

**IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS**

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<b>In Re Petition of:</b>	)	
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<b>Brian J. McPartlin,</b>	)	<b>No. 09-EEC-003</b>
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<b>Requestor.</b>	)	
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**THE PEOPLE OF THE STATE OF ILLINOIS' REPORT  
REGARDING BRIAN J. McPARTLIN'S WAIVER PETITION**

The People of the State of Illinois ("People"), by and through Lisa Madigan, Attorney General for the State of Illinois, pursuant to the Executive Ethics Commission's October 31, 2008 Order, respectfully submit their report regarding the Waiver Petition of Brian J. McPartlin.

**INTRODUCTION**

The State Officials and Employees Ethics Act's "revolving-door prohibition" (5 ILCS § 430/5-45(a)) is designed to ensure that a state employee will act in the best interest of the People of the State of Illinois and not in his own self-interest regarding future private sector employment. A state employee may, however, petition this Commission for a "revolving-door waiver," but only if he shows that the prospective employment did not affect the decisions he made regarding a prospective future employer while he was employed by the state. 5 ILCS § 430/5-45(c).

Brian J. McPartlin ("McPartlin"), the Executive Director of the Illinois Toll Highway Authority ("ISTHA") from 2006 through October 2008, was clearly subject to this prohibition. During his tenure, McPartlin functioned as the chief executive officer, overseeing ISTHA's day to day operations and employees. Moreover, McPartlin personally executed tens of millions of dollars worth of contracts with McDonough

Associates, Inc. ("McDonough"), a Chicago-based construction company. While serving as ISTHA Executive Director, McPartlin accepted an offer to become McDonough's Vice President of Business Development. Given his leadership position at ISTHA and his responsibility for executing contracts with McDonough worth millions of dollars, if McPartlin were granted a waiver, the revolving-door prohibition would be rendered meaningless. Based upon the People's findings and analysis, and under the clear language and intent of the revolving-door prohibition, McPartlin's Waiver Petition should be denied.

#### **FACTUAL BACKGROUND**

McPartlin filed his petition seeking a revolving-door waiver from this Commission on September 8, 2008 – after he had already accepted the McDonough position. *See* Ex. A, McPartlin Waiver Petition.<sup>1</sup> Based on McPartlin's position as ISTHA Executive Director and the importance and size of the McDonough contracts, on October 13, 2008, the People sought a stay of the McPartlin Waiver Petition proceedings and authority from the Commission to conduct discovery and submit additional information regarding McPartlin's request. On October 31, 2008, the Commission granted the People's motions. Pursuant to the Commission's Order, the People have obtained written discovery from McPartlin, McDonough, and ISTHA and have taken McPartlin's deposition. The People respectfully submit the following findings.

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<sup>1</sup> On September 29, 2008, pursuant to the Commission's request, McPartlin submitted a Supplemental Waiver Petition providing additional information. *See* Ex. B, McPartlin Supplemental Waiver Petition.

**I. McPARTLIN'S RESPONSIBILITIES AND DUTIES**

**A. As Executive Director, McPartlin Oversaw All Aspects of ISTHA Operations.**

McPartlin served as ISTHA Chief of Administration between 2003 and 2006. In 2006, he briefly served as Acting Executive Director and then became Executive Director, a position he held until October 2008. While Executive Director, McPartlin served as the "CEO" of the agency, responsible for coordinating all ISTHA activities and programs and overseeing ISTHA's day-to-day operations and employees. *See* Ex. C, McPartlin Dep. at 47-48; Ex. D, McPartlin Discovery Responses, Interrogatory No. 1. All significant ISTHA departments reported to McPartlin, including Engineering, Administration, Finance, Business Systems, and Toll Operations. *See* Ex. E, ISTHA Discovery Responses, Interrogatory No. 8. "McPartlin was thus involved in and responsible for the full range of Tollway operations." *Id.*

**B. McPartlin Had Specific Oversight of and Involvement in ISTHA's Bid Solicitation Process.**

When soliciting bids, ISTHA's Procurement Division posted Professional Service Bulletins ("PSBs") and held public bid openings. *See* Ex. A; Ex. E, Interrogatory No. 7. The ISTHA Engineering Department would let McPartlin know when a PSB was going out, and McPartlin would see the PSBs and approve their public issuance. *See* Ex. C at 29-30, 40-41.

McPartlin stated he would not speak with contractors when PSBs were open. *Id.* at 40-41. However, McPartlin would meet with companies interested in doing business with ISTHA when ISTHA was not actively soliciting bids from construction contractors through the PSB process. *Id.* at 134-136. McPartlin stated that companies met with him to "showcase" their areas of expertise and discuss the status of their ongoing projects and "future expectations of where the Tollway was going." *Id.* at 135. McPartlin also

claimed that those meetings were often “just informal,” or that “[the companies] wanted to say hello.” *Id.* at 136. McPartlin claimed that he never had such meetings or any other professional contacts with McDonough while working at ISTHA. *Id.* at 70-73, 135.

**C. McPartlin Had Knowledge of, Involvement in, and Authority Over the Process of Selecting ISTHA Contractors.**

ISTHA reviewed contractor proposals through use of a Consultant Survey Committee. *See* Ex. E, Interrogatory Nos. 3, 7. McPartlin appointed ISTHA personnel to the Consultant Survey Committee, including representatives from the Engineering, Planning, Procurement and Legal Departments. *See* Ex. C at 27; Ex. F, ISTHA Policy at 2. The Consultant Survey Committee was responsible for evaluating the proposals and making a recommendation to the Board. *See* Ex. E, Interrogatory No. 3, 7; Ex. C at 28-29. The Chief Engineer would provide McPartlin with information about the Consultant Survey Committee’s PSB review process, including: the fact they were reviewing proposals; the number of PSB responses they had received; and the identity of those who were recommended. *Id.* at 29-31, 42-43.

McPartlin also had authority as Executive Director “to interview several of the most qualified ... firms prior to consultant selection” from a list created by the Consultant Survey Committee. *See* Ex. F at 2. However, McPartlin stated that he never availed himself of the opportunity to interview a short list of possible contractors, and “didn’t even know it was an option.” *See* Ex. C at 33-34, 43-44.

**D. McPartlin Had Authority Over Contractor Approval Prior to Presentation to the ISTHA Board of Directors.**

Pursuant to ISTHA’s contractor selection policy, an agreement with the recommended contractor would “be prepared and approved by the Legal Department and then presented to the Executive Director and the Board of Directors for their approval.” *See* Ex. F at 2. McPartlin stated that the Consultant Survey Committee would disclose

the recommended contractor at the executive staff meeting that preceded the Board of Directors meeting. *See* Ex. C at 30-31.

During this executive staff meeting, McPartlin and the staff would discuss the items that were going to be presented to the Board of Directors. *Id.* at 32-33. McPartlin confirmed that he had an opportunity at this meeting to discuss the Consultant Survey Committee recommendation and ask questions. *Id.* at 30-31. Nevertheless, McPartlin claimed that he would not review such proposals at these meetings. *Id.* After the Consultant Survey Committee presented its recommendations to McPartlin and the executive staff, McPartlin would approve the agenda – including the recommended contract – that would be submitted to the Board of Directors. *See* Ex. E, Interrogatory Nos. 3, 4.

McPartlin stated that he “provided an Executive Director’s report at each board meeting” that covered many issues, including the status of ISTHA programs. *See* Ex. C at 44-45. At this meeting, McPartlin had another opportunity to discuss any concerns or issues he had with a contract as it was presented to the Board of Directors, but he claimed that he never voiced any. *Id.* at 52.

**E. McPartlin Executed Contracts on Behalf of ISTHA.**

As Executive Director, McPartlin states that he was one of three ISTHA employees (along with the Chairman of the Board and the Chief of Staff) responsible for executing ISTHA contracts, and he did so on the majority of relevant occasions. *See* Ex. C at 46-47. However, according to ISTHA, McPartlin was one of only two people with the authority to execute the final agreements – the Chairman and the Executive Director. Ex. E, Interrogatory Nos. 7, 12.

In any case, McPartlin stated that he never read, and was not expected to read or review, the contracts prior to signing them. *Id.* at 48-49. In fact, McPartlin claimed that he could not refuse to sign a contract that was approved by the Board of Directors:

Q. Could you have refused for any reason to sign a contract that was approved by the board of directors?

A. No.

*Id.* at 52.

**F. McPartlin and James McDonough's Personal Relationship Spanned 25 Years.**

McPartlin has had a personal relationship with James McDonough, Chairman of McDonough, which has spanned a quarter-century. *See* Ex. C at 55-56. McPartlin was unable to recall the specifics of how they met, or their interactions since that time, but he has spoken with Mr. McDonough on multiple occasions each year at various social and civic events. *Id.* at 56-58. Though McPartlin characterized Mr. McDonough as an "acquaintance[]" at his deposition, the facts indicate that this relationship was more substantial. *Id.* at 56-57.

For instance, Mr. McDonough gave McPartlin \$1,500 for McPartlin's 2002 campaign for Cook County Commissioner. *Id.* at 52-53; Ex. G, Checks to Friends of Brian J. McPartlin. McDonough Executive Vice President John Bulut also gave \$1,500 to McPartlin for that same campaign. *Id.* Bulut signed McDonough contracts that McPartlin executed on behalf of ISTHA. *See* Group Ex. H, Contracts. Despite the fact Bulut and McPartlin together executed over \$14 million in McDonough-ISTHA contracts, *id.*, McPartlin stated that he has no specific recollection of ever meeting Bulut until his recent employment discussions with McDonough. *See* Ex. C at 58-60.

**G. McDonough Was In the “Top Ten” of ISTHA Contractors.**

McPartlin stated that he was “sure” McDonough was in the “top ten” of ISTHA contractors during his tenure as Executive Director. *See* Ex. C at 133. Indeed, between 2006 and 2008, McPartlin executed seven ISTHA contracts with McDonough, totaling approximately \$24.5 million. *See* Ex. A. In 2006 and 2007, ISTHA contracts accounted for a very significant percentage of McDonough’s gross billings.<sup>2</sup> *See* Ex. J(6).

**H. McPartlin Defended McDonough Against Charges of Favoritism at an ISTHA Board of Directors Meeting.**

During a 2006 ISTHA Engineering-Planning Committee meeting, an ISTHA Director made allegations of favoritism regarding McDonough contracts:

I’ve talked about this before, that McDonough is by far the leading vendor and as I mentioned last month, we have these favorite sons, a handful of consultants who get all of our work and the other people are left out in the cold and just don’t see how we can continue to do this time and time again. I know these are politically connected firms and the favorites who get all this work. No one will waste their time submitting bids when they know McDonough or one of the other favorite sons is going to get the work anyway. Other contractors should have a chance to get some of this work.

*See* Exhibit I, 4/27/06 ISTHA Meeting Minutes at 4. McPartlin immediately dismissed these allegations:

Clearly this is done based on a qualification selection not on a political qualification selection. Obviously it was done independently with experts in the field to make the recommendation, not based on their political contributions to anybody or their political connections to one particular party.

*Id.*

McPartlin contended that he first heard concerns about McDonough’s contracts with ISTHA during this time. *See* Ex. C at 80-81. McPartlin admits that he never made any inquiries to follow-up on or explore these concerns and that he did not “have any

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<sup>2</sup> McDonough’s 2008 data was not made available.

personal feeling or knowledge regarding whether or not McDonough deserved any of the contracts or whether or not their performance on any of the contracts was acceptable.”

*Id.* at 83-85.

Despite the seriousness of these concerns, whether true or not, and McPartlin’s vigorous defense of ISTHA’s selection of McDonough, McPartlin did not possess any facts to support his statements. *Id.* at 90-95. At no point prior to these statements had McPartlin ever made any inquiries regarding McDonough and the contracting process. *Id.* at 84. Nor did McPartlin ever ask the Chief Engineer about any of these concerns. *Id.* at 94. Indeed, McPartlin claimed that he never discussed the question of political favoritism toward McDonough with anybody at ISTHA or the State of Illinois after the meeting (*id.* at 87): “It’s not for me to be concerned because I am not – I didn’t participate in the submittals. I wasn’t making the recommendations.” *Id.* at 84. When asked about this issue at his deposition, McPartlin denied that he had any responsibility for looking into this question. *Id.* at 86-90.

## **II. McPARTLIN SEEKS OUTSIDE EMPLOYMENT AND WAIVER**

### **A. On June 17, 2008, McPartlin Decides to Seek Outside Employment “Effective Immediately.”**

McPartlin testified that in June 2008 he made the final decision to leave ISTHA and seek outside employment “effective immediately”. *See* Ex. C at 101, 129. On June 17, 2008, McPartlin spoke with John Mitola, the ISTHA Board Chairman, and expressed his intent to leave ISTHA. *Id.* McPartlin stated that he had not spoken at that time with anyone outside of his family about this decision. *Id.* at 100. On June 19, 2008, McPartlin memorialized his conversation with Mitola in a letter. *See* Ex. K, McPartlin 6/19/08 letter. McPartlin stated that he also at that time informed the ISTHA Chief of Staff, Chief of Administration, General Counsel, and executive staff that he was seeking outside

employment. *Id.* at 101. McPartlin was sure that the news of his planned departure “spread” and that it was “not a secret.” *Id.* at 104-105.

**B. McPartlin Confirms His Intent to Recuse Himself from Dealings with Any “Prospective Employer.”**

In the June 19, 2008 letter to Mitola, McPartlin pledged: “I will recuse myself and shall not make or inject myself in Tollway matters that involve any business that I have reason to believe may be a prospective employer.” *See* Ex. K. When McPartlin made this pledge, he claimed that he did not have “a list in [his] mind of any [] companies that [he] believed could become prospective employers,” a “sense at all of companies that [he] might be interested in working for,” or an idea of any companies he “might approach.” *See* Ex. C at 130. He further testified that he did not have “any reason to believe” at the time that he might take a position with McDonough (*id.* at 132) and that it “didn’t occur to [him]” when he wrote this letter in June 2008 that he might look to McDonough for employment. *Id.* at 134.

Despite McPartlin’s pledge of recusal, he was unable to provide a clear explanation as to when he thought recusal would become necessary and how he planned to fulfill his commitment to recuse himself:

Q. And when you said that you were going to not make or inject yourself in Tollway matters that involve anyone that you believed to be a prospective employer, what -- at the time you made this statement, what was the criteria for believing that somebody could be a prospective employer? What would cause somebody to become -- to get on your list?

A. What would cause somebody to get on my list?

Q. Yes.

A. I don’t know how to answer that.

*Id.* at 130-131. McPartlin did testify that, if he were contacted by a company that had worked on ISTHA projects, the company would have been on his recusal list. *Id.* at 131.

**C. McPartlin Undertook Minimal Efforts to Find New Employment.**

After June 19, 2008, McPartlin's job search consisted exclusively of "look[ing] on the web to different things," "compil[ing] different headhunting firms that [he] could potentially use," and having one headhunter "help me build my resume better." *See* Ex. C at 102-103. At some point in June, the CEO of MACTEC, Inc. (a former Chief Engineer at ISTHA) contacted McPartlin to discuss employment possibilities. *Id.* at 103-105. McPartlin testified that he does not know how MACTEC, a company that had done business with ISTHA, learned McPartlin was seeking outside employment. *Id.* at 104-106. McPartlin had a lunch meeting with MACTEC's CEO, but nothing came of it. *Id.* at 105-108.

Beyond informally searching the internet and building his resume, McPartlin claimed nothing of note happened in his job hunt between the MACTAC lunch meeting and the next time he was contacted regarding outside employment – from McDonough – allegedly in July 2008. *Id.* at 110, 143.

**D. On July 17, 2008, McPartlin Executes an ISTHA Contract with McDonough.**

On July 17, 2008, a month after his announced job search, McPartlin signed a supplemental contract between ISTHA and McDonough, which increased the total underlying contract amount by as much as \$600,000. *See* Ex. C at 144-145; Ex. L, 7/17/08 Supplemental Contract; Ex. A.

**E. "On or About" July 23, 2008, McPartlin Claims He Had His First Employment-Related Contact with McDonough.**

In McPartlin's September 8, 2008 Waiver Petition, he disclosed to the Commission that his first contact with McDonough regarding possible employment was on July 30, 2008. *See* Ex. A. However, on September 29, 2008, McPartlin supplemented his Waiver Petition and represented to the Commission that a "review [of]

additional information” led him “to believe the discussions with McDonough regarding an employment opportunity began on or about July 23, 2008 ...” See Ex. B, McPartlin Supplemental Waiver Petition.

McPartlin stated that email communications from the Commission prompted him to review his cell phone records to pinpoint the date he was first contacted by McDonough. *Id.* at 148-149. When asked whether he had looked at phone record dates prior to July 23, 2008 for any such contact with McDonough, McPartlin admitted he had not. *Id.* at 150. The date of first contact with McDonough is critical because just six days prior to July 23, 2008, McPartlin had executed an ISTHA contract with McDonough that he admits would have precluded him from obtaining a revolving-door waiver:

- Q. Now, if at this point [July 17, 2008] you had had conversations regarding employment with McDonough, would it have been improper, do you believe, for you to sign the contract [July 17, 2008 Supplemental Contract between ISTHA and McDonough]?
- A. Yes.
- Q. Why is that?
- A. Why would it have been improper for me to sign it? Because I would have had employee related conversations – employment related conversations with McDonough at that time.
- Q. So do you believe you would have been unable to get a waiver from the revolving door prohibition if you had signed a contract from McDonough after you had started having employment conversations with them?
- A. Probably, yes.

*Id.* at 145-146.

**F. McDonough Contacts McPartlin.**

McPartlin received a call on his cell phone on July 23, 2008 from Feroz Nathani, the President of McDonough and a man with whom McPartlin maintains he had no prior substantive professional or personal relationship. See Ex. C at 148, 151-153. McPartlin

makes this claim despite the fact that both he and Nathani were signatories to ISTHA-McDonough contracts valued at over \$5 million. *See* Group Ex. H. The two set a lunch meeting for August 1, 2008 to discuss McPartlin's potential employment with McDonough. *See* Ex. C at 152-153. Again, the timing of this first contact is not a mere technicality. The timing of McPartlin's first employment-related contact with McDonough is critical, because by McPartlin's own admission, once he began such discussions, he would have had to recuse himself from any McDonough related matters. If such discussions did occur prior to the execution of a McDonough contract, even McPartlin admits a revolving-door waiver would be improper. *Id.* at 145-146.

**G. McPartlin Claims that He Recused Himself From McDonough Dealings.**

After the call from Mr. Nathani, McPartlin testified that he contacted Dawn Catuara, ISTHA Chief of Staff. *See* Ex. C at 153. McPartlin stated that in this conversation, he informed Ms. Catuara of his discussions with Mr. Nathani and stated that McPartlin would recuse himself from any further contractual dealings with McDonough. *Id.* at 153-154. On or about July 28, 2008, McPartlin provided a McDonough supplemental contract to Ms. Catuara for her signature. *Id.* at 155-157; Ex. N, 7/28/08 Supplemental Contract. In complete contradiction of his previous testimony, McPartlin stated that the reason he did not want to sign this supplemental contract was merely because of "appearance" and that he did not think it would be a violation of any ethical rules to do so, despite his employment conversations with McDonough. *Compare* Ex. C at 145-146 *with* Ex. C at 154-155.

**H. McPartlin Meets with McDonough and Accepts a Job Offer.**

On August 1, 2008, August 18, 2008, and September 3, 2008, McPartlin met or spoke with (at varying times) Mr. Nathani and McDonough Chairman James

McDonough (both of whom signed five of the seven McDonough contracts that McPartlin executed on behalf of ISTHA), as well as McDonough Vice President Martin Swanson. *See* Ex. C at 158-163; Group Ex. H. According to McPartlin, these conversations were cursory in nature. *See* Ex. C at 158-163.

McPartlin stated that on September 3, 2008, McDonough offered him a position as Vice President and provided him an undated "Offer of Employment." *Id.* at 119-120, 162-163; Ex. D, Interrogatory No. 2. On September 5, McPartlin contacted Mr. Nathani and asked Mr. Nathani to increase the salary offer. *Id.* at 164. Mr. Nathani agreed to an increase, and McPartlin accepted the position of Vice President of Business Development. *Id.* at 113, 164, 173, 176; Ex. O, "Offer of Employment." McPartlin did not produce this undated "Offer of Employment" or any information about the McDonough offer to the Commission, and he does not believe any aspect of his compensation is relevant to these proceedings because he is "going into the private sector as a private citizen." Ex. C at 116-119.

**I. McPartlin and McDonough Exchanged Very Little Information About McPartlin's Prospective Employment.**

Beyond the undated, single page document entitled "Offer of Employment" that sets forth McDonough's compensation schedule for his first two years of employment, McPartlin claims to have received no written contract or any other contractual materials outlining or governing his employment with McDonough. *See* Ex. C at 112-113; Ex. O. In his deposition, McPartlin himself appeared confused on the subject of whether McDonough will provide further documentation regarding his position. At one point, McPartlin stated that he "suspect[s]" he will get a written contract from McDonough, while later he testified that he does not expect such additional information. *See* Ex. C at 112-113.

McPartlin also acknowledged a significant number of critical issues were never discussed prior to McDonough's offer and McPartlin's acceptance of the Vice President position:

- The relevance of McPartlin's ISTHA duties to the prospective McDonough position. (*Id.* at 125-126);
- The identity of the McDonough employee responsible for handling business development inside Illinois (*Id.* at 121-122);
- McPartlin's first year goals and duties while at McDonough (*Id.* at 127-128);
- Whether McPartlin's positions and duties will or could change during his second year with McDonough (*Id.* at 128);
- Whether McPartlin is prevented from doing work within Illinois for McDonough (*Id.* at 126-127);
- How much international and non-Illinois work McDonough currently is undertaking (*See Ex. C* at 123); and
- Whether or not McPartlin needed to, or would, seek a revolving-door waiver (*Id.* at 126-127).

**J. McPartlin Has Displayed a Lack Of Concern Regarding The Waiver Process.**

McPartlin's original Waiver Petition, filed on September 8, 2008, misleadingly stated that it was his "desire to accept an employment opportunity with McDonough" that prompted his Waiver Petition. Ex. A. However, McPartlin has repeatedly admitted he had already accepted that offer on September 5, 2008. *See Ex. C* at 113, 164, 173, 176. This is the most egregious example of McPartlin's lack of concern for the waiver, but not the only one.

After submitting his initial Waiver Petition on September 8, 2008, McPartlin communicated with Chad Fornoff, Executive Director of the Commission, who informed McPartlin that additional information in the form of a Supplemental Waiver Petition was required. *Id.* at 177-178; Ex. M, Commission Emails. Despite this, McPartlin moved

forward with his plans to leave ISTHA and take his new job with McDonough before he even submitted the Supplemental Waiver Petition on September 29, 2008:

- On September 9, 2008, McPartlin told Greg Stukel of ISTHA that he would be taking a job with McDonough in four to six weeks. *See* Ex. E, Interrogatory No. 9.
- On September 18, 2008, McPartlin emailed his biography and a color 8 x 10 headshot to Nathani. *See* Ex. C at 175-176; Ex. P, 9/18/08 Email. In the email, McPartlin stated: "My resignation will be publicly announced at this month's [ISTHA] board meeting on Thursday, September 25, 2008. I would ask that you hold any announcement until then." Ex. P. No mention was made of this proceeding or his (then) not-yet-filed Supplemental Waiver Petition. *Id.*
- The fact that McPartlin had not yet received a revolving-door waiver did not deter him from providing his letter of resignation to John Mitola on September 25, 2008, stating that he had "chosen to depart now to take a new position in the private sector," which referred to the McDonough job. *See* Ex. C at 181; Ex. Q, McPartlin Resignation Letter.
- McPartlin stated at the September 25, 2008, ISTHA Board meeting that he had met all the conditions of the revolving-door waiver process. *See* Ex. C at 178-180.
- On September 25, 2008, it was announced at the ISTHA Board meeting that McPartlin would step down from his post and leave ISTHA in October 2008. *See* Ex. R, 9/25/08 ISTHA Resolution; Ex. C at 179.

After he filed his Supplemental Waiver Petition on September 29, 2008, McPartlin continued to act in apparent disregard of the pending revolving-door waiver proceedings:

- On October 7, 2008, McPartlin met with a member of McDonough's Human Resources Department and set a November 3, 2008 start date. *See* Ex. J, McDonough Discovery Responses, Interrogatory No. 3; Ex. C at 183-184. McPartlin was not concerned with setting a start date even though the Commission had not yet ruled on his Waiver Petition. *Id.* at 184-185.
- McPartlin left ISTHA on October 24, 2008. *Id.* at 182.

Indeed, the facts show McPartlin has treated the revolving-door waiver process as a mere formality:

- McPartlin has not committed in writing that he will absolutely refrain from performing work involving ISTHA, stating only that he "will have no *known*

business interactions with ISTHA in his first twelve months of employment by McDonough.” *See* Ex. D, Interrogatory No. 7 (emphasis added).

- During this process, McPartlin never considered waiting to leave his job with ISTHA until the Commission ruled on his Waiver Petition. *See* Exhibit C at 185-186. McPartlin stated, “I suppose I probably could have stayed there and waited, but I didn’t. I had already made the decision to leave. I already accepted an offer.” *Id.*
- McPartlin never made any effort to seek temporary or one-year employment with a company that had no ISTHA dealings. *Id.* at 186.
- McPartlin did not say whether he would revoke his acceptance of McDonough’s offer should this Commission deny his Waiver Petition. *Id.* at 165-166, 183.

#### ANALYSIS OF McPARTLIN’S WAIVER PETITION

Pursuant to the State Officials and Employees Ethics Act, when a state employee has “participated personally and substantially in the decision to award State contracts” to a company with a cumulative value exceeding \$25,000, the state employee is prohibited for one year from working for that company. 5 ILCS § 430/5-45(a). The state employee may, however, petition this Commission for a waiver from the prohibition, but only if he shows that the prospective employment did not affect his decisions regarding his putative future employer. 5 ILCS § 430/5-45(c). As discussed below, McPartlin is clearly subject to the revolving-door prohibition yet has failed to carry his burden in seeking a waiver. In fact, the evidence before the Commission affirmatively demonstrates a revolving-door waiver is not warranted.

#### **I. McPARTLIN’S INVOLVEMENT IN THE ISTHA-McDONOUGH CONTRACTS WAS “PERSONAL AND SUBSTANTIAL” SUCH THAT A WAIVER IS REQUIRED.**

In order for McPartlin to accept the McDonough Vice President of Business Development position, he must obtain a waiver from the revolving-door prohibition. This is because McPartlin’s execution of McDonough contracts on behalf of ISTHA constituted “personal and substantial” involvement. *See* 5 ILCS § 430/5-45 (waiver must

be obtained in cases where a state employee has “participated personally and substantially in the decision to award State contracts [to the putative future employer] with a cumulative value of over \$25,000”). Indeed, at his deposition McPartlin acknowledged that executing a McDonough contract after any employment-related discussions with McDonough would foreclose the possibility of a waiver.

Of course, the need for a revolving-door waiver is just as apparent in light of McPartlin’s duties and authority as ISTHA Executive Director. McPartlin was in charge of all ISTHA operations and employees and was also responsible for binding ISTHA to legal and financial obligations. As such, he clearly had the “personal and substantial involvement” in State contracting that necessitates a waiver from the revolving-door prohibition.

## **II. McPARTLIN HAS FAILED TO CARRY HIS BURDEN TO WARRANT A REVOLVING-DOOR WAIVER.**

Under the State Officials and Employees Ethics Act, once “personal and substantial involvement” is established, a waiver “shall be granted upon a showing that the prospective employment or relationship did not affect” the petitioner’s decisions regarding his or her putative employer. *See* 5 ILCS § 430/5-45(c). McPartlin has failed to carry this burden.

To support his Waiver Petition, McPartlin relies on two contentions: as ISTHA Executive Director, he had no involvement in or authority over the contracting process or over the multi-million dollar McDonough contracts, and he did not speak to anyone from McDonough about employment until after he had executed all relevant contracts. If these conclusory statements were enough to obtain a waiver from the revolving-door prohibition, the State Officials and Employee Ethics Act would be reduced to a mere

formality, and the public policy of guarding against state employee conflicts of interest would be meaningless.

Moreover, McPartlin's contentions are insufficient and unsupported – and, therefore, fail to carry McPartlin's burden. The record indicates that McPartlin's relationship and interactions with McDonough could very well have affected McPartlin's decisions at ISTHA. As a result, the Waiver Petition should be denied.

**A. McPartlin Has Failed To Establish The Date Of His First Employment Contact With McDonough.**

McPartlin is unable to provide this Commission with any firm statements or hard facts regarding the date of his first employment-related contact with McDonough. This is the central issue before the Commission. Both the People and McPartlin agree that if McPartlin had begun employment discussions with McDonough at the time he signed the July 17 McDonough contract, he cannot meet his burden to obtain a waiver. Because McPartlin has failed to establish when his first employment contact occurred, he has failed to carry his burden.

**B. McPartlin's Obfuscation Regarding His Duties and Responsibilities as Executive Director of ISTHA.**

McPartlin has repeatedly made self-serving and contradictory statements regarding his duties as ISTHA Executive Director, especially as they relate to the contracting process. On the one hand, McPartlin has admitted that he appointed personnel to the Consultant Survey Committee, that ISTHA policy allowed him to interview the most qualified bidders prior to completion of the contractor selection process, and that he had the opportunity to analyze and give commentary on contracting recommendations during both executive staff and Board meetings. On the other hand, McPartlin repeatedly claimed in his deposition that he had no actual involvement in the contracting process.

The incredibility of McPartlin's contentions is exemplified by his testimony that though he approved ISTHA contracts for the Board agenda – and he executed ISTHA contracts (including McDonough contracts) – he never read these contracts and was powerless to refuse to sign them. Indeed, by McPartlin's testimony, had he been presented with a contract that was clearly illegal, he – as Executive Director – lacked the ability to do anything about it. McPartlin is either not being forthright about his oversight and involvement in the contracting process, or he failed to perform even the most basic responsibilities of an Executive Director. The facts suggest the former, given that ISTHA described McPartlin's role as an active, successful, and involved leader of the agency (see Ex. R) and that the multi-million dollar McDonough contracts were central to the agency's goals.

**C. McPartlin Had Well-Developed Contacts With McDonough and its Executives.**

McDonough was a leading ISTHA contractor while McPartlin was Executive Director. Additionally, McPartlin admits he has known James McDonough for approximately 25 years. Despite this, McPartlin has claimed that he had no professional contacts with the company while he was with ISTHA and could recall few details of his personal relationship with McDonough. The idea that McPartlin had no professional or substantive personal interaction with McDonough or its executives during his tenure at ISTHA strains credulity. The People are as concerned with McPartlin's attempts to downplay these relationships as they are with the relationships themselves. In any event, both support the denial of McPartlin's Waiver Petition.

**D. McPartlin's Minimalist Job Search and Exchange of Information with McDonough Regarding Prospective Employment.**

McPartlin's job search was nearly non-existent, yet in a relatively short time after announcing to a select group of people his decision to leave ISTHA, he secured a high-

level position with one of ISTHA's leading vendors. Quite simply, McPartlin did very little to find a new position in the approximately six weeks between his mid-June announcement and his alleged date of first contact with McDonough at the end of July. Between those two dates – on July 17, 2008 – he executed the supplemental contract with McDonough.

Moreover, McPartlin never provided the Commission with the undated, single page "Offer of Employment" – the *only* document that in any way sets out his prospective position with McDonough. According to McPartlin, he and McDonough never discussed such basic issues as his relevant ISTHA work experience and McDonough's expectations regarding McPartlin's first and second-year goals and duties:

Q. Did you have any discussions about what the first goal – first year goals and duties you were going to have if you worked at McDonough?

A. No.

Q. Anything about what you would be doing your second year?

A. No.

*See Ex. C at 127-128.* McDonough's willingness to offer McPartlin a job as Vice President of Business Development, and McPartlin's willingness to accept it, on the basis of nothing more than a few non-specific discussions and a single undated document raise extensive questions that undermine his waiver request.

**E. McPartlin's Dismissive Approach Towards the Waiver Process.**

McPartlin has repeatedly treated the Waiver Petition process itself as little more than a formality. Days before he even submitted a Waiver Petition to this Commission, McPartlin accepted McDonough's employment offer. However, McPartlin's September 8, 2008 Waiver Petition incorrectly gave the impression that he had not yet accepted the position. McPartlin exhibited this cavalier attitude in other instances as well. He freely

informed people that he was leaving ISTHA for a job with McDonough – and even announced a resignation date – prior to submitting all required Waiver Petition paperwork with the Commission. McPartlin also set a start date with McDonough within ten days of submitting his final waiver paperwork to the Commission, well before it was scheduled to rule on the issue. Furthermore, McPartlin has declined to assure the Commission that he will not be involved in ISTHA business on behalf of McDonough, representing only that he will have “no *known* business interactions with ISTHA” in his first year of his McDonough employment. *See* Ex. D, Interrogatory No. 7 (emphasis added). McPartlin’s statement does not provide confidence that McPartlin will adhere to the letter and spirit of the State Officials and Employees Ethics Act.

Finally, at his deposition McPartlin did not explain whether he felt a revolving-door waiver was required for him to start employment with McDonough, or whether he would refrain from working for McDonough should the Commission refuse to grant such waiver. In combination with all of the facts discussed above, McPartlin’s dismissive approach toward the waiver process further raises significant questions that completely undermine his legal and factual basis for a waiver from this serious ethics requirement.

### CONCLUSION

Based upon the foregoing, it is clear that as ISTHA Executive Director, McPartlin was personally and substantially involved with ISTHA-McDonough contracting and, therefore, is subject to the revolving door prohibition. Moreover, McPartlin has failed to carry his burden to obtain a waiver from this revolving-door prohibition. *See* 5 ILCS §430/5-45(c). Under the present circumstances, a grant of McPartlin’s Waiver Petition would render the revolving-door prohibition a mere formality and undermine the letter and intent of this important public policy.

WHEREFORE, for the foregoing reasons, the Commission should deny Brian J.

McPartlin's Waiver Petition.

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Respectfully submitted,  
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