



**NATIONAL CONFERENCE OF STATE LEGISLATURES**  
**PRESENTATION (TRANSCRIPT)**

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**Center for Ethics in Government**

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## National Conference of State Legislatures Presentation (Transcript)

By: Peggy Kerns and Natalie Wood

Mr. Yepsen: Okay, we'll get started now. Thank you for that short break there for technical issues. Our next speakers are national recognized experts in the field of ethics and reform issues in the states. There was some request for information from other states. Well, we're going to talk about it now. Peggy Kerns is director of the Center for Ethics in Government, a nonpartisan, nonprofit organization located at the National Conference of State Legislatures. Peggy, raise your hand so they know. There's Peggy.

Ms. Peggy Kerns: And it's Ethics in Government, not and Government.

Mr. Yepsen: The Center for Ethics in Government.

Ms. Kerns: Right.

Mr. Yepsen: Natalie Wood is a program principal with the Center. She's also an Illinois native. And she's also NCSL's liaison to the Illinois legislature. Thank you both for making the long trek from Denver to be here with us today and tomorrow. And with that, the program is yours.

Ms. Kerns: Thank you very much. It's actually not that a long a trip. It was only an hour and a half flight, so it was a pretty easy trip. Natalie and I are very glad to be here, and we have thoroughly enjoyed this part of the symposium and to read some of the reports that we got ahead of time.

As David said, I'm the director. I'm a former Colorado legislator, so the woman who got a little sensitive about the Issues magazine, I just got a little nervous about all politicians are corrupt attitude, but we can talk about that. But I've been with—helped start the Center 13 years ago, and Natalie has worked for the Center for the last four years. And by the way, she is terrific and she is really your person to go to for what other states are doing specifically on a whole bunch of issues. And she also manages our website, and we'll refer you to our website address in one of the handouts.

But just a quick explanation about NCSL. We are a bipartisan organization. Been around for about 45 years. And we do not take policy positions. We don't say which state is better or which state is more corrupt than another, or which one has better ethics laws. That's not the NCSL way.

Our way is we do research on a whole bunch of issues and then provide the lawmakers and legislative staff and citizens with that objective information, and let people make up their own minds. But we really fundamentally exist for legislators

and legislative staff in order to make good public policy and be able to know what other states are doing. So we do have some information on that kind of thing.

Now, the Center for Ethics in Government, we do two things. Natalie is our researcher, and we also...my main, primary responsibility is to do training on value-based ethics. And so we wear two hats—law-based and rule-based information, but also what really is ethics, and from our viewpoint is what your values are and how you handle yourself above the—better than the law, right Natalie?

Ms. Natalie Wood: Yeah. So while you all may be reformers, we're more observers of the things that you're doing and the things that states are doing. But I was telling Peggy as we were getting ready to talk to you today that my very first political memory was being at the Illinois State Fair and meeting Senator Simon, so it's very cool. [Laughter.] Got to shake his hand and everything, so it's really cool to be here at a conference under his banner.

Ms. Kerns: The quick thing about what our purpose is for this short time, and a little bit about the format. First of all, we're here to give you a national perspective on what states do on a variety of topics that are included in ethics laws. And we're going to have to kind of whip through this because we'd like to leave room at the end for questions, and also for a little exercise that we have planned. So if it's all right with you, if we could hold your questions until the end, and then we'll be glad to answer everything we can.

Ms. Wood: There's tons of handouts. You guys are researchers and reformers, so you're used to paper. But this one is the one we're going to be working off of. So we plan to talk to you for about 25 minutes, hopefully, about all these different issues. It's called Themes, Recent Themes in State Ethics Laws. And this is sort of our bird's eye view on the state of ethics and lobbying across the country.

We've listed five big themes for you that we'll walk through today. The first is concerns about money in politics. The second is transparency. The third is oversight, and the fourth is the issue of conflicts of interest. And lastly we'll speak to you about ethics training.

Ms. Kerns: And we also included in your materials some things that Natalie and I have written that may be relevant, based on the earlier conversation, "Creating an Ethical Legislature," with some other information about ethics commissions. "Do Ethics Laws Work?" And we kind of have our opinion. We do have some opinions, by the way. So though we don't take the NCSL position, we might give you—

Ms. Wood: We haven't had any wine, so I don't know if—

Ms. Kerns: Yeah, you're right. And then of course because legislative staff is a big part of our constituency, we give them a plug. And also the last thing on the page is "Ethical Lobbying is Not an Oxymoron." Because actually, as a former legislator, lobbyists were very important to me in providing information. Another article is

“Sorting Right from Wrong.” Somebody mentioned an article with five points, how to make ethical decisions. I forget—

Ms. Wood: Nowlan, right?

Ms. Kerns: Was it Nowlan? Yeah. You can compare your list with ours, see if we are on target. But this has been, actually, a popular handout to give to legislators because it breaks it down if you have an ethical dilemma. Then Natalie wrote an excellent, what we call a “LegisBrief,” which is a white paper on making the most of your ethics training, because we are obviously very big on ethics training.

So our philosophy is that laws are very important. And Natalie will start to talk about these in a minute. That laws are the fundamental basis for being an ethical person. You have to follow the law. But interestingly enough, the legislators who get into all these problems—and we’re not even talking about Illinois, we’re talking about a lot of other states—the legislators that get into ethical problems most always are violating laws that are already in place.

But the natural reaction from the legislature is to pass a bunch of more laws, because that reassures the public that we’re serious about being ethical. But most of the time these big events that Natalie will kind of work into some of her presentation are already against the law.

And so what we stress is you obey the law. But you really need to be in touch with your moral core and what your own values are, because that then helps you make decisions in the gray area, because no state can make enough laws to cover every little situation, and particularly when we talk about conflicts of interest.

Just quickly, before we go into the specifics, some of the issues that legislators face that are in this gray area have been touched on. Do I vote my conscience or do I vote what I think my constituents want? And we have a case study on that. And also another one, it’s probably the top one, is who—a lot of times the issue is who do I represent? Do I represent my district that has elected me, or do I vote for something that’s good for the whole state that may not be good for my district? And who am I loyal to? Am I loyal to my speaker, because he’s done me favors? Am I loyal to my caucus? Am I loyal to my friend who is across the aisle?

Those torn loyalties sometimes get people in trouble. And also, if I see something illegal, do I turn in a friend, a fellow legislator that I’ve known for years? And on some moral issues, do I follow what I believe as a moral issue or what I think my constituents might want? Do I follow my head or my heart? And the other thing that legislators will do, do sometimes I use a trick or a rules maneuver to get what I want? Is that borderline ethical or not? So at the end of our little session today, we’ll come back to some of those.

Ms. Wood: You can talk about scandals.

Ms. Kerns: Oh, yeah, I forgot scandals, yeah. Well, the whole thing started with Watergate, but as I read, Natalie and I read in one of the reports, after Watergate states started passing all these laws that started to restrict things. And one of the reports said Illinois didn't do that, so Illinois was on the outside. But the thing of what happened is states passed a whole bunch of different laws, and so it's a challenge to people like us, who do statewide research, because no state does everything exactly alike.

And so the real issue to us is do these ethics law work. And there's a good quote from a book we read that "Ethics laws and regulations are designed to make the government scandal-proof, but no institution can be scandal-proof through regulation alone."

And that's where we raise term limits. Term limits in Colorado actually booted me out of office, because we have a strong initiative and referendum process in Colorado. Somebody mentioned, I think, one of—it wasn't Andy. It was one of the earlier speakers about the populist movement as you move across the Mississippi. And Natalie wrote me a note, and what did you say?

Ms. Wood: I just pointed out a few states that will remain nameless for you all that we could sort of point to as counter examples of things working the way you think that they would out in our neck of the woods.

Ms. Kerns: Right. So we're not convinced that as you move west things become more ethical just because there's more of a populist movement there. But the funny thing about Watergate, we suddenly had all these FBI stings that had "gate" connected to it. We had Shrimpgate. Guess what state?

Female: Louisiana.

Ms. Kerns: You are right. We had AzScam. Well, that isn't a "gate," but where's AzScam?

Female: Arizona.

Ms. Kerns: Arizona, right. We had Troopergate. You know that one.

Female: Arkansas.

Ms. Wood: Think north.

Female: Alaska.

Ms. Wood: Yeah.

Ms. Kerns: Yeah, what was another?

Ms. Wood: There was Phoneygate. That was in Minnesota. And Bonusgate, which is not a very fun “gate” to talk about in Pennsylvania involving—

Ms. Kerns: Yeah, that was a sad...

Ms. Wood: —legislative staff campaigning on state time.

Ms. Kerns: Yeah, and actually all of these “gates” are sad situations because they were FBI stings and they were high profile. The next thing, probably one of the first subtopics under the concern about money and politics is gifts. You won’t get a legislator who will say I can be bought for a steak dinner, absolutely not. But the movement, actually, nationwide, is to be more restrictive in gift laws. And Illinois is probably on the bottom tier. I don’t mean in violations, but in regulations.

We divide it into three things, and did you show the map? Yeah. Nine states have total gift bans. Wisconsin is one of them, by the way, and Minnesota. Monetary threshold is where we stuck Illinois because there’s the \$75 wine and dine restriction and then the \$100 gift, which is actually lower than many other states. And then just a small number of states have no gift restrictions, but just say you can’t give a gift if it affects any legislative action, which, of course, is bribery, and that’s low on the totem pole. Anything else on that?

Ms. Wood: Yeah. I think the important story about gift bans is that you can pass the most well-intentioned, comprehensive gift ban, and in our tracking, anyway, in our observations, there’s always an unintended consequence. The legislature ends up revisiting the issue the next session because, for example, in Alabama, they had a big scandal down there, legislators and a staff member indicted, and they decided to revamp ethics laws, including the gifts.

Well, they passed this comprehensive gift ban for public employees, and then Christmas rolled around, and none of the teachers could get presents from the kids, so it was all over the news. We got all kinds of calls from the legislature about what do other states do to address this issue. So a small example, but even the states with total gift bans—Florida has an exemption for flowers on the first day of session on members’ desks, so they’re always going to be tweaking it.

Ms. Kerns: The Florida Floral Association lobbied that one, right? [Laughter.] And early scandal was in Kentucky, Boptrot, and it was about gambling and horse racing. And the legislature’s reaction, as Natalie has alluded to, was like an overreaction, very strict laws, and which then it came back and modified it. Because there’s a common sense element here. But if you talk about changing the culture, which was mentioned earlier, actually gift laws, Natalie and I think, affects that.

For example, the head of the ethics commission in Kentucky, with their pretty much no cup of coffee, very restricted gift ban, they said it very definitely changed the culture, because the wining and dining may, from the outside looking in, sound like, oh, you know, you’re being bought off, but really, it’s relationship building. And those of you who work around the legislature know that, that you go out at night, and

maybe to a reception with your fellow legislators. You get to know somebody across the aisle, you talk about your bill, you ask for a vote, and so it's a communication vehicle.

Now, it has been misused. But I guess I'm a little bit step back from total gift bans if it impedes what should result in making of good public policy, because that should be our goal.

Ms. Wood: Also under this category—it's funny, I was preparing my remarks, and I'm like, oh, I should define pay to play for everyone. But I'm guessing, from what we've heard so far today... [Laughter.] And I don't mean that, you know, I just noted it. So we decided to focus our tracking on efforts to curb or restrict campaign contributions from those who do business with the state or seek to do business with the state. And I have another map for you with some colors.

Illinois is one of an elite few that has what we would call a comprehensive pay to play regulation. There are eight states total. Colorado actually had one passed by voter initiative, and the State Supreme Court actually struck it down on some freedom of speech conditions. Similarly, when other states have passed more comprehensive pay to play bans, they too faced their State Supreme Court—New Jersey, Connecticut and Ohio are all examples of this.

I found Illinois' law interesting because it seemed like you anticipated what happened in New Jersey. Their exemption applies to federal highway contracts. And it seems, if I'm right, that the law here in Illinois does something similar. So there's also eight states that have a prohibition on the gaming industry only, and those are all marked on the map as well.

The history of pay to play. All states prohibit bribery for state contracts, but the laws really proliferated after an SEC decision in the 1990s. It applied to municipal government, but the ruling started to have an impact on state and local public officials, and so states started to turn their attention to it. I could go into all different components of the pay to play laws, but there's a gentleman named Craig Holman with a group called Public Citizen who has this great chart that I can share with you. It's six or seven pages long, and we're going to be here all night if I talk about it. So if you're interested in that, I'm happy to share it with you.

The important thing, from our point of view, is that more states are considering it, but not many have passed what I would consider a comprehensive law. Virginia, for example, passed something that applies only to gubernatorial candidates, and only for \$50,000 and above contracts. So what we're seeing is interest in dabbling in it, but no one passing anything, really, since Illinois and Colorado targeted it.

Ms. Kerns: The next piece that we have on our chart is about lobbyists. Are you finished with pay to play?

Ms. Wood: Yes.

Ms. Kerns: Now, lobbying could be the world's oldest profession, except maybe it's No. 2. But actually, lobbying is just communication. When I was a legislator, I'd go to the grocery store at 7:00 Sunday morning to hope to avoid people, and somebody would walk up to me and lobby me. My next door neighbor would lobby me. So lobbying, in itself, is a legitimate way of providing information to a public official. Where it gets dicey, and the gray line appears, is when there is money involved.

And you've brought up campaign finance, which Natalie alluded to a little bit, but that's where the public clicks in. They understand what it means to communicate and to push and persuade a public official. But when there's any kind of perk or money involved, things get a little more suspicious. But every state regulates lobbyists in some form, and every state defines what lobbying and lobbyist is. And we have that information on our website.

And so that in itself is good, because—and all states require lobbyists to register. Now, not all states give the public easy access to that information. But in Colorado, for example, you can go in on the Secretary of State's website and you can see the list of lobbyists—and there are a lot—and who they lobby. That's required in the legislation that made them have to register. It also is in there, their disclosure forms, about how much money they have gotten from lobbying different groups. And so the trend that we see is towards more transparency across government, but particularly in the area of lobbying.

One other piece, though, is that a handful of states, and it's mostly some southern states, have broadened their definition of lobbying to include grassroots lobbying. For example, if a teachers union wants to push a bill in the legislature, they would then marshal the troops. They would get their members and give them post cards, or they'd call them and say call your legislator, write your legislator. And so some states require that to be reported and the cost of doing that. That hasn't, I don't think, gotten a lot of—that doesn't seem to be spreading so much, but I think it's an interesting little niche that's going on there.

Another thing having to do with lobbyists is revolving door laws, which is one of the recommendations in the report for Illinois. Thirty-five states have laws that prohibit a public official from becoming a lobbyist right away. There is a time certain in there. Now, the easiest and weakest one probably is Maryland, because they say a legislator can't become a lobbyist until after the term is over until the next term states, which is about six months. But it can go all the way up to two years, which is a lot of states. Colorado is one. And that seems to have favorable public response, just like the survey said.

Because, the reason for that is—and I had a reporter recently said, "I don't understand the concept behind revolving door." Well, it's so as you, as a sitting legislator, cannot be negotiating your contract to go work for the lobbying firm at the same time you may be voting on issues that that lobbyist is pushing. So it's to put that sharp line in between your role as a public servant versus your role as a private lobbyist.



Where Congress has this little slippery slope is at the congressional level you can still go and work for the lobbying firm, but as long as you are not lobbying, you're not counted as a lobbyist. Many states have made that strict. You can't even be an employee of the lobbying firm. It doesn't matter if you answer the phones or anything. It means you cannot actually go work for them.

Ms. Wood: And staff, too. I mean, that was, at the federal level, we actually had a session featuring Jack Abramoff, believe it or not, who was pushing a bunch of federal reforms, and he made a very eloquent case, in many ways, about staff lobbying on the Hill, and how they go right to firms after they're done, so just food for thought. Some states have provisions that apply to staff.

I'm going to mention campaign finance, because I know it's going to come up. It already has over and over again. But since we're all about disclosure, in the interest of full disclosure, this is not an issue area that Peggy and I track. I know it seems like the Ethics Center would cover this, but our colleague, Jennie Bowser, is far away NCSL's expert on this issue, and she was nice enough to lend some maps to us.

One is about contribution limits in the states, and the other is about taxpayer incentives. States usually use three methods of regulating campaign finance. One would be the limits. The others, public financing and then lastly disclosure, which we'll cover a little bit more. All but four states have contribution limits in some way. Illinois and New Mexico were the most recent, according to Jennie, to do this. And I think I'll stop there.

Ms. Kerns: And her information is on NCSL's website, too, which is [www.NCSL.org](http://www.NCSL.org), and then you can find all kinds of stuff. In fact, the problem with our website is there's too much stuff there. But you can figure it out or you can call Natalie or me and we can help you find it.

Back to lobbyists, and talking about the transparency issue. All states require lobbyists to disclose something, and some of that something is very little, as in Idaho and Montana, and some of it is big stuff, as in the bigger states like Ohio and Pennsylvania. But legislatures have come up with other ways to regulate lobbyists that, in a bunch of states, requires them to wear badges.

And in fact when I was a legislator, there was a bill approach because there was a bill that was introduced. There was this lobbyist that was a longtime lobbyist, and he must have had 25 clients. And so the bill said that on your badge you had to list all your clients. [Laughter.] And he was a big guy. And so we just had this vision of him listing all those names on his badges. But, you know, that's good. I mean, a legislator needs to know, particularly in a term limited state, needs to know that somebody coming up to you is actually a paid lobbyist.

Most states ban contingency fees, which means a lobbyist gets paid on the success of what he or she is trying to do. If he wins, he gets more money, if he loses he gets

less. A bunch of states also limit public funds for lobbying. And that is usually a division of power issue that the legislature doesn't like the executive branch lobbying them—Health & Human Services, Transportation or whatever, or going out, the higher education, the universities hiring their own lobbyists and paying public funds to pay the lobbyists.

So that actually, for a number of years, was kind of popular and came up, and we haven't heard about that in the last couple years. But the idea was you cannot spend public dollars to lobby other public officials, which didn't quite...it never quite computed with me. But also, for a while, there was a big to-do about sanctions for lobbyists making false statements in committee meetings. In other words, you better tell the truth about your bill or you're going to have an ethics violation.

Ms. Wood: I think we're ready to move to the topic of transparency. And a big issue in the states is financial disclosure. There are, in fact, only three states that do not have financial disclosure laws for legislators. Does anybody know or is anyone from one of those states? They're Idaho, Michigan and Vermont. There's movement in at least two of the three. Every year we see some bills come up. Michigan, given it's a pretty big, full-time type legislature, it's a little surprising, and they've considered it, but no movement on that as of yet.

We track a few common elements in states' financial disclosure laws. It can get pretty dry, so stop me if—I'm going to look and see if people are yawning as I talk. But it's income, it's the source of income. There are about 15 states that require that public officials file in certain categories, the idea being the public can kind of see the range at which they're receiving compensation.

Information about spouse or family members is often required to be disclosed. The issue of relationships, be it to lobbyists with the state, who they contract with, and creditor and debtor information. And then also disclosures on gift and honoraria and client identification. That's been a really interesting topic in some big full-time legislatures, like New York, for example. One of the leaders in their state really came under fire for...it came out that some of his clients had state contracts, and so they're looking at changing their laws.

Illinois is kind of all over the place. All states are. It's really hard to make blanket statements about states' financial disclosure laws. Although I was interested. Charlie, your survey showed that legislators—it was saying in your poll that they don't have to require, if they are a lobbyist or if they're related to a lobbyist. But looking at the financial disclosure form, they do have to disclose some relationships, is that correct? Am I reading that accurately?

Dr. Leonard: If I remember the statute right, they can't lobby.

Ms. Wood: Legislators cannot lobby the legislature, no.

Dr. Leonard: They can't be paid to lobby. The definition of a lobbyist is to be paid.

Ms. Wood: And on the form here in Illinois, because I pulled it, there is a requirement that they disclose what sort of relationships they have, if they have a relationship with a lobbyist. And that's in line with many other states. One of the biggest stories, as with campaign finance, is disclosure and online availability, the ability for the public to actually access this information online, because what good is it if nobody's finding it or looking at it.

And only about...I just recently tracked this, and there's probably about 15 states that allow public officials to file online, and then only about ten or 11 where you can actually go and search in a database on somebody's name and actually pull up their financial disclosure. Illinois is actually one of the states that allows that. And in talking with ethics commissions and other entities with oversight, there are different thoughts out there about why it's a good thing or why it's a bad thing.

And Washington, for example, I was speaking with someone who works for their ethics commission, and she said they've really been debating the issue because of privacy concerns. Delaware actually contracts with a third party vendor to make the system available to the public, and they fought with a reporter at one point to actually keep that information private, and they had to release it, but there was no mandate that they do it on a larger scale.

And Maryland just—in Annapolis, until this year, you had to actually go to the legislature, to the capital, and pick out financial disclosure forms. There was no other way to get them. And so they've sort of joined the rest of the pack as far as making it easier, but they didn't allow for online disclosure. So that's something we'll continue to see, I think, as things get easier.

And then who's enforcing it? It costs money to do this stuff. State ethics commissions, which we'll get to in a minute, have limited resources. And they get under fire for not doing enough to find out if people are filing their disclosures, or if they're filing them appropriately. The gentleman that wrote Scandal Proof did a study on financial disclosures and found—and I'm not sure what state he researched or how many he actually looked at, but he found, in the disclosures he looked at, that 99.3% of them were actually examined by somebody.

Ms. Kerns: Once you move into oversight, yeah.

Ms. Wood: And really quick, there's another map on disclosures with campaign finance. This is done by a third-party. They're an advocacy group. NCSL is not affiliated with them. But Jennie Bowser, who I mentioned before, and who actually spoke to Governor Quinn's commission a few years ago, wanted me to provide this to you. It's grading disclosure post Citizens United. Illinois got an A, just in case you were curious.

Ms. Kerns: That's two good things about Illinois, see? You just mentioned.

Ms. Wood: So basically—

Female: She says [what does it mean].

Ms. Wood: What does it mean? As I understand this, this campaign disclosure project took a look at what states did in the wake of the Citizens United decision. And a lot of states ended up nullifying their laws with respect to corporate contributions. The other map I gave you kind of talks about contributions more broadly. So this is for corporate contributions in light of Citizens United and what states did as a result of that ruling.

Female: It doesn't say what they did—

Ms. Wood: Yeah, I gave you the link to the... It's a grade.

Female: Oh.

Ms. Wood: Yeah, and there's a link at the bottom so you can go and see. There were four major things they used to grade the states. And I apologize, I don't recall. I just saw this two days ago, so I don't recall, off the top of my head, what they were. But I provided this so you can take a look and see what measures they looked at.

And basically, states are beefing up their disclosure. Talking to Jennie, disclosure is really the final frontier, it seems, in states who are seeking to limit campaign money, because the courts have tended to believe it's sometimes the best disinfectant, and you don't see a lot of rulings like you do with campaign contributions, kind of against disclosure. And you said move to...we're ready to go.

So oversight is kind of the third topic we're going to talk about. The big story with oversight is—there's three prongs to it. One is the creation and proliferation and changing of ethics commissions. Two would be inspectors general. And Illinois is unique in that you have a legislative inspector general. And then committees. So 48 commissions exist in 41 states.

So states that don't have commissions, in our experience, and judging by the calls that we get, are looking at doing it. They just haven't necessarily moved on it yet. We just did a huge survey about two years ago that tracks all kind of information about ethics commissions. I encourage you to go to our website and check it out. We looked at jurisdiction, powers and duties, their budgets, how they're appointed, so it's really a big, great resource.

Ms. Kerns: How they handle complaints.

Ms. Wood: How they handle complaints, training. So please visit it or ask me how to access it and I'm happy to show you. What we're seeing in those states who do have commissions, they are revising the commission.

In New York they just scrapped their old ethics commission and have replaced it with a new one. That has not been without scandal and drama. They don't like the commissioners that have been appointed. They've been accused of not moving fast

enough on issues and not opening the process. So even as you revamp it, there's problems that can come along with it. In Tennessee they had two distinct—they had one commission for elections and ethics. They separated it out.

Ms. Kerns: They had one for campaign finance and one for ethics.

Ms. Wood: And then they merged it back together because they were saying that budget cuts were impending and that was something they needed to do, so we're seeing a lot of movement.

Ms. Kerns: Then they split them again.

Ms. Wood: It's been interesting to track it.

Ms. Kerns: All within about four years.

Ms. Wood: Illinois' commission is interesting in that it's one of, I think, seven states that have more than one commission, and it's only...you separate legislative and executive oversight, and it has only legislative members, which is a bit unique. Most ethics commissions, if they don't forbid legislators from serving on the commission, they have input on...they allow public members, like in Washington's case, and Alaska as well. So that's a unique thing about Illinois.

I mentioned inspectors general. Ohio is the only other state that we know of that has a legislative inspector general. Some states have considered the creation of one, but that's kind of where we are on that issue. And then at least 40 states have ethics committees, which is another way to provide oversight.

Some of the big stories coming out of this issue are challenges in funding. And Georgia has really struggled with this. The legislature has cut funding, and there's been lots of press about why that is the case.

Ms. Kerns: Well, when the ethics commission finds a lot of ethics violations from the legislature, then the next year they cut their funding type of thing. [Laughter.] That's kind of a stretch, but it has happened.

Ms. Wood: The conflict is inherent in regulating those with power over you, and I think commissions really struggle with that, especially on the funding issue. And the other big thing that we've seen that's been kind of fun to track, from a policy nerd aspect, is the separation of powers issues with respect to ethics commissions. States will create them, make them independent, and have this outside oversight authority, and then run into trouble when they try to regulate legislative action. Because often in the constitution, the legislature is vested with the power to sort of regulate itself.

So in Nevada and Rhode Island, for example, they've had both State Supreme Court cases, and in Nevada's case, a U.S. Supreme Court case that basically overturned the ethics commissions power, especially with respect to the speech and debate clause in Rhode Island, and then conflicts of interest in voting. And basically in

Nevada—I was just talking to a staffer there, and he said, “Well, yeah, the ethics commission has power over the legislature on everything but legitimate legislative activity.” And I said, “Well, what is legitimate legislative activity?” And he said, “We don’t really know yet. Nobody’s gotten charged with anything.” So it’s been kind of interesting from that aspect.

Male: I think it’s important to note that the Illinois legislative ethics commission has only advisory power. It has no sanction authority.

Ms. Kerns: And that’s the inspector general that does, though, right?

Male: No.

Ms. Kerns: No?

Male: I have a quick question on the—

Ms. Kerns: Good. Thank you for saying that.

Male: Are we going to questions now?

Male: Wait a minute, [Kent].

Male: Oh.

Kent: So when you say ethics committees, we’re talking about standing committees or the legislature?

Ms. Kerns: Well, both.

Ms. Wood: Three types. There’s—

Ms. Kerns: We’re actually not talking about standing committees so much because that would be, if there was an ethics bill, it would go through that standing committee. We’re actually talking about a special ethics committee that would review maybe an ethics violation.

Ms. Wood: We have a chart that outlines what states have what, where the rule authority is for the—go ahead.

Kent: My interest would be whether states have some analogous to the House or Senate ethics committee at the federal level—

Ms. Kerns: Some do.

Kent: And whether or not there’s a written code of ethics that is an internal set of criteria that the body applies themselves.

Ms. Wood: So that can be almost a—that's two issues also. Like Hawaii, for example, outlines their committee's processes and what they have power and jurisdiction over. The ethics code, and codes of ethics, that can be a separate thing, too, which many states have, not necessarily tied to the committee. So on our chart we list whether it's an ad hoc committee, if it's a joint committee or if it's a standing committee, and what their powers and duties are.

Kent: Okay.

Ms. Wood: And I can send you that list.

Ms. Kerns: Some states have all three. They have the standing committee, they have the legislative internal committee, and at the same time have an ethics commission.

Ms. Wood: In Illinois, the way your commission sort of operates and sort of, in my rudimentary research on it, it sort of acts like a committee, and it doesn't have a standing committee. The bodies have the ability to form committees to look—you know, the representative that was just kicked out is an example of how your state handles it.

Kent: It's [ad hoc].

Ms. Wood: Correct.

Kent: Very different than having a standing committee with a written code of ethics which the body does—

Ms. Kerns: Well, I think what Natalie's point was, that the ad hoc committees—well, the standing committee, I would take that out of the equation. They're just like the Transportation Committee and the Education Committee. They would just review bills. We're talking about the ad hoc that spurs into action when there is an ethics violation.

Kent: How would you classify, if you were classifying the federal, how would you classify the House and the Senate ethics committee in your typology?

Ms. Wood: I believe it's a standing committee, isn't it?

Ms. Kerns: The definition of a standing committee to a legislator is a committee that reviews bills, legislation. In Colorado we have the rules—well, not the Rules Committee, the Transportation, all that. But we have an ad hoc ethics committee that only meets when there is an ethics violation.

Ms. Wood: We'll talk after and I'll send you what I have so you can kind of review it.

Ms. Kerns: By the way, at the bottom of this "Trends in Ethics Laws" is our website, and we encourage you to go in. And that's our names and contact information on it. I think we're differing in terms here.

Kent: I got you.

Ms. Kerns: Yeah, okay. Is that it? Are we going to talk about the—

Ms. Wood: Yeah, any questions? We're kind of just rolling through, and I promised 25 minutes, and I know we're over it, so happy to—

Ms. Kerns: Well, conflicts of interest is also something that we track, and that's, to us, probably the most interesting ethics issue, because it's not black and white. Every state, in some way or another, defines what conflict of interest is. And it's basically if a legislator gets a personal or financial gain—or a public official—a personal or financial gain from a public policy issue.

Now, it's a shame Alan Rosenthal isn't here tomorrow because we like to quote him, that conflicts of interest aren't inherently bad. You all get them in your lives, too. You know, a family friend sells Girl Scout cookies or something, and oh, you know. But your own kid is selling them or something. So conflicts of interest are not unusual, but it's how they are handled that interests us. And what he says, "Conflicts of interest may occur when a legislator's personal interests come in conflict with the public's interest." But then he says, "Conflicts of interest do occur when a legislator picks the personal interest over the public's interest."

And every state has processes on how a legislator can recuse themselves. Minnesota says that the body itself, the chamber itself, has to vote, and has to decide if a legislator has a conflict of interest. It isn't up to the legislator to decide that. In Colorado, the individual legislator could say I am not voting on this because I have a conflict of interest.

But the thing that Natalie and I stress when we talk to people is that the public's interest is that legislators vote, that they get on record. And I used to hope, in my eight years in the legislature, that I'd get a case of the flu sometime and have to run to the bathroom so I wouldn't have to vote. The rules are not set up that way. They're set up so votes are a matter of public record. So we err on the side of you should vote.

But you never should vote if you gain in any personal or financial way. But there's a little asterisk to that, because every state will say if you're a member of a group and the group all benefits the same as you, then you do not have a conflict of interest, because the whole group has the same conflict and can vote.

And the easiest one is if you're a teacher in the legislature and there's a school finance bill that gives more money to education, which may mean you get a raise. Every teacher there is a group, so there is no a conflict of interest. Our speaker of the house used to say, well, the problem is how large is the group? In Colorado there were six sheep farmers. He felt that group was too small. You couldn't hide in the group then.



So we like this issue a lot, and there's a whole lot of categories that fall into this that we'll skip over. But the one thing that was mentioned earlier, dual employment. A bunch of states have rules and have laws that say you cannot hold two public jobs. Now, some say you can't hold—all states say you cannot hold two statewide offices. You couldn't be Secretary of State and in the legislature.

A bunch of states say that you cannot hold a local government job and be in the legislature. The poster child for that was New Jersey when, a few years ago, before they changed their law—anybody remember this? I think one-third of the legislature were either mayors, county commissioners, city councilmen, all of that. Talk about conflict of interest. It's that way.

Okay, we're going to stop at this point, but do a little exercise. Are there questions? Boy, it is getting hot in here, isn't it?

Ms. Wood: It's hot, right? Yeah.

Ms. Kerns: If you have some questions about any of this that we've talked about and we've just kind of breezed on through.

Ms. Wood: We're almost done, don't leave.

Ms. Kerns: No questions? Oh, yeah. Okay.

Male: We have discussed limiting the contribution by leaders to their members. Does that exist in any state?

Ms. Wood: I was really afraid that we were getting this question.

Ms. Kerns: I was afraid of that, too.

Ms. Wood: Because I don't know the answer. That's going to be one for Jennie. And I'm happy to pass that along.

Ms. Kerns: This would fall into the campaign finance thing. Now, states are all over the map also in how you can spend your campaign funds. Ohio lets legislators use their campaign funds to come up to our NCSL meetings. Other states say absolutely not. You only can use your campaign funds for campaigning. Some states allow you to buy clothes and new shoes if you're campaigning and you wear out your pair of shoes. So again, there's not a common thread in there, and I don't know what Illinois does.

Ms. Wood: You're interested in the legislative leaders being able to put money toward candidates, is that what you're asking? Yeah. Make sure Jennie gets that one.

Ms. Kerns: I doubt if there are too many laws on that, to tell you the truth.

Ms. Wood: I was wondering that as we were listening.

Ms. Kerns: You know, it's what states do. The leadership gets involved in helping people get elected, because next year they want to get elected to leadership. I mean, yeah. Yes, sir?

Male: Can you expand a bit on how different states reacted to Citizens United?

Ms. Kerns: Appalled, I guess.

Ms. Wood: Per that report that I read recently and my conversation with Jennie, states—Montana has a challenge. That's a big story. I should have mentioned it. They're challenging it. And we're waiting to hear, I think, what's going to be decided. They're standing firm on their law. I think 22 states nullified their contributions, and then many of the other states strengthened disclosure laws. And some of them have done some really innovative things.

That report, that link to that report—and I actually have a copy on me if you want to take a look at it—a few of the states passed laws that required, for instance—I'm trying to remember if it was Washington. It was a Western state. Where they actually have to list the top four donors on the commercial, like on the ad, so you can see who's behind the money, basically. So there's been a few—go ahead.

Male: [Illinois is just constant?]

Ms. Wood: I can't speak to whether or not other states... I was just looking at New Mexico and Indiana because Indiana, I was doubting our research on something. I shouldn't have, because Jennie's really good and she's always right. And it said basically they hadn't done anything. And the same with New Mexico.

So I think there are several examples where not much has changed, in part because maybe they didn't have a limitation in the first place that was affected by Citizens United. Those four states that are colored, I believe it's in green, didn't have limits anyway, so they wouldn't have to do anything. I'll show you the report if you want to...it's an interesting read. Again, we are not affiliated with the group. They're advocacy oriented, and we are not.

Ms. Kerns: Yes?

Female: With the ethics commission in your outline, you had a bullet point about confidentiality versus disclosure, so in your research, did you show that by and large other states' ethics commissions were not subject to their state's open records or open meeting statutes?

Ms. Kerns: Well, they all are at a certain point in the process. And we actually have that research on our website. Forty-one states have 48 ethics commissions, and we do have that breakdown. Now, you know, a person is innocent until proven guilty, so states are reluctant to immediately publicize, through their official action, that an ethics complaint has been filed against a legislator.

Now, if somebody outside says it, a handful of states actually have penalties for the revealing of that information. So what states prefer to do is receive the complaint, investigate it, retired judges sometimes do the investigation, and then they will hold a hearing. And those hearings are usually open to the public, but not always. But when the recommendation or the resolution is ready to be made public, most states do it. There's only one or two states that actually keep that quiet and never publicize it. But it should be publicized.

But the problem is this whole thing can be misused. For example, Florida had a concern that during an election year there are always more complaints against legislators who are surprisingly running for office. And so several commissions, probably about a fourth of the commissions, have put in a time frame that says so many, 60 days or 90 days before the election, we will not receive any ethics complaints against somebody running for office or a sitting legislator. And that's because of the abuse of the system. What Natalie put on our website is quite good. Can I tell them about it?

Ms. Wood: Any time you tell me I'm good, I like to hear it.

Ms. Kerns: Yeah, right. She did a map, and you go in and you click on Ohio, Illinois, whatever, and then what comes up is the information that lays a lot of this out. And in addition, we have a bunch of charts that really do a 50 state, or a 41 commission, 48 state side-by-side listing all the topics—when a complaint should be filed, what's the process, how long is it kept confidential, what's the powers and duties, what's the jurisdiction, to they issue advisory opinions. We have all the charts that back that up, so we actually have information in two places.

I think David wants us to kind of wrap up. We want to leave you with one thing, and just as an example. We won't have time to play our little game. There was a lot said here about how you want to go forward in making Illinois a more ethical state. We really encourage you to do that in any way that we could help you by providing information, testimony or whatever.

But we want you to make sure that you know that being ethical—I saw a lot of heads nodding before—is more than just obeying the laws that you have in place. You need good people who are able to distinguish do they represent their constituency or do they represent the state. Do they have a conflict of interest if their fiancé is a cosmetologist and there's going to be a bill that comes up that benefits her. How does she act on that? Even though your state law may allow you to take a nice trip to Hilton Head to get lobbied on a bill, do you still do it even if your law allows you to do it? Yes? You can have the final word.

Male: Just real quick. How do states compare on ethics officers at various state agencies or in the legislature to interpret the laws for the benefit of the legislators or the employees in the agencies? Is that something you've looked at or not?

Ms. Wood: That's more executive branch. Because there's so much work we could do, and Peggy's always trying to rein me in on what I'll volunteer, we kind focus our efforts on legislative. So no, we don't have that.

Ms. Kerns: There is a real gap in information on the executive branch, because the NGA, the National Governors Association, does no research. But our focus is legislators and legislative staff.

Ms. Wood: I will add to what Peggy said. Illinois, you are not alone. If I can impress anything else, in addition to obedience to the unenforceable, it's that many states have had issues, problems, situations, and we can talk to you about those over there later if you want.

Ms. Kerns: And just think. Arizona has had two FBI stings, so I think they win the prize.

Female: They may be more unethical.

Ms. Kerns: Yes. Thank you very much for your attention. [Applause.]

Mr. Yepsen: All right, thank you very much. Peggy and Natalie will both be here tomorrow with us for a panel discussion. We've really gotten into the weeds with this discussion, and I think some of you may have additional questions that you'd like to—

Female: [Inaudible.]

Mr. Yepsen: Well, I'd ask you to. That's what we're here for. So I just want to remind you of that, in case you do have additional questions or comments, these resources will be here tomorrow. Speaking of tomorrow, we start with a small breakfast at 7:30 and our program begins at 8:30. We are up on the fifth floor. And we are adjourned.

[End of recording.]