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Testimony to the Joint Commission on Ethics and Lobbying Reform

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Good afternoon and thank you for having us here again. My name is Marie Dillon and I'm the policy director for the Better Government Association.

I was happy to hear from the inspectors general today. I learned some new things, but I also heard things that we've all been hearing for many years. So I'm going to begin from the premise that the legislative oversight system is dysfunctional and move quickly to possible solutions.

Current and past Legislative IGs have repeatedly asked the General Assembly to make changes to the state ethics acts so they can do their jobs effectively. We know those concerns have been heard, because every year there are bills filed that would address the problems. Yet they never move. I hope this moment and this commission will provide the stimulus for change at long last.

The problems with the oversight system relate mostly to independence and transparency.

Most of the bills that have been filed would maintain the current arrangement — a Legislative Inspector General working in tandem with a Legislative Ethics Commission — but would reset that relationship to empower the inspector general.

A truly independent Legislative IG would have the authority to launch investigations, issue subpoenas and publish founded complaints without permission from a commission whose members are all legislators, chosen by legislative leaders.

Several lawmakers have told me this setup is meant as a check against politically motivated complaints or rogue inspectors general. These anxieties can't be allowed to trump the public's interest in holding its elected officials accountable.

The commission's control over the Inspector General is lopsided and invites political interference.

The BGA supports the provisions of SB 1426 and SB 74, both sponsored by Sen. Melinda Bush, with a few additions.

First, give the Legislative IG authority to launch investigations and to issue subpoenas without permission from the Legislative Ethics Commission. (SB 74, SB 2297)

Second, require publication of any summary report in which the LIG finds reasonable cause that a violation was committed by a current or former member of the General Assembly. (See also HB 3962)

Third, change the composition of the Legislative Ethics Commission to include members of the public and to eliminate the built-in 4-4 partisan deadlock.

Current law says members of the public *may* be named to the commission; SB 1426 would change the wording to *shall*. It doesn't speak to how many, but I would suggest at least four of the current eight.

Although we did not survey all 50 states, we found many ethics commissions with mixed panels and several with no elected members at all. In some states, caucus leaders name (or nominate) the public members; sometimes the commission itself selects them. The important thing is to avoid stacking the commission with what Inspector General Homer just described as "surrogates" for legislative leaders.

Next we need a tie-breaker member.

LIG Homer suggests that a ninth member could be chosen from the public by the commission itself. A selection committee named by legislative leaders could nominate a candidate or candidates.

Next, make the workings of the Legislative Inspector General and the Legislative Ethics Commission transparent and public-friendly. For a good model, look no further than the Illinois Executive Ethics Commission's website.

Its page labeled "founded investigative reports" displays the subject's name, date, agency and nature of the violation. It also includes a search window. The corresponding information on the legislative side is simply a column of links with case numbers; you can't tell what's inside and you have to open each one to look. The reports are scanned pdf files, so not searchable.

The quarterly reports of the LIG and LEC are also presented in ways that impede transparency. It's not possible to track a distinct case from start to finish or even tell for sure if it's still pending. You have to collect the data piece by piece from each report; it can't be downloaded to a spreadsheet. This aggregate data is valuable public information but is unnecessarily hard to assemble.

Finally, for those who worry about politically motivated complaints: A few states have safeguards written into their laws. A complaint found to be "lacking basis in fact or law" (in Missouri) or filed "for a purpose other than reporting a violation of the Ethics Act" (in Pennsylvania) can be declared frivolous by their ethics commissions. This opens the complainant to civil penalties.

New Jersey's ethics commission does not accept complaints within 90 days before an election (though it still can initiate its own).

Of course the best check against frivolous complaints or partisan attacks is a qualified, professional and thoroughly vetted inspector general. I believe the law as written and applied has served the state well in that regard.