22 people arrested for ethical violations. Like, are we
23 looking in the wrong areas when you are keeping track? You
24 know, are you cross-referencing, or is there an
25 opportunity? This is how people are getting arrested, this

1 is what we are reporting. Like, are we potentially barking
2 up the wrong tree? Because it seems to be a disconnect,
3 you know, just looking within the State of Pennsylvania.
4 And I'm a strong believer in ethics, but as you know,
5 depending on the ethical lens you place in front of
6 yourself, you can get a very different answer.

7 MR. QUINER: Well, very good question again,
8 Mr. Chairman and Representative. I really don't have the
9 answer to that. I will tell you that in my experience, in
10 the 26 years I worked with very complex laws when they
11 first would come out, we really seriously considered grace
12 periods and went around the state, conducted seminars,
13 trainings, webinars, panel discuss -- you name it, we did
14 it.

15 And, the one that comes to my mind was when we
16 did the one called -- which actually turned into two calls,
17 but the call before you dig. Oh my gosh, and I was
18 involved in that legislation, and all of a sudden I found
19 myself on panels all over the state with, you know, the
20 head of the construction, the Wyoming construction
21 industry, et cetera.

22 And, what we did was really just reserved the
23 implementation of panels. We told everybody what was going
24 to happen, and I think we did a grace period of two to
25 three years. And in that timeframe we did our very level

1 best, I think, to tell the world, hey, these changes are
2 coming. Be ready. And other than that I really don't know
3 what the answer is. That's a good question. I just don't
4 know. We just always considered either dealing the
5 penalties or phasing them in over time. In the meantime
6 educate, educate, educate.

7 REPRESENTATIVE NELSON: Great, thank you. Thank
8 you, Mr. Chair.

9 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
10 Well, thank you. And I just have two very quick questions.
11 Or hopefully they can be quick, and then we will move to
12 conclude the hearing.

13 First, you had mentioned in regards to our
14 cooling-off period that our one-year period was in the
15 middle of the range that you had seen in other states.
16 When looking at our current lobbying regulatory
17 environment, did you see anything that stood out here in
18 Pennsylvania around any of our other requirements that were
19 maybe out of line that we should consider?

20 MR. QUINER: That is a good question. Thank you,
21 Mr. Chairman. The answer is no, I did not. I found your
22 laws relatively balanced and within the scope of certainly
23 what we see in -- across the country. So no, I did not.

24 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Okay.
25 That's fine. Thank you. And the next question, regarding

1 the specific package of bills that we are considering here
2 and discussing here today, have you seen any of these being
3 taken up in other states? And if so, you know, any
4 outcomes or modifications that have been made after their
5 implementation? So looking at these bills, are they things
6 that are being discussed in other states? And if so, how
7 are they going?

8 MR. QUINER: Very good question. Thank you,
9 Mr. Chairman. The answer is yes, we are seeing laws like
10 this, and it's sort of more uniform. And I think these are
11 somewhat typical of what we're seeing in other states.

12 We do -- I don't know if you or your staff are
13 familiar with the program called StateNet, but on our
14 website we try to track all ethics, lobbying, anything
15 related to ethics, laws that are being introduced, and we
16 try to track them through that program. And so you can
17 sort of follow some of the trends on our website, but most
18 states and their legislative sessions as you know will
19 really ramp up in January.

20 And so, until such time we don't really have a
21 lot of indication of how many there will be. But, in my
22 humble opinion and what I have seen is that these are very
23 typical and within the panoply of regulation of lobbyist
24 and disclosure laws.

25 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.

1 All right. Well, thank you for your testimony today. We
2 appreciate you joining us all the way from out West, and
3 really appreciate you listening during the whole hearing
4 and providing your input today. So, we will continue to be
5 in touch and continue to monitor other state legislation
6 around the country on this topic.

7 All right. Well, thank you. And so with that we
8 will move to closing remarks, and I will move to the
9 Democratic Chair.

10 MINORITY SUBCOMMITTEE CHAIRMAN KENYATTA: Thank
11 you, Mr. Chairman. And I'll really, you know, end where I
12 began. I am sure that there will be some differences of
13 opinions and some additional suggestions that will come
14 from our side about how to make this package as strong as
15 possible, but we ought to be. We ought to be, and I will
16 certainly endeavor to do so, to make sure we work together
17 just as hard and as focused as we do when we are
18 disagreeing.

19 And I think today, what came out of this is a lot
20 of what I have hoped would come out of it, which is a
21 serious conversation about how we do ensure that there is
22 trust and faith in what happens in this body, and that it's
23 not being decided by folks who are well off and well
24 connected, but that folks who can't afford lobbyists,
25 working Pennsylvanians all across the Commonwealth, that

1 their voices are heard and prioritized in this building,
2 and prioritized in terms of the decisions that we make.

3 And so, I will say for myself and my colleagues
4 that I know we are looking forward to working with you on
5 this and to making these bills as strong as possible.
6 Thank you.

7 MAJORITY SUBCOMMITTEE CHAIRMAN MACKENZIE: Great.
8 Well, thank you, and I would just like to say to everybody
9 that we appreciate the time and input that you have given
10 for your testimony today. I think it did generate good
11 conversation, and will hopefully inform and better inform
12 the legislation that we will ultimately end up advancing
13 through the committee.

14 I would like to encourage anybody watching at
15 home, if you do have additional input that you would like
16 to provide, feel free to reach out to myself or the staff,
17 and we can certainly incorporate that into our
18 decision-making process with the legislation as well.

19 And as was noted, ultimately what we are looking
20 for is accountability of those participants in this
21 process. We want transparency so that it does lead to
22 greater trust in government. And so that's the ultimate
23 goal, and I think we are on our way to achieving that with
24 these reforms that are being proposed.

25 So, with that I will close this hearing, and I

1 will make a note that this is our first of two subcommittee
2 hearings today. We do have a second subcommittee hearing
3 that will be back in this room at 2:00, and look forward to
4 seeing everybody. That is on ballot randomization, a
5 different issue but also relating to campaigns and
6 elections in the subcommittee. So, interested participants
7 can rejoin us at 2:00 p.m. So, with that this meeting is
8 adjourned. Thank you.

9
10 (The hearing concluded at 12:18 p.m.)

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