

LOBBYING REFORM: WHAT IS THE PROBLEM?

by
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In 2007, Oregon enacted among the most strict government ethics laws in the country. The resulting statutes have created additional controversy, centering on disagreement about what constitutes inappropriate influence in politics. If the problem to be solved centers on reducing influence through prohibiting gifts, the remedy is quite different than if the problem focuses on increasing public disclosure to allow the voters to decide what is, or is not, inappropriate. This Comment assesses both heuristics, recommending adoption of the disclosure approach while discussing the strengths and weaknesses of the current statutory scheme.

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I. INTRODUCTION

During the summer of 2007, Oregon Governor Ted Kulongoski signed some of the most strict lobbying and government ethics laws in the nation. These laws—Senate Bill 10, and to a lesser extent House Bills 2595 and 5025—address many of the issues that came to light after Dave

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Hogan, a writer for the *Oregonian* newspaper, discovered that a group of legislators had failed to report trips to Hawaii paid for by members of the Oregon Beer and Wine Distributors Association.¹

While the Hawaii trips sparked a number of heated op-eds, the subsequent passage of Senate Bill 10 has just as many people up in arms. The bill has been criticized as overbroad,² filled with loopholes,³ and is being challenged as unconstitutional in part.⁴ Clearly, there are many viewpoints on the appropriate role of money in politics. To be fair, the debate is even broader than money in politics—it is about *influence* in politics. But while most debates in this arena revolve around finding an appropriate remedy, there is a less-discussed predicate issue: what problem are we remedying? More specifically, what constitutes inappropriate influence in politics? It is disagreement on this issue that underlies the controversy surrounding Senate Bill 10. This Comment sets out a method for achieving more agreement on the problems posed by lobbying in Oregon.

There are two general viewpoints on the severity and types of problems posed by current lobbying practices. First is the view that lobbyists, primarily through gift giving, exert inappropriate influence over public officials, and that the key to curbing this influence is through prohibiting or limiting gifts (I will call this the corruption heuristic). Second is the view that, so long as lobbyists and public officials disclose their activities (including gift giving), the public can decide which activities amount to inappropriate influence and vote accordingly (the disclosure heuristic).

Both camps of thought have ideologies based on sweeping assumptions with little, if any, empirical or scientific backing. The corruption heuristic is based on the assumption that lobbyists have a significant amount of influence, and that this is a major problem. The disclosure heuristic is more *laissez-faire*. This heuristic is based on the assumption that the appropriateness of influence can and will be decided by the political process. Unfortunately, studying influence is quite difficult.

The difficulty in testing these heuristics may explain why Senate Bill 10 essentially adopts both. The fact Senate Bill 10 does not clearly fit into either category may also explain why the bill is so controversial. Senate Bill 10 increases both gift limitations and disclosure requirements, and

¹ Steve Duin, *A Li'l Sunburn for That Day at the Beach*, OREGONIAN, Oct. 1, 2006, at B1.

² Interview with John DiLorenzo, Jr., Co-Chair, Gov't Relations Practice Group, Davis Wright Tremaine, LLP, in Portland, Or. (Oct. 25, 2007) (on file with author).

³ E-mail from Dan Meek, Oregon Public Interest Attorney and Sponsor of Campaign Finance Reform Measures, to Author (Oct. 13, 2007, 21:40 PST) (on file with author).

⁴ Complaint at ¶ 4, *Vannatta v. Oregon Gov't Ethics Comm'n*, No. 07C-20464 (Marion Co. Cir. Ct., Oct. 8, 2007), available at <http://www.oregoncapitolclub.org/documents/CTPFSComplaint.pdf> [hereinafter Complaint].

even prohibits certain gifts. While there has been much debate about whether this bill is too restrictive or not restrictive enough, I argue that this two-prong approach is simply inappropriate; it is an attempt to please both camps of thought (both heuristics), but neither is happy.

Given the different assumptions that underlie the two camps, it will not be possible to implement a less controversial remedy until lobbyist influence is more thoroughly understood. Perhaps more importantly, a better understanding of lobbyist influence will enable the legislature to better tailor future remedies. Fortunately, understanding lobbyist influence need not be conjectural. This analysis is partially informed by existing studies and this analysis can and should be supplemented by studies specifically in Oregon.

This Comment lays out the most important factors in assessing and addressing lobbyist influence. These factors are drawn primarily from commentary at the federal level because there is little commentary available specifically for Oregon.⁵ Some of these factors have been scientifically studied and some, apparently, have not. While the extant studies are informative, they are not likely conclusive enough to promote agreement on the problems posed by current lobbying practices, much less agreement on appropriate remedies.

A better understanding of lobbyist influence will require gathering more information. This goal can be accomplished by adopting the disclosure heuristic. I recommend adopting this heuristic merely because it provides the surest means of gathering valid data on lobbyist influence, not because I think its underlying assumptions are correct or superior to those of the corruption heuristic. There is no way to know which assumptions are correct without more empirical evidence. Although disclosure laws have existed in Oregon for many years, these laws have never been strongly enforced, and the disclosed data has never been electronically stored. These two steps are necessary for obtaining valid and easily accessible data. Senate Bill 10 *does* effectively address these two problems.

Further, disclosure laws are more easily implemented and enforced than anti-corruption laws, and disclosure laws have fewer potential negative side effects than anti-corruption laws. Because the corruption heuristic involves these difficulties, it makes little sense to adopt this approach until the nature and extent of lobbyist influence in Oregon is more thoroughly understood, and unless this understanding points to a need for adopting the corruption heuristic.

In support of these propositions I discuss the problems implied by both heuristics, the likely severity of these problems, and the challenges in remedying the more serious problems. Section II of this Comment provides some necessary background information, including the Hawaii

⁵ "Regulating lobbyists involves essentially the same challenges at the federal, state, and local levels..." Vincent R. Johnson, *Regulating Lobbyists: Law, Ethics, and Public Policy*, 16 CORNELL J.L. & PUB. POL'Y 1, 17 (2006).

story and the subsequent passage of, and response to, Senate Bill 10. Although the underpinnings of Senate Bill 10 far predate the Hawaii story, this story provided a major catalyst to the passage of the bill.⁶ In Section III, I discuss Senate Bill 10 and related laws. I use the remedial provisions of Senate Bill 10 to infer the problems the bill was meant to address. I also discuss the strengths and weakness of Senate Bill 10 and related laws in addressing these problems. In Section IV, I discuss the costs and benefits of potential remedies for the three issues that remain unaddressed or controversial in the wake of Senate Bill 10. In conclusion, I argue the issues that fall under the corruption heuristic should be better understood before remedial measures are taken. The disclosure heuristic will provide a means for achieving this understanding.

II. BACKGROUND

In September 2006, the *Oregonian* reported that members of the Oregon Beer and Wine Distributors Association had paid for three legislators' trips to Hawaii.⁷ These legislators, Wayne Scott, Derrick Kitts, and David Nelson, were not the only ones who failed to report benefits paid by beer and wine distributors. Following the initial article, four more legislators admitted to failing to report similar benefits.⁸ These revelations looked especially bad in light of the fact that Oregon beer and wine taxes had not been increased, despite repeated legislative attempts, since 1976.⁹ Further, Oregon beer and wine distributors have long been privileged with abnormally favorable laws, including exclusive territories for beer brands and cash on delivery.¹⁰

Despite the fact that this situation looked bad, and despite widespread calls for reform in the wake of these stories, seemingly no one took the time to dissect the facts and articulate the underlying problem. Predictably, some pundits accepted these facts as evidence of quid pro quo corruption.¹¹ But the prevailing sentiment among lawmakers seemed to be that the main problem post-Hawaii was, essentially, dwindling

⁶ Interview with Janice Thompson, Executive Director, Democracy Reform Oregon, in Portland, Or. (Oct. 19, 2007) (on file with author).

⁷ Dave Hogan & Janie Har, *Legislators Never Reported Maui Trip on Group's Dime*, OREGONIAN, Sept. 27, 2006, at A1.

⁸ Dave Hogan, *More Legislators Make Hawaii Trips Official*, OREGONIAN, Sept. 30, 2006, at B1.

⁹ Hogan & Har, *supra* note 7; Editorial, *In Oregon, the Alcohol Industry Runs the Show*, OREGONIAN, Oct. 10, 2006, at B4.

¹⁰ Richard Read, Janie Har & Bill Graves, *Beer, Wine Lobby Has Lock on Law*, OREGONIAN, Oct. 8, 2006, at A1.

¹¹ See, e.g., Editorial, *The Best Legislature Money Can Buy*, OREGONIAN, Sept. 28, 2006, at B6; Editorial, *Let's Close an Ethics Loophole That's Big Enough to Hold Hawaii*, OREGONIAN, Oct. 1, 2006, at E4.

public faith in government.¹² The content of Senate Bill 10 does not match this diagnosis.

Senate Bill 10 makes extensive changes to Oregon Revised Statutes Chapters 171 (Lobbying Regulations) and 244 (Government Standards and Practices). The changes to chapter 171 generally fit into the disclosure heuristic, while the changes to chapter 244 generally fit into the corruption heuristic. This two-pronged approach begs the question: what is wrong with simultaneously addressing the problems implied by both heuristics? Unfortunately, we have already seen the problem—we have seen a bill that, despite passing with an overwhelming majority, has created as much controversy as the story that spurred it.¹³ Even members of the legislature who voted for the bill have expressed regret for doing so.¹⁴ In the wake of the Hawaii trips, everyone seemed to agree that an ethics bill of some sort was needed. This momentum temporarily repressed fundamental differences in ideology, but the two camps of thought are mutually exclusive. A less controversial remedy will not be possible without more agreement as to the severity and type of problems to be addressed.

One benefit of the Senate Bill 10's two-prong approach is that it offers insight into the types of issues both sides have considered salient. In the next Section, I will work backwards using the bill's provisions to infer a list of issues and sub-issues. Oregon law has adequately addressed some of these issues, and I will highlight the widely-accepted provisions in addition to the unaddressed or controversial issues. In Section IV, I will discuss the costs and benefits of potential remedies for these issues.

¹² See e.g., Blue Oregon, House Passes Major Ethics Legislation, <http://www.blueoregon.com/2007/06/house-passes-ma.html> (June 27, 2007) (quoting House Speaker Jeff Merkley who carried Senate Bill 10 to the floor and promoted it as “[r]estoring the public’s faith in their elected leaders.”); News Release, Senate President Peter Courtney & Senate Majority Leader Kate Brown, Senate President Courtney and Majority Leader Brown Announce Five-Point Plan for Ethics Reform (Jan. 5, 2007) available at http://www.leg.state.or.us/press_releases/courtney_010507_2.pdf (describing Senate Bill 10 as “critical to the public’s confidence in government”).

¹³ Senate Bill 10 was passed 27-2 in the Senate and 40-18 in the House. Oregon State Legislature, Senate Measure History, <http://www.leg.state.or.us/07reg/pubs/senmh.html>.

¹⁴ Interview with John DiLorenzo, Jr., *supra* note 2 (based on communications between legislators and interviewee). Mr. DiLorenzo further explained that some legislators were motivated to vote for the bill in order to avoid the potential stigma of “voting against the ethics bill.” *Id.*; see also, E-mail from John DiLorenzo Jr., Co-Chair, Gov. Relations Practice Group, Davis Wright Tremaine, LLP to Dave Hogan et al. (Oct. 24, 2007, 14:12 PST) (on file with author) (“The bill as amended by the House was forced down the throats of most of the members who risked being branded if they did anything to impede the progress of the bill.”).

III. SENATE BILL 10

The provisions of Senate Bill 10 imply three primary issues: lax enforcement, lack of transparency, and undue influence of lobbyists over public officials.

A. *Lax Enforcement*

This issue is important in both heuristics and, not surprisingly, is the area where Senate Bill 10 and the companion house bills are least controversial. The Oregon Government Ethics Commission (GEC), formerly the Government Standards and Practices Commission, is the body charged with enforcing lobbying laws. Three factors play into the GEC's enforcement powers: neutrality, funding, and independence.

The GEC's neutrality has been an issue for the better part of two decades, but multiple amendments to chapter 244 during this time have tamed the issue considerably.¹⁵ The Oregon legislature has extensively amended the process for appointing commissioners, investigation procedures, and hearings procedures.¹⁶ Thus, at the time the Hawaii story broke, few if any pointed the finger at a biased ethics commission.¹⁷ Rather, the most commonly cited problem was the commission's impotence.

The key issues post-Hawaii were the GEC's small budget and the source of that budget—the legislature. This setup was arguably akin to the “fox guarding the henhouse”¹⁸ because the GEC's support came from a potentially adverse legislature. Given this situation, it may be no surprise that the GEC had been “chronically underfunded,”¹⁹ and staff size had dwindled from six to three.²⁰

¹⁵ Interview with John DiLorenzo, Jr., *supra* note 2.

¹⁶ See, e.g., S.B. 292, 66th Legis. Assem., Reg. Sess. § 3 (Or. 1991); S.B. 159, 67th Legis. Assem., Reg. Sess. §§ 2, 3 (Or. 1993); H.B. 2525, 70th Legis. Assem., Reg. Sess. § 51 (Or. 1999); H.B. 3432, 70th Legis. Assem., Reg. Sess. § 1 (Or. 1999); and H.B. 2526, 72nd Legis. Assem., Reg. Sess. § 30 (Or. 2003).

¹⁷ Notably, the 2007 legislature did make minor amendments to these areas of Chapter 244 via Oregon House Bill 2595, namely appointment of commissioners (§1), investigation procedure (§2), and hearings procedure (§23). H.B. 2595, 74th Legis. Assem., Reg. Sess. (Or. 2007).

¹⁸ Editorial, *Act Swiftly on Ethics Reform*, OREGONIAN, Mar. 28, 2007, at B4.

¹⁹ Press Release, Democracy Reform Oregon, Oregon Ethics Bill Passes House—Its Companion Also Needed (June 7, 2007), *available at* <http://www.democracyreform.org/?q=060707Release>. In fact, the GEC's budget had been cut in half over the last decade. Posting of the Oregonian to OregonLive.com, http://blog.oregonlive.com/politics/2007/06/today_in_salem_ethics_mobileho.htm 1 (June 27, 2007 9:00 PST).

²⁰ Posting of Kirstin Ellison, Staff Writer, Common Cause, to Common Blog, <http://www.commonblog.com/tag/oregon> (June 22, 2006, 10:26 PST).

The Senate Bill 10 drafters apparently agreed that GEC funding and independence were problems. Beginning July 1, 2009,²¹ the GEC will receive funding by imposing charges on the public bodies that it serves.²² Public bodies in state government will be liable for these funds in proportion to the number of public officials serving each body.²³ Other public bodies will be allocated liability in accordance with the allocation of municipal audit fees among these bodies.²⁴ Additionally, House Bill 5025 increases the commission's budget to over \$1 million,²⁵ allowing the agency to reestablish an investigator position, among other things.²⁶ Finally, penalties for violations of chapters 171 and 244 have generally been increased from \$1,000 to \$5,000.²⁷ These changes have given the GEC much more power. Unfortunately, there is still the issue of whether the GEC should be using this power primarily to encourage transparency or to crack down on corruption.

B. Lack of Transparency

Transparency is the primary problem under the disclosure heuristic. Senate Bill 10 takes three steps to achieve transparency, and thus implicates three sub-issues. First, the bill seeks to better enable the public to track the flow of money—the underlying issue being the public's ability to assess who might be influencing public officials. Second, tracking the flow of money must be doable in a timely manner because, in order for the public to effectively use this information (primarily by voting in upcoming elections), it must be available quickly, lest the issue become moot. Finally, the bill seeks to better aid compliance with disclosure laws by educating public officials—the underlying issue being that public officials may have difficulty complying with complex regulations.

Regarding the first two sub-issues, Senate Bill 10 aids the ability to track the flow of money in a timely manner by requiring the GEC to implement a searchable electronic filing system²⁸ and requiring more frequent (i.e. quarterly) reporting.²⁹ Also relevant to tracking the flow of money is the nexus between public officials, lobbyists, and the people

²¹ Or. S.B. 10, 74th Legis. Assem., Reg. Sess. § 3 (Or. 2007).

²² *Id.* § 2(2). State agencies, for example, often refer complaints to the GEC, and these agencies will now fund the GEC.

²³ *Id.*

²⁴ *Id.* Subject bodies include “[l]ocal governments, local service districts and special government bodies that are subject to the Municipal Audit Law.” *Id.* § 2(1)(b).

²⁵ H.B. 5025, 74th Legis. Assem., Reg. Sess. § 1 (Or. 2007).

²⁶ Press Release, Democracy Reform Oregon, Oregonians Win Ethics Reform Victory in Legislature (June 27, 2007), *available at* <http://www.democracyreform.org/?q=062707Release>.

²⁷ Or. S.B. 10, at §§ 10(1), 11(1)(a).

²⁸ *Id.* §§ 8, 9.

²⁹ *Id.* § 5.

who hire lobbyists (principals). Although all three entities had previously been required to report to the ethics commission, Senate Bill 10 further requires principals to itemize lobbying expenditures.³⁰ Although these remedies have not been especially controversial, the effectiveness of these remedies hinges on the assumption that tracking money or influence is logistically feasible. The amount of data involved could be unruly, and the ease with which identities are hidden or veiled could create problems for those who wish to track influence.

Further, it is worth considering whether strict disclosure laws may create barriers to entry for some lobbyists.³¹ Lobbyists at big firms will have automated systems in place to satisfy reporting requirements, while lobbyists with lesser means may have to work much harder to comply with disclosure laws. Therefore, the benefits of transparency must, to a degree, be weighed against the benefits of equal access to public officials (the problem of unequal access is discussed below).

The goal of educating public officials is less problematic. The GEC, with its improved budget, can now establish a trainer position for the benefit of public officials,³² and the GEC has an increased responsibility to issue advisory opinions in a timely manner.³³ Notably, the education push may be related to Representative Scott's excuse for not reporting his Hawaii trip. Although at the time, all lobbyist-paid trips over \$144 had to be reported, Scott said, "If [the lobbyist] didn't provide me something saying I exceeded that (amount), I assumed it was under the limit."³⁴

C. Undue Influence

Undue influence is the primary problem underlying the corruption heuristic. Senate Bill 10 takes three primary steps to curb undue influence. The bill (1) limits lobbyists from providing gifts to public officials,³⁵ (2) prohibits legislators from becoming lobbyists for one full legislative cycle after leaving office,³⁶ and (3) generally prevents public officials from using their official positions for financial benefit.³⁷ The first step implies an underlying problem known in psychology as reciprocity (essentially the idea that people are likely to return favors). The second step implies the underlying problem of unequal access. The third step implies an underlying problem of quid pro quo corruption.

³⁰ *Id.* § 7(b), (c).

³¹ Scott Ainsworth, *Regulating Lobbyists and Interest Group Influence*, 55 J. POL. 41, 52-53 (1993).

³² Press Release, Democracy Reform Oregon, *supra* note 26.

³³ H.B. 2595, 74th Legis. Assem., Reg. Sess. §§ 12, 14 (Or. 2007).

³⁴ Hogan & Har, *supra* note 7.

³⁵ Or. S.B. 10, at § 18.

³⁶ *Id.* § 15(6).

³⁷ *Id.* § 17(1).

As a preliminary matter, this Comment does not focus on the problem of quid pro quo corruption. Such activities are explicitly criminalized under Oregon's anti-bribery statute.³⁸ Instead, I will focus on a more subtle form of corruption (the aforementioned principle of reciprocity). Reciprocity is a form of corruption both more pervasive and more controversial when it comes to writing laws.

Regarding gifts, Senate Bill 10 prohibits gifts of entertainment³⁹ and limits most other gifts to an aggregate value of \$50 per year.⁴⁰ These limits, as far as *receiving* gifts, also apply to the public official's relatives and household members.⁴¹ However, for gift *giving*, these prohibitions do not extend to persons without an interest in the public official's official power.⁴² On the other hand, a number of items have been newly exempted from the definition of "gift."⁴³ These exemptions are too numerous to list, but they generally break down into five categories. First, when a public official acts in her official capacity, perks incidental or related to those actions are generally allowed.⁴⁴ Other exemptions are for benefits not specifically targeted at public officials,⁴⁵ like perks related to professional licensing,⁴⁶ honoraria,⁴⁷ and unsolicited awards of appreciation.⁴⁸

Senate Bill 10's gift provisions have been the most controversial part of the bill. First, the exceptions to the gift rule, and the exemptions from the definition of gift may present loopholes. For example, money could be filtered through a person or entity that has no interest in the public official's power. Second, and much more significantly, these provisions do nothing to close the campaign finance loophole. Lobbyists will remain almost unlimited in their ability to donate campaign money to public officials.⁴⁹ Finally, these gift provisions may be unconstitutional. Fred Vannatta has brought suit against the GEC alleging that these provisions violate the free speech protections of Oregon's constitution.⁵⁰ Specifically he challenges the provisions as overbroad.⁵¹ Vannatta's attorney, lobbyist John DiLorenzo Jr., offers a hypothetical to illustrate how the bill is overbroad:

³⁸ OR. REV. STAT. § 162.205.

³⁹ Or. S.B. 10, at § 18(4)(a).

⁴⁰ *Id.* §§ 18(1), (2).

⁴¹ *Id.* § 16a(5)(a).

⁴² *Id.* § 18.

⁴³ *Id.* § 16a(5)(b).

⁴⁴ *See id.* §§ 16a(5)(b)(D), (H), (I), (K), (N).

⁴⁵ *Id.* §§ 16a(5)(b)(L), (M).

⁴⁶ *Id.* § 16a(5)(b)(J).

⁴⁷ *Id.* §§ 16a(5)(b)(E), (F).

⁴⁸ *Id.* § 16a(5)(b)(C).

⁴⁹ E-mail from Dan Meek, *supra* note 3.

⁵⁰ Complaint, *supra* note 4, at ¶¶ 4, 5.

⁵¹ *Id.*

An owner of a stationery store in a small town wishes to compete for a stationary supply contract with the local elementary school district. Owner deals with a person in the local district's procurement office. Owner's son attends the elementary school. Owner's son has a best friend whose mother is a school teacher in the district. She has nothing to do with procurement; she is a good teacher who is employed by the district. Owner cannot treat his son and son's best friend to a movie because owner has an "administrative interest" in the district and his son's best friend is a relative of a public official (the teacher) who works for the district. Owner is therefore prohibited from paying for "entertainment expenses" attributable to son's best friend. There are many more scenarios equally absurd which could well develop in the face of this legislation....⁵²

Finally, an explanation is warranted as to why temporarily prohibiting former legislators from lobbying implies the problem of unequal access. Such revolving door provisions may be thought of as targeting conflicts of interest.⁵³ However, a conflict of interest will only exist when an active legislator receives consideration for lobbying efforts. If this were the problem at issue, Senate Bill 10 could have simply prevented legislators from accepting any such consideration until immediately after ceasing to hold office. Although the Oregon Law Commission, which was involved in drafting the bill, cited the concern of limiting promises of future employment to public officials, the group did not link this concern to the subsequent employment provision.⁵⁴ Because the bill imposes a waiting period and nothing more, I assume the goal was to curb the potentially "unfair" access ex-legislator's might have to their former peers.

However, the problem of unequal access extends beyond former legislators. This problem is tied to the problem of reciprocity inasmuch as a gift from a lobbyist may result in access to the public official, the potential result being that the most access is granted to those who give the biggest gifts. Because Senate Bill 10 does nothing to directly address the problem of unequal access as it applies to non-former legislators, and because the bill inadequately addresses the reciprocity problem, the problem of unequal access is likely to remain controversial.

In summary, there are three primary problems implied by Senate Bill 10: lax enforcement, lack of transparency, and undue influence. The first problem is considered salient in both heuristics, the second problem is central to the disclosure heuristic, and the third problem is central to the

⁵² E-mail from John DiLorenzo Jr., *supra* note 14 (citation omitted).

⁵³ See, e.g., Jeni L. Lassell, Comment, *The Revolving Door: Should Oregon Restrict Former Legislators from Becoming Lobbyists?*, 82 OR. L. REV. 979 (2003).

⁵⁴ Memorandum from Wendy Johnson to the Government Ethics Work Group and Interested Person (Sept. 29, 2006) available at http://www.willamette.edu/wucl/olc/groups/govt_ethics/ (click on Memo under heading "Government Ethics Standards Sub-Work Group #1", "Employment/Subsequent Employment").

corruption heuristic. These primary issues each contain sub-issues. Oregon law appears to have addressed some of these sub-issues adequately, but three sub-issues remain controversial or unaddressed. In the next section I will discuss the costs and benefits involved in remedying these remaining sub-issues.

IV. COSTS AND BENEFITS OF REMEDIES

The most controversial or unaddressed sub-issues from the previous section are the ability of the public to assess who might be influencing public officials, reciprocity, and unequal access. The first falls under the disclosure heuristic and the latter two fall under the corruption heuristic. The following analyses address the key assumptions of proposed solutions, the likely effectiveness of proposed solutions, and the downside of proposed solutions.

A. *Disclosure and the Public's Ability to Assess Political Influence*

There are three key assumptions under the disclosure heuristic. The first is that enough incentive can be given to encourage public officials and lobbyists to report their behavior. The second is that disclosure laws will encourage public officials to avoid undue influence rather than simply to avoid the *appearance* of undue influence by hiding the identities of benefactors. The third assumption is that the public will use disclosed information to assess the presence or absence of undue influence and vote accordingly. But, to reiterate part of my thesis, even if the public does not use this information, and so long as public officials *do* disclose *valid* information, lawmakers can at least use this data to assess the degree of lobbyist influence in Oregon.

1. *Will Public Officials and Lobbyists Report?*

Disclosure laws will not be effective if public officials or lobbyists fail to report their behavior. This is a valid issue considering that failure to report was technically the only wrongdoing at issue after the Hawaii trips. In that case, the legislators faced a maximum fine of \$1,000—potentially payable from campaign funds.⁵⁵ However Senate Bill 10 increases maximum penalties for such violations to \$5,000⁵⁶ and disallows the use of campaign funds to pay such penalties.⁵⁷ These measures seem likely to be effective, especially considering Oregon legislator compensation of \$18,408 per year.⁵⁸ Moreover, it is not likely that these legislators were

⁵⁵ Dave Hogan, *Legislators: Sharpen Ethics Laws*, OREGONIAN, Oct. 16, 2006, at A1; Dave Hogan, *Ethics Laws Lack Bite, Panel Says*, OREGONIAN, Oct. 20, 2006, at A1.

⁵⁶ Or. S.B. 10, 74th Legis. Assem., Reg. Sess. §§ 10(1), 11(1)(a) (Or. 2007).

⁵⁷ *Id.* § 14(2).

⁵⁸ Compensation is supplemented with a \$99 per diem. NCSL.org, *Legislator Compensation 2007*, http://www.ncsl.org/programs/legismgt/ABOUT/07_legislatorcomp.htm, (updated March 2007).

trying to cover up a quid pro quo. If this were the case, it is hard to explain why the same legislators *did* report campaign contributions from the Beer and Wine Distributors Association that far exceeded the value of the Hawaii trips.⁵⁹

Overall, especially given the changes in Senate Bill 10, it seems the incentives to report are much greater than the incentives to not report—that is, unless a public official is truly engaged in quid pro quo corruption. As one commentator noted, disclosure laws would not have prevented the Jack Abramoff and Duke Cunningham scandals.⁶⁰ Therefore, it is important to assess the prevalence of quid pro quo corruption in Oregon. On one hand, Oregon has the lowest number of public corruption convictions per capita in the country.⁶¹ On the other hand, it is impossible to assess to what degree this statistic is a result of lax enforcement. Hopefully this question will be answered in part by whether or not the increased independence and resources of the GEC result in increased corruption convictions. Either way, given the current incentive structure, most public officials and lobbyists are likely to comply with reporting requirements, and those who do not are now more likely to be caught by the GEC. Finally, as noted, the lack of controversy surrounding the changes to the GEC is evidence that this solution has little downside. The main downside is the increased cost of funding the GEC, which will be borne broadly by state and local government entities.

2. *Will Public Officials and Lobbyists Hide Undue Influence?*

The next question is whether disclosure laws will encourage public officials to avoid undue influence or simply to avoid the appearance of undue influence. Unfortunately, it may be quite easy to hide undue influence by using veiled entities and essentially playing a shell game. The most immediate issue is how to define “lobbyist.”⁶² If this term is defined broadly, it becomes cumbersome to require detailed disclosure because the volume of information will be unmanageable. If the term is defined narrowly then it becomes easy to circumvent lobbying laws by funneling benefits through “non-lobbyists.”⁶³ Senate Bill 10 seems to strike a good balance by only regulating lobbyists who spend more than 24 hours or \$100 on lobbying in the aggregate in one calendar quarter.⁶⁴

Veils may also be used to hide the principals or special interest groups who hire lobbyists. Consider the warning of Anita Krishnakumar:

[M]any interests will seek to avoid full disclosure of their lobbying activities by creating separate organizations, subsidiaries, or

⁵⁹ Hogan & Har, *supra* note 7.

⁶⁰ Brian Griffith, Comment, *Lobbying Reform: House-Cleaning or Window Dressing?*, 75 U. CIN. L. REV. 863, 882 (2006).

⁶¹ Gajan Retnasaba, *Do Campaign Contributions and Lobbying Corrupt? Evidence from Public Finance*, 2 J.L. ECON. & POL’Y 145, 171 (2006).

⁶² Johnson, *supra* note 5, at 26.

⁶³ *Id.* at 27.

⁶⁴ Or. S.B. 10, 74th Legis. Assem., Reg. Sess. § 6(b)(4) (Or. 2007).

coalitions with unrelated names that then can be used as the vehicles for making campaign contributions or hiring lobbyists; in this way, only the name of the separate organization, subsidiary, or coalition—rather than the recognizable name of the parent organization or interest group—need appear on campaign finance or lobbying disclosure form. Such “veiled political actors” can subvert the entire purpose of disclosure statutes by effectively shielding their lobbying activities from public view and causing voters and competing interests to draw inaccurate conclusions about the true nature of the groups to whom elected officials have granted political access, and by whom such officials may have been influenced, on a particular issue. This problem is exacerbated by the fact that at least some interests intentionally seek to mislead voters through the use of patriotic or populist sounding names, which in some instances make them appear to represent neutral policy positions or even positions directly opposite to their true ones.⁶⁵

Ms. Krishnakumar’s comment not only highlights the problem of hiding undue influence, the last sentence also notes the potential for creating the appearance of influence where none exists.

These issues are mitigated in two ways. First, while Ms. Krishnakumar’s comment pertains to federal politics, such issues may not be as common or as serious at the state level. Funneling money through veiled entities can be a complex and costly endeavor, and compared to federal lobbyists, Oregon lobbyists do not have the resources or the incentive to do this because the stakes are so much smaller. Money spent on lobbying at the federal level is approximately one hundred and thirty times the amount spent in Oregon.⁶⁶ Second, where special interests are truly seeking special treatment, they will want public officials to know where the money is coming from. Too strong a veil might prevent both the public *and* public officials from following the money. The way around this would be simply to let the public official know about the shell game. However, unlike the reciprocity situation where a public official returns a favor to a donor of some sort without any direct solicitation by either party (an essentially subconscious form of corruption) this step would require public officials to involve themselves consciously in a cover up—a step far fewer public officials will be willing to take.

The downside of piercing these veils, if possible, is that it may impinge on constitutional rights. In *NAACP v. Alabama ex rel. Patterson*, disclosing NAACP membership had exposed NAACP members to

⁶⁵ Anita S. Krishnakumar, *Towards a Madisonian, Interest-Group-Based, Approach to Lobbying Regulation*, 58 AIA L. REV. 513, 550 (2007) (citations omitted).

⁶⁶ In 2005, lobbyists spent \$23,664,490 on lobbying in Oregon. Oregonfollowthemoney.org, Lobbying Spending—How Much?, <http://www.oregonfollowthemoney.org/Lobbyist/lobby%20by%20sector.htm>. In 2005, \$3 billion was spent on lobbying at the federal level. ACFnews source, *Lucrative Lobbying*, Aug. 17, 2005, http://www.acfnews source.org/democracy/lucrative_lobbying.html.

“economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.”⁶⁷ The result was that “compelled disclosure could deter the willingness of some or many people to associate for advancement of their beliefs because of the personal consequences of that exposure.”⁶⁸ It seems unlikely that similar issues would plague major Oregon lobbyists. The issues faced by members of the NAACP in 1958 would likely only exist today for members of lobbyist groups that are narrowly focused on sensitive issues. The vast majority of lobbying money in Oregon comes from business interests,⁶⁹ and over the last ten years only seven percent of lobby spending has come from ideological groups focused a single issue (*E.g.* gun control, abortion).⁷⁰ Therefore unveiling entities in order to follow the money should hardly ever pose constitutional problems in Oregon.

Finally, there is also the problem of what to disclose. Most disclosure laws focus on money, but money is not the only potential source of undue influence. For example, organizations with substantial volunteer networks could benefit a public official with volunteer work.⁷¹ Tracking influence with any accuracy may require disclosing more than expenditures. For example, public officials may be influenced by: the time spent in discussion, the context of the discussion (*E.g.* office, golf course), and the content of the discussion.⁷² An increase in disclosure requirements eventually may unduly burden the GEC and inequitably burden small-time lobbyists. Moreover, even if these logistical issues can be overcome, there is still the question of who will perform due diligence and actually use the disclosed information?

3. *Will the Public Use Disclosed Information?*

The prospect of widespread monitoring of these records may be dim. “Voters are, for the most part, ‘civic slackers,’ disengaged from politics and disinclined to spend their free time learning about candidates for elective office, let alone combing lobbying disclosure statements to uncover candidates’ relationships with lobbyists.”⁷³ To make matters worse, “journalistic review of voluminous public documents is

⁶⁷ 357 U.S. 449, 462 (1958).

⁶⁸ William V. Luneburg & Thomas M. Susman, *Lobbying Disclosure: A Recipe for Reform*, 33 J. LEGIS. 32, 39 (2006) (paraphrasing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958)).

⁶⁹ Between 1997 and 2006, 68% of lobby spending came from the business sector. Oregonfollowthemoney.org, Money in Politics Research Action Project: Lobbying Expenditures and Sector Analysis, <http://www.oregonfollowthemoney.org/Lobbyist/lobby%20by%20sector.htm>.

⁷⁰ *Id.*

⁷¹ Interview with John DiLorenzo, Jr., *supra* note 2.

⁷² Krishnakumar, *supra* note 65, at 545–46.

⁷³ *Id.* at 544. *See also*, Luneburg & Susman, *supra* note 68, at 34 (“[D]etailed disclosure may not have an audience with the ability or willingness to sort through the information provided, make crucial linkages, and formulate insightful conclusions.”).

haphazard at best given the limited resources of many newspapers and broadcasters, as well as the distraction of other public events that command reporters' attention."⁷⁴ Applying these thoughts to the Hawaii scenario, one might wonder, could an average citizen have uncovered this story? And if the story had not involved possibly the most influential lobbying organization in the state, would Dave Hogan's story have even been newsworthy?

There are three answers to this dilemma. First, House Bill 2595 calls for the GEC to "establish a procedure under which the commission shall conduct accuracy audits of a sample of reports or statements filed with the commission."⁷⁵ These accuracy audits combined with the GEC's reestablished investigator position should result in more and better scrutiny of these reports.

Second, watchdog groups help disseminate this information.⁷⁶ In fact, Democracy Reform Oregon already researches lobbying and campaign spending, and such research will only become easier once the GEC publishes records online.⁷⁷

Finally, perhaps the most motivated watchdogs will be competing lobbyists. This concept dates back to James Madison, who saw the breadth of political interests in the U.S. as balancing each other out in terms of influence.⁷⁸ Likewise, lobbyists have incentive to check each other by publicizing the potentially improper activities of their competitors.⁷⁹ For example, the Oregon Beer and Wine Distributor's lobby faces strong opposition from the retailer lobby regarding the cash on delivery and exclusive territory laws.⁸⁰

In summary, the disclosure heuristic involves three assumptions. It is relatively safe to assume that public officials and lobbyists will comply with disclosure requirements if given enough incentive to do so. Less sure are the assumptions that the information disclosed will be trustworthy and, if so, that this information will be put to use. However, electronic storage and retrieval will make using this information much easier, and the difficulties in obtaining trustworthy information pale in comparison to the difficulties of enforcing gift laws. While unveiling a disguised special interest might require persistence and diligence, discovering cash slipped under the table may be nearly impossible.

⁷⁴ Johnson, *supra* note 5, at 54.

⁷⁵ H.B. 2595, 74th Legis. Assem., Reg. Sess. § 3(2)(e) (Or. 2007).

⁷⁶ See Luneburg & Susman, *supra* note 68, at 34.

⁷⁷ Democracyreform.org, Money in Politics Research, <http://www.democracyreform.org/?q=2007moneyresearch>.

⁷⁸ THE FEDERALIST NO. 10, at 55–56 (James Madison) (E.H. Scott ed., 1898).

⁷⁹ Krishnakumar, *supra* note 65, at 543.

⁸⁰ Read et al., *supra* note 10.

B. Corruption and the Problem of Reciprocity

There are two key assumptions regarding reciprocity. The first is that reciprocity influences public officials' decision making. The second is that reciprocity can be prohibited. Both of these assumptions are probably correct. Reciprocity has been thoroughly scientifically studied, and reciprocity could be essentially eliminated by prohibiting public officials from receiving anything of value, from anyone, other than information. Therefore, there is little need to discuss the effectiveness of potential remedies—an effective remedy certainly is possible. Rather the issues relevant to these assumptions are (1) the amount of influence reciprocity exerts, and (2) the downside of gift prohibitions.

1. How Much Influence Does Reciprocity Exert?

First, it is important to note that public officials, despite being on the front lines, *are not* in a good position to assess the influence of reciprocity. This influence is often subconscious and public officials may believe themselves immune to such influence.⁸¹ Following the Hawaii trips, Wayne Scott told reporters “[lobbyists] don’t have any assurances that I’m going to vote however [they] want me to vote. . . . No one . . . gets that from me.”⁸² This statement is likely a result of self-serving bias. Namely, all but the most overtly corrupt lawmakers are likely to think that their votes could never be bought.⁸³ Lawmakers who are not consciously corrupt may see their own actions as unwavering regardless of lobbyist influence while they attribute the actions of those involved in scandals to fundamental character flaws. However, no one is completely immune to the influence of reciprocity.

In a controlled setting, reciprocity exerts tremendous influence. But in the multifarious world of politics its influence is likely marginal. The power of reciprocity is probably best exhibited by a Cornell University study.⁸⁴ The researcher, Professor Dennis Regan, examined subjects in pairs who were ostensibly participating in an art appreciation study and who were told to rate the quality of paintings.⁸⁵ Each pair included one true subject and “Joe,” who was actually an assistant to Professor Regan.⁸⁶

⁸¹ BRADLEY A. SMITH, UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM 128 (2001).

⁸² Hogan & Har, *supra* note 7.

⁸³ Thomas M. Susman, *Lobbying in the 21st Century—Reciprocity and the Need for Reform*, 58 ADMIN. L. REV. 737, 748 (2006). *See also*, Archibald Cox, *Ethics in Government: The Cornerstone of Public Trust*, 94 W. VA. L. REV. 281, 292 (1991–92) (“[T]he official will claim—and may indeed believe—that there is no causal connection between the favors he has received and the decision which he makes . . . [T]he whole process may be so subtle as not to be detected by the official himself.”) (quoted in Johnson, *supra* note 5, at 26).

⁸⁴ ROBERT B. CIALDINI, INFLUENCE: HOW AND WHY PEOPLE AGREE TO THINGS 31 (1984).

⁸⁵ *Id.*

⁸⁶ *Id.*

The experiment involved two conditions: in one condition, Joe brought the subject a Coke during a small break in the experiment; in the other condition, Joe performed no such favor.⁸⁷ After the art appreciation study had apparently ended, Joe attempted to sell raffle tickets to the subject.⁸⁸ Subjects who had received Coke bought twice as many tickets as the remaining subjects.⁸⁹ Perhaps more interesting, the average value of tickets purchased by the Coke group was five times the value of the Coke itself.⁹⁰ Moreover, unlike the non-Coke group, the number of tickets purchased in the Coke group was unaffected by whether or not the subjects personally liked Joe.⁹¹ In fact, the gift can even be unwanted. This scenario is commonly exhibited in the solicitation technique of Hare Krishna monks: a person accepts a flower, donates money, and then immediately throws the flower away.⁹²

However, the power of reciprocity may be significantly diminished in a world filled with independent variables. A favor to a public official will almost certainly weigh on the official's decision-making process provided the decision is related to the favor. But "[political p]arty, ideology, constituency, press, advisors, and friendships" will also influence the decision making process.⁹³ This debate need not take place solely at the theoretical level as reciprocity has also been studied in the political arena. A study on campaign contributions from opposing sides of the handgun lobby found that monetary contributions had a "marginal" influence on subsequent votes (controlling for independent variables: ideology, constituency characteristics, and member's prior position).⁹⁴ Another study involved the effects of Political Action Committee (PAC) contributions on national defense voting, which, controlling for ideology, found that "contributions from defense PACs can under certain circumstances marginally influence the votes of members."⁹⁵

Even if we conclude that the power of reciprocity in the political arena is marginal, some might argue that social pressures should never influence a public official's decisions. However, social pressures are a major factor in any decision. It is hard to see the logic in arguing that the particular social pressure involved in reciprocity should be eliminated while other social pressures are completely ignored. For example, the psychological principles of commitment and consistency (i.e. the desire

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 32.

⁹⁰ *Id.* at 44.

⁹¹ *Id.* at 33.

⁹² *Id.* at 43.

⁹³ SMITH, *supra* note 81, at 128.

⁹⁴ Laura J. Langbein & Mark A. Lotwis, *The Political Efficacy Of Lobbying and Money: Gun Control in the U.S. House, 1986*, 18 LEGIS. STUD. Q. 413, 434 (1990).

⁹⁵ Richard Fleisher, *PAC Contributions and Congressional Voting on National Defense*, 18 LEGIS. STUD. Q. 391, 406 (1993).

to appear consistent with what we have already done),⁹⁶ and social proof (basically mimicking the behavior of the majority)⁹⁷ are every bit as powerful as reciprocity. Based on these two principles, voting consistently and voting with the majority may, like reciprocity, be a result of social pressure. Perhaps these two types of social pressure are ignored because they would be impossible to regulate. But regulating reciprocity, though possible, may also be quite difficult, and the question becomes: is eliminating the potentially marginal effect of reciprocity worth the enforcement effort? Probably not, when we add in the downside of gift prohibitions.

2. *Downside of Gift Prohibitions*

There are two downsides to gift prohibitions. First, these laws can easily run into constitutional barriers. Second, even if these laws survive the constitutional test, they may have unforeseen negative consequences.

The Oregon Constitution's protection of free speech makes it especially difficult to prohibit lobbyists from giving money to public officials. Regardless of whether Senate Bill 10 survives the constitutional test, campaign contributions are protected and essentially unlimited under Article I, section 8 of the Oregon Constitution.⁹⁸ Filling this loophole is critical if the gift laws of Senate Bill 10 are to have any meaning. This problem is widely recognized. Janice Thompson of Democracy Reform Oregon calls the stronger gift limits in Senate Bill 10 the icing, and campaign finance reform the (yet to be baked) cake.⁹⁹ According to Dan Meek, legislators will be able to use campaign contributions for any sort of entertainment or travel so long as a discussion of campaign or legislative business is involved.¹⁰⁰

Gift restrictions may have their own constitutional issues. Colorado citizens recently amended the state constitution to enact a total gift ban, but the Denver County District Court has recently ruled this amendment unconstitutionally overbroad and vague.¹⁰¹ The Senate Bill 10 gift ban is narrower than the Colorado gift ban, but, as mentioned, it is already being challenged in court.¹⁰² Clearly, while eliminating reciprocity is easily accomplished at the theoretical level, at the practical level this goal is limited by both the Oregon and U.S. constitutions.

Even if constitutional gift laws and campaign finance laws are enacted, there are potential issues that may result from attempting to

⁹⁶ CIALDINI, *supra* note 84, at 66.

⁹⁷ *Id.* at 117.

⁹⁸ Vannatta v. Keisling, 931 P.2d 770, 784–85 (Or. 1997).

⁹⁹ Interview with Janice Thompson, *supra* note 6; see also Nigel Jaquiss, *Twin Piques: Opposition to New Ethics Laws Comes from Two Very Different Quarters*, WILLAMETTE WEEK, July 4, 2007, available at <http://wwweek.com/editorial/3334/9198/>.

¹⁰⁰ Jaquiss, *supra* note 100; E-mail from Dan Meek, *supra* note 3.

¹⁰¹ Developmental Pathways v. Ritter, No. 07CV1353 at 39 (Denver Dist. Ct. May 31, 2007) (appeal pending).

¹⁰² Complaint, *supra* note 4.

break the nexus between lobbyist and public official. First, broad prohibition may cut off exchanges that have no political motive as in Mr. DiLorenzo's hypothetical discussed above. Senate Bill 10 attempts to address this issue by prohibiting a public official from using his official position to obtain a financial benefit that would not be available *but for* his official position.¹⁰³ However, this provision only applies to gifts *solicited* by public officials; a similar "but for" provision is not included in the general prohibition against gifts in section 18 of the bill. Unfortunately, while using a "but for" provision in section 18 might eliminate those absurd situations where a lobbyist is prohibited from having a public official's child over for dinner, such a provision would also create a loophole for lobbyists. Lobbyists could always argue that a gift would have been available to a public official regardless of her official power because, for example, she was an old friend.

Second, as with disclosure laws, the broader the gift ban, the harder it is to enforce. But while disclosure laws may involve the difficult task of unveiling entities to track the flow of money, gift bans will involve the much more difficult task of detecting completely covert activity. Anyone who believes that the GEC will be able to detect and regulate such covert activity with a \$1 million budget would be wise to study the money spent on, and the effectiveness of, the war on drugs.

C. The Problem of Unequal Access

I am categorizing unequal access as part of the corruption heuristic because this problem generally calls for a prohibition of some sort. However, the problem of unequal access can exist regardless of whether corruption exists. The problem of unequal access involves the assumptions that money buys access, and that a more level playing field will ensure that public officials receive the most pertinent and unbiased information on a given issue. Unfortunately, remedies aimed at promoting equal access may be problematic and ineffective.

Based on the principle of reciprocity, if money buys a marginal amount of influence, it probably also buys a marginal amount of access. For a somewhat contrasting view, consider the statement of former U.S. Congressman and Senator Dan Coates:

The notion that members of the House or Senate sell access is, in my experience, unfounded. Many political supporters who contribute to officeholders never request a personal meeting, but some do request and receive meetings with legislators or their staffs. But political supporters who do not contribute are also granted meetings, as are constituents having problems with their social security, Veterans, or Medicare benefits, and experts on issues pending before the member's committees. . . . A contribution is by

¹⁰³ Or. S.B. 10, 74th Legis. Assem., Reg. Sess. § 17(1) (Or. 2007).

no means necessary to obtain a meeting, and a meeting by no means guarantees results.¹⁰⁴

Regarding where information ought to come from, to the extent that leveling the playing field involves limiting access by limiting lobbying expenditures, the potential constitutional problems with gift limitations—and the attendant campaign finance loophole—loom just as large. To the extent that leveling the playing field involves directly limiting access to public officials, this is an even more direct affront to free speech and the right to petition. The U.S. Supreme Court perhaps best captured this concept in the famous campaign finance case, *Buckley v. Valeo*: “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”¹⁰⁵ In other words, leveling the playing field is very likely to infringe on constitutional rights, perhaps even more so than gift bans.

Further, attempts to promote equal access by limiting gifts may actually deprive public officials of important information. This concept is commonly cased in the language of “drowning out the minority viewpoint.” A popular example of a well-funded but minority viewpoint is Eugene McCarthy’s 1968 antiwar campaign.¹⁰⁶ As the thinking goes, had a few wealthy individuals not been allowed to contribute large sums to Mr. McCarthy, an important viewpoint might not have surfaced.

On a similar note, revolving-door provisions arguably exclude from lobbying a class of people (former legislators) that is uniquely qualified to convey information in a legislative context. Moreover, the gap left by the small pool of former legislators that these provisions affect will likely be filled by professional lobbyists who are no more or less likely to convey relevant and unbiased information.

In summary, the problems of reciprocity and unequal access are real, but likely marginal. The effects of potential remedies to these problems are unpredictable at best. At worst, these remedies may be unconstitutional.

V. CONCLUSION

Given the difficulty of remedying the problems of reciprocity and unequal access, and the likelihood that remedies will create substantial problems of their own, we should not take on these problems unless and until we can prove that they are more than marginal. The key to showing how marginal or severe these problems are will come from analyzing the information obtained through strictly enforced disclosure laws. Compared to prohibitive laws, disclosure laws are less likely to have

¹⁰⁴ SMITH, *supra* note 81, at 127 (quoting *Testimony of Dan Coates*, U.S. Congress, Senate, Committee on Rules and Administration).

¹⁰⁵ 424 U.S. 1, 48–49 (1976).

¹⁰⁶ SMITH, *supra* note 81, at 67.

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adverse consequences and are easier to implement and enforce. Assuming the GEC begins using the teeth given to it by the Legislature, future reporting gaffes of the Hawaii variety should be avoidable. While Senate Bill 10 has some very strong provisions—especially those pertaining to the GEC—it makes little sense to enact detailed remedial measures when neither proponents of the corruption heuristic nor proponents of the disclosure heuristic understand the nature and extent of the problem.