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New York State Commission on Government Integrity

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DOCUMENT NO. 8

IN THE MATTER OF A PUBLIC HEARING ON THE REVISED MUNICIPAL ETHICS ACT CONDUCTED NOVEMBER 22, 1988, COMMENCING AT 9:00 A.M. BEFORE MEMBERS OF THE COMMISSION [NOVEMBER 22, 1988]

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STATE OF NEW YORK COMMISSION ON GOVERNMENT INTEGRITY 1

In the Matter of

A Public Hearing on the revised Municipal Ethics Act conducted November 22, 1988, commencing at 9:00 a.m. before Members of the Commission.

> Justice Building, Courtroom #2 Empire State Plaza Albany, New York Tuesday, November 22, 1988

STENOGRAPHIC MINUTES of the above-entitled matter which came on for Hearing before:

JOHN FEERICK, CHAIRMAN, Commission on Government Integrity

JAMES MAGAVERN, Commissioner Commission on Government Integrity

CAROL SCHACHNER, ESQ., Deputy Counsel Commission on Government Integrity

SHERRIE MCNULTY, ESQ., Staff Counsel Commission on Government Integrity

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REPORTED BY: BETH S. GOLDNAN, Certified Shorthand Reporter and Registered Professional Reporter

1	PROCEEDINGS
2	CHAIRMAN FEERICK: Good morning. And
3	welcome to this Public Hearing of the New York
4	State Commission on Govenrment Integrity. My
5	name is John Feerick. I serve as Chairman of
6	the Commission. To my right is Commissioner
7	James Magavern. To his right is Deputy Counsel
8	Carol Schachner, and to her right is Staff
9	Counsel Sherrie McNulty.
10	Today's public hearing brings our
11	Commission close to the end of a long process in
12	which many of those testifying have been active
13	participants. Since the fall of 1987, our
14	Commission has been looking at the ethical
15	issues in local government and grappling with
16	the challenge of constructing a code of ethics
17	that would provide uniform minimal ethical
1.0	standard without being overly burdensome and
19	discouraging to public service.
20	In order zo help us strike this
21	delicate balance, we distributed this past
22	summer over twenty-four hundred copies of a
23	draft Municipal Ethics Act for distribution and
34	comment. We also made several formal

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presentations around the State, and have received dozens of comments and letters and phone calls that reflect careful and thorough analysis of our earlier draft. And we, in turn, have carefully analyzed the reactcions and have, I hope, and have improved the draft law.

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When we toured the State in the summer of 1987, time and again, the people we met expressed concern about ethical standards in their local government. We have also been contacted by municipal officials who wanted help drafting local ethics codes and who have complained to us about the confusion and irrelevance of existing state ethical laws. And, no wonder. Existing laws governing local ethics are a crazy quilt of contradictions, inadequacies and, in some cases, overrestrictive and excessive in regulations. The Commission's draft of this proposed new law is in part a response to these concerns as well as to the problems we have uncovered in our own investigations. Our mandate directs us to investigate laws relating to ethical standards and practices at all levels of government to

determine if they adequately prevent favoritism, conflicts of interest, undue influence and abuse of official position. Good ethics in government and legisation at the local level will provide critical guidance for honest officials and, at the same time, would deter abuse and articulate a moral standard for communities. After we receive the input of the witnesses today and other commentary that is coming to our attention in response to our draft, we plan to prepare a final version of our proposed Municipal Ethics Law which we we hope to be able to transmit to Governor Cuomo before the end of this year.

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Before we call the first witness, I would like to express the Commission's deep gratitude to all of those who will be testifying today. As I mentioned earlier, some of those who will be testifying today have been active participants in our work, not necessarily agreeing with all aspects of the draft that we have presented, but they have been very helpful to us in trying to strike the appropriate balance as best we can in this complex and difficult area.

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Our format today is to invite each of 1 the speakers to summarize, if they can and will, 2 any formal presentations they might wish to 3 submit to us. And a number, as I understand it, a plan to submit written submissions. Our hope is 5 that the witnesses would summarize the major 6 features of their submissions so that 7 Commissioner Magavern and myself and our staff 8 counsels might be able to ask questions that 9 10 would be helpful to us in formulating our final 11 recommendations on the subject. Our first witness this morning is 12 Professor Joseph Zimmerman. I would like to 13 call him. Good morning, Professor. 14 PROFESSOR ZIMMERMAN: Good morning, 15 16 sir. 17 CHAIRMAN FEERICK: I would like to thank you very much for your participation in 3.8 this hearing today. And time does not permit an 19 20 appropriate recitation of your most impressive 21 and distinguished background in terms of state and local government. I would say to you and 22 23 the other vitnesses that we will include as part 24 of the record of the proceedings not only, of

course, the statements that you submit, but also biographical data that will do justice to the expertise of those who are testifying today. Welcome, Professor.

PROFESSOR ZIMMERMAN: Thank you. I have submitted written comments. I will summarize them rather briefly. By way of background, some of these comments draw upon work that I have done for international and national organizations on the subject of ethics. And you will see that I use comparative examples quite frequently. I do work for the International of Union Local authorities in the Hague and Netherlands and for the Irish government and other organizations. And I will attach to my comments reprints of articles based on work I have done for international organizations in this area. In general, I think the Commission as done an excellent job in preparing the Hunicipal Ethics Act. I do suggest that it has a misnomer in its title. Basically, of course, you focused on conflicts of interest. Municipal ethics are much broader than simply conflicts of interest. And I

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suggest you might want to consider giving consideration to changing the title of the act. I recognize, of course, the Executive Order issued by the Governor did direct you to examine conflict of interest laws and regulations, et cetera.

I am going to just highlight certain points that I make in my written comments. Page three, section two, the statement relative to, "Improper influence that may result from opportunities for private gain," is suggestive of the need for a broad Municipal Ethics Act rather than a simply a conflict of Interest Act since private gain can involve more than conflict of interest.

I suggest on page six, section three subdivision ten, that the definition should include Boards of Fire Commissioners, as fire districts levy taxes, and they expend public funds. I also suggest you may want to examine and develop recommendations relative to whether the State Insurance Law should continue to authorize the Firemen's Benevolent Association

Levy and collect a two percent tax on fire

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insurance premiums written in the district by insurance companies with headquarters in other states. The Insurance Law since 1909 allows the proceeds of the tax to be utilized "for the promotion of fraternal intercourse" among the members.

Section 4B on page 9, it is questionable whether any municipal officer or employee should be allowed to accept "a gift or gifts which are customary on family, social holiday or civic occasions, et cetera." There are problems with the proviso that is added. 1 suggest you might, if you have not already done it, you might look at the decision of the New York County Court, Fulton County in 1975 upholding the constitutionality of the General Numicipal Law provision forbidding the solicitation of a gift but striking down as vague the prohibition of the acceptance of a dift exceeding twenty-five dollars if it could be inferred that the gift was intended to influence the recipient. And the court based its ruling on the due process equal protection of the law clauses of the New York State and

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United State Constitutions. I won't go into more details, just simply call it to your attention. I suggest that a superior provision it one that is currently found in the Township of Piscataway, New Jersey Code of Ethics which forbids and officer or employee to "accept any gift in any form that would not be offered or given to him if he were not an officer or employee." Similarly, the United Kingdom since 1906 forbids a civil servant from accepting a gift or rewards from any organization or citizens with whom the civil servant has had official contact. A very interesting policy toward the acceptance of gifts by city managers was suggested by the East Lansing, Michigan City Hanager in 1975. He wrote in a journal article "Small difts of value as well as large difts offered to you or your spouse should be returned to the giver with a thank you note and suggestion that this type of activity is not acceptable.

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Another interesting approach to the gift problem was adopted in 1974 by Greenville, -South Carolina which posted a letter to all

vendors informing them of the city's policy on gifts and requesting, "you omit the names of any city employess from any gift list you may contemplate. The letter added, "A card or letter will serve as well to express personal holiday greetings and help us maintain impartial political relations."

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I suggest that you add to section 4B pages eight and nine that municipal officers should be forbidded to borrow money from subordinates. We have had one case recently involving a former New York City school chancellor in 1985. The Hassachusetts State Sthies Commission issued its annual report pointing out that a former Cambridge, Hassachusetts Superintendent of Schools admitted that he violated state law by borrowing money from two employees, and subsequently recommending that the school committee granted one of the two employees a subbatical leave of absence.

Section 6 on page eighteen, in my professional judgment, a mistake is made in excepting all unpaid officers from the annual

disclosure requirement.

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It is true such is a requirement may 2 dissuade a number of very highly competent 3 citizens from agreeing to accept appointments to Ą unpaid local government positions. But we must 5 recognize that some of those positions do б involve situations where conflicts of interest 7 may develop. And I give one example involving 8 local zoning boards of appeals. 9 Section 23 on page 44, I suggest that 10 the State Ethics Commission specifically should 11 be empowered to conduct an investigation of the 12 charges brought by the media against an officer 13 14 at his or her request. And I cite the example back in 1967 where the Manhattan Borough 15 President requested a New York City Board of 15 Ithicu, " -- to evaluate the propriety of the 17 conduct of the public officer with regard to the 13 stories that have appeared in the New York Post 30 alluding to improper conduct by he as a public 20 official." The board did conduct an 21 22 investigation, issued a report stating that there was absolutely no foundation to the 23 24 charges against the Hanhattan Borough President.

1	So, this was a mechanism by which the President
2	of the Borough was able to clear his name.
3	Turning to the second part of my paper
4	dealing with the need for a broader ethics act,
5	that self-regulation of conduct is facilitated
6	by a broar based code of ethics or ethics act
7	containing relatively general and flexible
8	guidelines that can be applied to any
Э	contemplated action involving questionable
10	ethics. And I cite as an example the code of
11	ethics drafted by an organization in the United
12	Kingdom. It contains the following provision
13	relative to official conduct: "The public is
14	entitled to demand of a local government officer
15	conduct of the highest standard and public
16	confidence. And his integrity would be shaken
17	where the least suspicion, however ill founded,
13	were to arise that he could in any way be
29	influenced by Improper motives. A proad
20	Sunicipal Othics Act or code of ethics should
21	require a public officer or employee to notify
9 G 64 m	an appropriate superior in writing whenever he
20	or she suspects that present or anticipated
24 24	actions my violate the act or code. Many
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potential conflicts are minor and inconsequential, and there are also unavoidable in a complex society. The superior should be responsible for making a written determination and notifying the person seeking the advice within a specified time period. If for any reason such a written determination is not made, the matter should automatically be referred to the board of ethics for a determination. And in the event that the latter does not prepare a written determination within the required time period, the act or code should specify that the board's failure to act shall be deemed an advisory opinion, and that the facts and circumstances in the particular case do not constitute is a violation of the act or the code. In self-regulation of conduct, unfortunately, is inadequate to prevent

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violations of ethical standard. To raise ethical standards affectively in public service, action must be initiated to remove the opportunity and incentives for unethical behavior and increase the risk that such

behavior will be detected. The Municipal Ethics Act and/or Municipal Code of Ethics should provide broad guidance with respect to appropriate conduct. Municipal officers and employees, for example, must avoid giving the appearance of a conflict of interest or exhibiting any form of unethical behavior undermining public trust. Consequently, the propriety of the social contacts of public officers is deserving of mention. The Code of Ethics should caution public officers and employees to be careful in choosing their social associates because of the danger of giving the impression that the officers or employees are engaged in unethical activities. Subtle ethical problems are involved in relations between government personnel and their collegues. An Australian public service board circular contained guidelines relative to the code of conduct and stipulates that, " -- an office holder should be frank and honest in official lealings of collegues." The sourd also advises officers to avoid malice in their reports. And I will muote here origily some examples.

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"Situations in which a report could potentially be regarded as having been made with malice where the report knowingly includes false allegations, where the language of the report is deliberately unnecessarily strong in a matter which might unreasonable harm the person being reported on, where extraneous material is deliberately introduced so as to create a misleading impression. A serious problem involving the

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relative unavailability of public information is the unavailability of public information in many municipalities. Back in 1965 I had a graduate student who wanted to study the City of Albany, and he wanted to know where to start. And I said you should obtain to copy of the City of Albany Charter. And he said, "Where do you find the charter." I said, "In most cities, the City Clerk nas copies and they are readily available." And when the graduate atudent spoke to the City Clerk, he said, "Charter, What is chat? I never heard of a charter." And I chink he was toiling the truth. Even today, it is yery difficult to find a copy of the Charter of

the City of Albany. And this is true I know in other cities in the State that frequently it is difficult to gain access to charters and other basic information. I require my undergraduate students to write a research paper on their hometown government, and some of them report experiencing great difficulty in obtaining information on the government. It is just not readily available. This situation contrasts with other states where such information is normally readily available. I am not saying there is a deliberate decision on the part of the public officials in these instances to withhold information, but there is an ethical obligation to make the information available.

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A more serious ethical problem involves a deliberate decision not to release public information, or to delay the release of such information. A very recent example of such

a situation involves the Hayor of Detroit, Coleman Young violating apparently the Hichigan Freedom of information Law. And the Hayor was quoted as saying, "It is obviously up to us to restrict is --- meaning information " -- to its

narrowest parameters." And that is what is going on.

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Another serious problem involves attempts by government officers to co-opt or manipulate citizens. And I won't expand on that, but I do have some comments in my paper. Municipal officers also have an ethical obligation to comply with all states and federal mandates no matter how disagreeable the mandates New York State levies more mandates on may be. its local government than any state in the union. And in some cases, of course, local officials may not be aware of all of the mandates that are levied. But, there is an obligation to comply with whatever the mandates are or to put pressure on the legislature or the executive branch, as the case may be, to change or modify the mandate.

I wind up the paper with two sections; one entitled Intractable ethical problems." Your code of ethics or conflict of interest law addresses two of these problems. One is the revolving door problem, and the other one involves valitie blowing. But let me suggest

three others that I think you may wish to included in the draft act. One is a fair day's work. And what constitutes a fair day's work may be somewhat controversial. But there are many ethical problems involved with how employees and officers use their time for which they are paid by the municipality. Secondly, sick leave. And again, this

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is a very serious ethical problem. And thirdly, the ultra veres problem. And by that, of course, we mean officials exceeding their authority.

I have a section called, <u>Personal</u> <u>Responsibilities of the Public Servant</u>. And, just to highlight the key words, I am advocating that all public officers and employees should be guided by those canons of equitable treatment of all citizens: equal access, equal consideration, equal responsiveness, equal pervice provision, equal appeals treatment, equal taxation and equal respect for the law.

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few which I think perhaps should be modified or amended in some way. It is quite apparent that unique and subtle ethical problems do arise in government. And its impossible in an ethics act or code of ethics upon the conflict of interest act to address these specifically. Therefore, the provision for a municipal Board of Ethics that is authorized to issue advisory opinions is highly desirable.

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In closing, I want to stress that the municipal code of ethics needs to be supplemented by other acts. In particular, each municipality should adopt effective control systems to reduce the opportunity for and increase the risk of detection of unethical behavior. In addition, each municipality should review its personnel salary policies to ensure that all officers and employees are treated fairly. The maintenance of high ethical standards of government difimately is the responsibility of the officers and employees. Careful recruitment and in-service training, which is a point you do in a sense couch on, dan reduce the amount of unethical conduct by

impressing on personnel propriety should be 1 2 their central guide and tenant. 3 CHAIRMAN FEERICK: Thank you very much, Professor Zimmerman, for your very 4 thoughtful statement. I would say at the outset 5 that what I think I hear you saying is the draft 6 that we have presented is not strict enough. 7 PROFESSOR ZIMMERMAN: It is not broad 8 It may be too strict in some respects 9 enough. and not strict enough in others. But I think 10 the coverage -- you are basically focusing on 11 direct conflicts of interest. And I think that 12 is important and that, in general, you do a good 13 job of addressing that problem. 14 CHAIRMAN FEERICK: Thank you. 15 1.5 PROFESSOR ZIMMERMAN: I an suggesting that the subject of ethics covers more than 17 1.3 direct conflicts of interest, all of these gray areas between the black over here and the white 19 20 over here. 31 CHAIRMAN FEERICK: DE course, as you know, our document is designed to reflect in 22 23 state law uniform minimum standards, but cutting across the state, leaving plenty of room for 1.1

different municipalities to regulate as they 1 might deem best in the context of the particular 2 3 community. And I would just note that for purposes of the record at this point. I did Ą note that you feel that the removal of unpaid 5 public servants --6 PROFESSOR ZIMMERMAN: Not all. T 7 ß think there are some which could be exempted, The regulatory ones, no. That is the 9 ves. 10 point I am making. CHAIRMAN FEERICK: So, if somebody 11 hypothetically is serving on a zoning board 12 exercising guasi-judicial functions. 13 14 PROFESSOR ZIMMERMAN: Yes, and is 15 unpaid. CHAIRMAN FEERICK: Unpaid, but you 16 feel that that official should be brought within 17 the scope of provisions that presently be or she 13 would not fall within under our draft? 3.0 PROFESSOR AIMAERMAN: ¥es. 20 CHAIRMAN FBERICK: Chank you very 11 uch. 23 COMMISSIONER MAGAVERN: I have got two 24 detailed points, Professor Slamerman, one of

which we have had a lot of trouble with effecting a satisfactory resolution on. And that is gifts. I think in an earlier draft, we had something close to an absolute bar on any And the comments we received in meetings gifts. we held with public officials throughout the State we heard again and again that it is too categorical and unworkable, and it puts people in a very difficult and embarrassing position. The examples were if you were invited to an annual charitable banquet, can you attend. The one case, I recall was the town's insurance advisor every year would invite the members of the town board to dinner to review the town's insurance policies. Frequencly, a public employee or officer will be dealing with a pusiness person and they will break for lunch. And the business person will offer to, in many cases, well, simply buy the lunch. And in many cases, the employee will have a hard time even stopping that. Another example is really crivial, but I don't chink we should have anything that will permit even crivial exceptions that create an undertain area where

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people don't quite know whether it is true. Take, for example, if you get promotional materials. In one town meeting a town board member pulled out a note pad that had the name of, I think a printer in the town who printed the local newspaper. And he said, "Am I in violation of the law here, using this note pad?" Well, first, do you think that those lunches, note pads, and the like, should be barred? And, if not, do you have any thought on what might be a workable solution? Well, I PROFESSOR ZIMMERMAN: Yes. did read part of my prepared statement which specifically address that situation. And I. Referred to the Township of Piscataway, New Jersey's code of ethics which forbids an officer or employee, " -- to accept any gifts in any

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form that would not be offered or given to him if he were not an officer of employee." So, the person who has the note pad -- well, that is given to everybody in the town or anyone that wants it. That would seem to be an exception. And he could accept it, right. And I also mentioned the policy of the Base Sansing,

Michigan City Manager suggesting that the gift should be returned with a thank you note suggesting that that type of activity is not acceptable. And then I read that Greenville, South Carolina posted the letter to all vendors informing them of the city's policy and requesting that, "you omit the names of any city employee from my gift list you may contemplate." And the letter added that, "A card or letter will serve as well to express personal holiday greetings." You mentioned about the --COMMISSIONER MAGAVERN: Take a Champer of Commerce dinner. They invite say the Mayor, the Commissioner of Planning. Should they be allowed --

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3 4 14 PROFESSOR ZIMMERMAN: Mell, the question is should they go free of charge is what you are saying. And there is nothing to prevent them from paying their own way and buying a ticket in the same manner anyone else would. Thy whould they be troated differently? And, particularly, if the Champer's members are regulated by the municipality in any way. It would seem that is a possible conflict of

interest or, at least gives the appearance of a conflict of interest.

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COMMISSIONER MAGAVERN: The answer is that it extends their working day to have to attend the dinners, not necessarily that they are going for sheer pleasure of it. And if it is required that they pay for it, the tickets can be expensive --

professor ZIMMERMAN: I assume that most of the officers are aware when they accept appointment or election that they will be extended invitations and they have to be available at odd times and seven days a week twenty-four hours a day, and so on; and this is something they should know or perhaps they shouldn't accept the appointment or stand for election. And it is not unreasonable for them to say, "Unfortunately, I can't attend because I have a conflict," or, "I have to do something eise." I think you do need a strict rule on gifts. The big question is where do you draw

the line between an acceptable gifts and unacceptable gifts. And I do suggest in my written comments that there is one alternative;

that the board of ethics could be requested to make a ruling. In other words, any officer who is in one of these situations, knows that it is coming up --

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COMMISSIONER MAGAVERN: In other words you give some standard that would give discretion that meaning that the bar is not absolute.

PROFESSOR ZIMMERMAN: That's right. I am suggesting this is an alternative. If you went to keep it more flexible, since the Board of Ethics has as a major role the providing of advisory opinions, it could simply be suggested that gifts can only be accepted with the permission from the board of ethics. COMMISSIONER MAGAVERN: I would just

> Like to note, not in an argumentative manner, but just so that no one is confused in the audience, that the exemption of unpaid board members and the like is not across the board. They are subject to all of the regulations of conducts. They are subject to transactional

1	they must disclose that. And that is a very
2	broad provision in the exemption from annual
3	disclosure. Therefore, it does not let them off
4	the hook altogether. Far from it.
5	PROFESSOR ZIMMERMAN: Yes. You made a
б	good point. And I didn't comment on that. I
7	was only talking about the exemptions from the
3	annual disclosure.
9	COMMISSIONER MAGAVERN: Thanks very
10	much.
11	MS. SCHACHNER: Professor, you talked
12	about the anual disclosure statement in your
13	statement itself. And I notice that you suggest
14	perhaps coupling it with an auditing
15	requirement, as that would be a good way of
15	policing the completion and filing of those
17	forms. Bid you have in mind an internal audit,
13	for example, by the State Commission, or do you
10	have in mind the State Comptroller?
20	PROFESSOR ZIMMERMAN: Well, I was
21	suggesting it should be done by somebody
22	properly at the state level. And, of course it
23	could be done as part of the audit that is
34	conducted by the Department of Audit and Control

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periodically. Or it could conceivably be done by the state ethics commission. In my formal remarks I referred to the 1969 New York State law that became effective in 1970 that required all municipalities to adopt codes of ethics. Five years later in 1970, I checked on that. And what I discovered was two cities hadn't adopted a code of ethics and that a relatively large number of towns and vllages had not adopted codes of ethics. So, in other words, the law was on the book. There was no supervision, and either through ignorance or, possibly deliberately, a number of municipalities did not follow the mandate of the law and adopt a code of ethics. HS. SCHACHNER: Was it a question of their not following them or not preparing them; do you know which it was? PROFESSOR ZIMMERHAM: That, I don't I only checked because the law said they know. had to file copies with the Department of Audit and Control. The reason for that is, of course,

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the State Comptroller is responsible for additing the records, and he needs to have a

copy so that he can check that when he is out 1 auditing the records of that municipality. So, 2 I don't know why they weren't filed. But a 3 fairly large number of municipalities did not 4 file them five years after the requirement vent 5 into effect. And that has been a complaint. 6 And I know your Commission has had a complaint 7 about the Board of Elections, of the various 8 reporte filed. Are they audited, does anyone 3 ever look at them. 10 MS. SCHACHNER: Thank you. 11 NS. McNULTY: Professor, I am 12 13 interested in your suggestion that an official ought to be able to go to an ethics board and 14 ask for an investigation of a public scandal. 15 15 PROFESSOR ZIMMERMAN: Not necessarily a scandal, but charges in the media. There may 17 13 be no public scandal. HS. MCMULTY: You suggest that this 1.0 investigation be conducted by the State Othics 20 22 Commission. Is it important that it be 22 investigated by the State Sthics Commission 23 rather than a local board? 23 PROFESSOR AIMMERNAM: Mell, it may be.

It would depend on wherever there is, shall we say there is partisanship son involved on the local level or some type of personal vendetta. And it may be a situation where the local ethics board may be totally impartial in conducting an investigation. I think for that reason it would be preferable to have it done by the State Commission. One thing that bothers me is the fact that the media frequently is not very careful in some of the reporting. And they suggest that somebody is guilty of unethical behavior and improprieties, and they may keep this up day after day. And what can the official do other than just denial, right? And it seems that it would be highly desirable to have somebody responsible at the request of the official, not on its own initiative, investigate. And hopefully, from the standpoint point of the official, clear the official's name.

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HS. HeHULTY: One other point. Hew York recently revised their charter, as you know. And they have a similar provision to what you are suggesting here. But that is treated as

a complaint if the official makes such a request 1 2 which, in effect, subjects the official to jeopardy. Is that a good idea? 3 PROFESSOR ZIMMERNAN: I hadn't really A thought it through. I have a copy of that new 5 charter amendment, but I haven't really thought 6 that one through. That does raise questions. 7 MS. MCNULTY: Thank you. 8 CHAIRMAN FEERICK: Thank you for your 9 10 very helpful comments. Mayor John Whitney, welcome to our 11 12 hearing. And I appreciate that your past participation in the work of our Commission. 13 14 Mayor Whitney is Mayor of the Village of Avon. Perhaps, you might tell us something about your 15 village in terms of its size. And I would just 15 note for the record that you have given very 17 active leadership to developing conflict of 13 interest, ethical standards in your community, 19 and we yould benefit from your views on this 20 21 subject. 22 SAYOR WALTNEY: Thank you. As you said, I am the Mayor of the village of Avon. 23 Τt is a small, cural community in upstate New York. 24

There are approximately three thousand residents 1 in the village. There are an additional three $\mathbf{2}$ thousand residents in the Town. The Town is 3 governed by a town board, so we have both a town Į, board and village board in the community. and I 5 do appreciate the opportunity to speak to you 5 7 today. I do not have a lengthy prepared submission. I have sent a November 11th, some 8 correspondence. And if you don't have that, I 9 have another copy of that for you. 10 CHAIRMAN FEERICK: Perhaps we can 11 12 include that as part of the record of this proceeding as well. 13 14 MAYOR WHITNEY: Fine. You have that, Ma. Schachner? 15 15 HS. SCHACHNER: I have a two-page 17 Hovember 11th --13 HAYOR WHITNEY: Yes. That is what I an referring to. That I would like to do with 1.920 you is briefly go through that and nighlight it, and then give you a few ad hoc comments that I 21 22 had. Then I received the original draft back in, I think the April-Hay time frame of this 23 year. Then I read that, I was very nonestly 23

concerned from a small community that the rules
set forth in that draft were too restrictive on
a small community; that I didn't think that one
could very honestly function in an official
capacity without violating the rules set forth
in that. And that is why I prepared my
statement on that. And, to your credit, I must
tell you that I was much pleased with the
revised draft. I was very concerned with the
gifts portion of the original draft. You spoke
a little bit about that this morning. And if
you would like my comments on that, I would be
glad to give them to you. But the revised
draft, I believe, adquately meets my concerns
with the original draft, so I was pleased with
that.
I was concerned with the restrictions
on aunicipal officials holding policical office.
And that was removed in the second draft, and I

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was pleased to see that. I am somewhat confused, a little bit concerned on the section

don't know that I understand or have interpreted the section correctly. If what it is intended to do is prevent say myself as being a former Hayor representing someone to the village board in a subsequent time frame on a matter on which I voted, like a zoning law, then I have difficulty with that. If it is not intended to restrict that kind of interaction post time period of holding office, then it is just my confusion on what this section intends to come at, especially from a small, local level. So, again, it may be just my confusion with the section. The submission section, Section 3.2

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on page twenty-three, again, that can be my crouble with interpreting the intent of the section. The way I read it, it led me to believe that if someone had business to transact with the village board, that that person should, at the time of the submission of their proposal, diort the village board -- I forgt exactly who; I mean it is the is/it] village board -- of

anyone that this person may have supported

past few years. I have difficulty with that if that, again, is the intention of the section. If it is not, if I am misinterpreting these two sections, I quess my recommendation would be to put it in more layman's terms so we could understand it once we got it. That is a general concern I have with any legislation like this; that the people you are dealing with are not attorneys and they need to be able to understand this in their terms. So, some kind of education to go along with the legislation I think would go a long way to help us.

The requirements for the number of times that the local board, ethics boards meet. What I can probably tell you is that in our community, one of the advantages of being a village is that we believe in home rule and self-rule. There are several options that we have had in the past of delegating upwards to the county level, cax collections and things like that that we have opted not to do. We Jon't see that as the most peneficial way of servicing our community. So, with this

legislation, we would probably put in our own

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ethics board at the village level is the point I am just trying to come at. And many other vllages and towns may decide to do that. So, when you get into the number of meetings, when you are talking about a community with three thousand people, I think requiring the ethics board to meet four times a year is just too restrictive. They don't need to do that. I don't foresee the necessity of that. I think they ought to meet with a minimum of once a That is to review the profiles and the year. documents. And then they can meet throughout the year on an as-required basis. I think if you get into the large municipalities that have many more complaints, that they, then, with the one meeting a year minimum, can set the number of meetings that they have.

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One of the things I didn't see in the legislation was a time frame in which that board works, is required to work. We talk about the board -- or the legislation talks about the board meeting a minimum of four times a year. Unless I missed it, I didn't see a minimum time frame when the board must respond to a

complaint. The board could have met last night and received a complaint today. That means that it could be three months before that board looked at the complaint.

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I didn't see any internal requirements of the board as once they do hear the complaint, how do they notify the person to whom the complaint was issued against. In what time period should the board have to make a decision so that the people involved in a complaint process, once started, all know what to expect as time frames; is a hearing required, do they have to have prior notice of the hearing, steps through the process, so it is not just left up to the discretion of local boards. I think we need to spell that out so people work through a process that everyone understands.

So, those were my specific comments on the revised draft. In general, I am concerned -- well, first of all let me talk about what I am not concerned about. What I am not concerned about is the intent of the legislation. I think it is needed. I encourage you to continue forth with this through its enactment. I do not look

at the legislation from a strained point where I believe that most people are unethical and, therefore, we are trying to control them. I have been the Mayor of Avon for two years, but I have been on the village board for six years before that as Deputy Mayor. So I have been involved eight years. And in all, I will have been involved ten years with the completion of my term.

In a small community, it is not like any other group of people. There is twenty percent of the people that usually get involved to do everything. And that same twenty percent of the people participate on the school board, participate on the village board, participate on the town board, run your churches, run the chamber of commerce. So, there is an interaction, daily interaction in a small community. So I am concerned that if we put too much bureaucracy in this, that twenty percent will go down to ten percent. People are willing to give of their time when it is productive and it has a good end. If we make it cumbersome, if we make it difficult to do a good job for a

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community, these people will not go through that work; you will be working with fewer numbers of people. So, I am concerned about that. And I understand your problem. I mean you have the New York cities and the Buffalos and large cities to worry about where there isn't the necessarily daily contact. I live nextdoor to the people I deal with. I cannot not accept a gift or I wouldn't go to the local dance. I mean you are going to run into situations like that. I do not think that the legislation should be so broad in its definition that it leaves trivia to individual interpretation. Ι don't believe that if you put something in this legislation that is so restrictive as to say do not accept gifts, and then someone like myself says, "That means I can't accept a drink at a bar from a friend of mine who was at the village board last nights and may come again next week." You can't say, well, that is trivia, so no one would ever make an issue of it. If it is in the document, if it is in the final legislation as "any gift," anyone that is upset with you can make that a non trivial issue. So, we have got

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to be specific, which is why I like the revised So, not knowing what other testimony you draft. may hear today, one of the reasons I wanted to come today was to encourage you to leave the revised draft as it stands. I was concerned that when people saw it being not so restrictive as the first draft, that you may get testimony encouraging you to go to the more restrictive version. And I want to encourage you not to do that. From a small community, you would be throwing the baby out with the bath water, to use an old cliche. Those were my general points. And if there are any questions you have, I can try to answer them. CHAIRMAN FEERICK: Thank you very I take it from your view -- and I will much. come back to some of the specific comments that you had, and I know Commissioner Magavern will

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come back to some of the specific comments that you had, and I know Commissioner Magavern will be following up on a few of them. One of our concerns was and remains is to produce as a minimum in the way of uniform standards cutting across the state, but to do so in a way that leaves plenty of room for local government and

does not impede the important participation of people in theiregovernments. Do I take it from your comments as Mayor of a community of thousand people that the document that we have produced that is in this revised draft, noting your specific comments, is workable to the extent that it gives guidance, it is helpful in terms of public confidence in government and, at the same time, it doesn't drive people away from government. What would be its impact in your community as best you can devine it from what you know at this point?

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MAYOR WHITNEY: I am extremely comfortable with the revised draft, given the specific questions I have in a couple of sections, that the draft as written, taken in total context, I think would be very workable in a small community. I believe that it is important to make people sign statements that they have read the legislation, that they understand going into those functions what is expected of them. I don't believe that having a local ethics board is unmanageable. I don't see anything in the document that is unmanageable.

That is why I like the revised draft much more 1 2 than I did the original. The original one, I was extremely concerned. This one, I think, is 3 much more appropriate. 4 CHAIRMAN FEERICK: Thank you very 5 much. 6 COMMISSIONER MAGAVERN: To nit-pick 7 just a wee bit, Mayor Whitney, you have two 8 9 points of interpretation. I think the first concerns post municipal employment 10 representation of clients. The draft attempted 11 12 to narrow down that prohibition by using the term "particular matter," and then defining a 13 "particular matter" at page seven subdivision 11 14 of section 3, in a way that I think may meet 15 16 your concern. It expressly excludes 17 legislation. So that using your example, if you as Mayor approved a zoning ordinance, that would 18 not prohibit you later as attorney for a 19 property owner, from say applying for a variance 20 21 and representing a client applying for a variance. I think we have solved that problem. 22 I hope we have to your satisfaction. Your next 23 point on the breadth of the term "submission" in 24

connection with the requirement that anyone submitting a petition or request disclose campaign contributions, I think is a point well I think we have tio think about that a taken. little bit, because it occurs to me that if you have a petition that is circulated in a neighborhood, say in opposition to a zoning change. Does everyone who signs that petition have to disclose, gee I gave ten bucks or I bought a tickets to a fund raiser last year, or something of that sort. I can see that that might present problems. I do note that "submission" is defined as written. And that meets at least part of the problem. So, I wouldn't require disclosure at the point of a preliminary conversation.

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MAYOR WHITNEY: One of the reactions I 17 have to that is in Avon -- and I don't think we 18 are unlike other rural communities. Many of the 19 issues we get into are spontaneous. They can 20 21happen overnight, in a day. There is general apathy no matter what level of government you are talking about. And as an issue becomes more recognized at a particular board meeting, ten

people can walk in and fill out a petition and give it to you. I don't believe -- I could only give you the perspective of a small community. And it is -- there is rarely an issue that there aren't two sides on, and you will have as many friends and neighbors on one side as on the other side. So, it makes the job extremely difficult to do that. And God forbid, if you ever tried to do favoritism, you don't need legislation laws necessarily to find that out. Your neighbor will tell you about it that night on the telephone. And people give general to campaign contributions. The Democrats or Republicans will send outlet general fund raisers or sell raffle tickets. That is the kind of environment you are in. It is extremely grass roots.

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COMMISSIONER MAGAVERN: Can we try another example, though? There have been cases that have been reported of developers, for example, making very heavy contributions at about the time of submitting a proposal for a major development project which may be very controversial.

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l	MAYOR WHITNEY: In a small community,
2	very honestly, I don't think that would be a
3	problem, because one of the things you have to
4	understand is that the people comprising the
5	head of the local party that control that money,
6	may very well be in opposition. Your chances
7	are that they, themselves or their cousin or
8	their brother may ve opposed to it. You can't
9	hide that in a small community. Because, again,
10	it is your neighbors who are receiving that
11	contribution. It is not part of ten thousand
12	contributions totalling a million dollars. If
13	one person walked in on a small community and
14	gave check for two thousand dollars to that
15	local campaign, I think they would be
16	flabbergasted. It would just stand out so much
17	that you couldn't hide it if you wanted to.
18	COMMISSIONER MAGAVERN: If you are to
19	assume that the present disclosure requirements
20	of the law are not always adequte and don't
21	always so that those contributions are not
22	always picked up, do you have any problem in
23	principle in requiring a developer to disclose
24	such contributions?

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MAYOR WHITNEY: No. In principle, I 1 Again, I don't want you to think because 2 don't. of the small criticism I have, that I am against 3 the intent of the legislation; I am not. I am 4 fully supportive of the intent of the 5 legislation. I really don't have a real problem 6 with it. I just wanted to be practical. 7 And I would just ask you that as you go through 8 whatever revisions, you just think of yourself 9 not only of the types of examples of unethical 10 acts you are trying to control, because there 11 are always examples out there, but try to deal 12 with the legislation on a weekly and monthly 13 basis on how we are trying to do our jobs, and 14 make sure we can continue to do that within the 15 16 context of it. I guess that is really all I am 17 asking. 18 COMMISSIONER MAGAVERN: We are trying to do that. Thank you very much. 19 20 MR. SCHACHNER: On The issue of the annual disclosure, do I take it that you do not 21 22 find that overly burdensome as currently 23 drafted? 24 MAYOR WHITNEY: No, I do not.

MS. SCHACHNER: And it might be 1 effective in either highlighting activities so 2 that there are no conflicts of interest? 3 MAYOR WHITNEY: And there is an 4 awareness to it. It is a reinforcement every 5 year. We happen to -- one of the things that we 6 have done is we have some -- I can't quote you 7 where we found it, but it is a general outline 8 on ethical standards and practices and behavior. 9 And we have it posted in the board room of the 10 village. And usually, every year at the annual 11 meeting, we just go through it to try to refresh 12 ourselves as to what we are all about. So I 13 14 don't think annual disclosures is a bad idea at all. It is just a reinforcement tool, because 15 we do get busy and I think it's good to do that. 16 CHAIRMAN FEERICK: Thank you very 17 much, Mayor. I appreciate your help. 18 Jeffrey Haber, Executive Director of 19 20 the Association of Towns. Thank you, Mr. Haber, for participation of your Association. And you 21 have been very much enganed in the process of 22 our development of this document, and we have 23 24 benefitted, certainly, from your previous

comments, and I know we will today as well. MR. HABER: Well, I thank you for allowing your staff to participate in a meeting that we had in the Catskills where this was a very invigorating topic of discussion. I am not going to read all of my written testimony. I would like to read a portion of it, and I have some comments. The association of Towns of State of

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New York is a non profit membership association representing the nine hundred thirty-two towns in New York State. As such, the Association maintains an abiding and primary interest in the conflict of interest laws affecting local government and the public officials who choose to serve their town governments across the state.

Our association has been dedicated to the cause of good government since its formation in 1933. As expressed in our Constitution and Bylaws the purposes of the association include: to investigate, study, discuss and recommend improvements in the application of more efficient methods in government, as well as to

promote education in local government and to do any and all things necessary and proper to effect the greatest economy and efficiency in such government for the benefit of the town's inhabitants in the towns of New York State. Throughout its existence, the Association of Towns has sought to carry out each and every one of those just enumerated goals. We recognize the essential need for a set of standards of ethical conduct to guide town officers. The public must have confidence that governmental officials are acting in the best interests of those they represent. A code of ethics does help to cement that important cornerstone of a democratic government. Having said that, however, I appear here today to object to many of the provisions contained in your November 7th draft of the Municipal Ethics Act for New York State municipalities, and express our opposition to the adoption of any new code of ethics.

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Let me detail our concerns and objections. First of all, our association feels that the existing ethics provisions contained in Article 18 of the General Municipal Law are

effective and have worked extremely well since their enactment in 1964. We believe they strike the desired balance noted by the Legislature in its finding when enacting Article 18. The legislature found that, "There is an increasing need for known standards of ethical conduct as a quide for public officers," and that, "Lest a few brand the many, the discernment of the offending case must be made certain and its elimination sure." However, it also went on to state that existing law is too complex, too inconsistent, to overgrown with exceptions for such a clarity of understanding to be possible, and that there is another equally important objective, a formula of conduct which is not only clear but reasonable, one will permit governmental employees to share in the normal benefits of a democracy society and economy they If government is to attract and hold serve. competent administrators, public service must not require a complete divesting of all propriety interests. Real conflict must be routed out without condemning the inconsequential. I think that we feel that your

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motives are good. But, perhaps, when something isn't broken, we shouldn't strive to fix it. We think that the existing law has worked sufficiently. It has latitude for municipalities to make stricter codes in their own localities if they wish to. Local government service is comprised in many cases of people who are practically volunteers or work for little or nothing. And to require financial disclosure in every town we feel will discourage service by needed professional people, especially when we talk about a planning board member who may serve for five hundred or one thousand dollars a year or, in many towns, perhaps donating their services, and to require their spouse and children to disclose this information we feel is unnecessary. We feel that Article 18 works. We understand it. Vie ask you not to change it. Let each local government tighten up their own code of ethics as they feel their needs dictate. The campaigning provisions may address

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a few isolated problems, but we feel will create many more that are perhaps too confusing. And

also, commenting on the revolving door provisions, it is a particular problem at the local level when you perhaps do not have lot of professionals living in the community to prohibit them for a length of time from doing work in the community after public service.

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The concluding part of my testimony says that we want to restate that the Association of Towns recognizes the importance of a code of conduct. We simply feel that the General Municipal Law, Article 18 has already proven to be an effective and workable code. T think it was mentioned earlier that there was a great number of municipalities that hadn't But I followed the law and enacted the code. think that statistic was based on, I think Professor Zimmerman said 1970. I think you will find that if you look, that probably over 95 percent of the municipalities have a code of ethics in place.

Article 18 has successfully struck the balance between clarity of understanding and the routing out of real conflict. It has protected the public from municipal contracts influenced

by avaricious officers, and has protected innocent public officers from unwarranted assaults on their integrity. Most important, it leaves to each local government the responsibility and obligation to express in its own codes those ethical standard which its own citizens and populace demand and desire. The Association believes that it is the proper road to follow. The principle was recognized as recently as in 1987 Ethics In Government Act which provided in new section 811 to be added to the General Municipal Law. That affected local government bodies, to promulgate their own rules of ethics and financial disclosure. Section 811 did not set standards for either. And I would like to thank you for the opportunity to be here. CHAIRMAN FEERICK: Thank you very I would just note for the record that one much. of the original impetuses for our Commission's work in this area, aside from the being directed by the Governor's Executive Order to examine

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both state and local government, were many communications that members of our staff,

including myself, received last summer as we traveled throughout the State of New York visiting communities in every part of the state. And we met with attorneys, people who are lay people active in government. And repeatedly, people were asking us for quidance, for our views on the subject of conflicts of interest. And, as we moved into the subject the following those visits, we began to conduct our own studies and examinations and investigations. And we also put together within the Commission to play a major role in the Commission's work, those Commissioners who have had extensive involvement in local government. And Commissioner Magavern, as you are well aware, has been steeped in both state and local government, and particularly in the area of developing conflict of interest standards in his part of the state. And so, we have been very much mindful of the importance of striking a balance, not engaging in an area that is working and isn't "broken." I do share that view. If something is working, and working in a way that promotes confidence in government -- and there

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are polls that suggest in general, having nothing to do with local government as such --that faith in government, perhaps, has been tarnished and damaged a little bit in recent years and that we are in an important period of time where those engaged in public service should be making their contribution to renewing and lifting that phenomenon that may have been developing over recent years. That is something that I suppose reasonable people might have different views on. As you know, and I think as you commented, the Ethics In Government Act of 1987 does ask all communities in the State of fifty thousand or more to take a look at the subject of disclosure. And the State law says to communities fifty thousand or over, if you don't came up with your own system of disclosure, you then will have to follow the disclosure provisions of the Ethics In Government Act of 1987. If one examined those disclosure provisions and examined the proposed disclosure provisions in our draft document, I think one would have to conclude that our proposed disclosure provisions are far less

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intrusive, far more manageable, certainly in terms of privacy interests than the provisions in the Ethics Act of 1987. For example, our disclosure provisions are very limited to what we feel are basic information that should be provided to voters, such as the official's real property within the municipality, the official's occupation, private occupation, either self-employment or one's involvement in a corporation as an employee. So, it doesn't really go very far. And I don't think it -- and that is my own view. I don't think it presents the kind of threat to privacy interests that perhaps might be presented by the Ethics In Government acts of 1987 if it were to apply to all municipalities around the State. Now. I would note that that Act does not apply in the area I am discussing, to communities under fifty So, your views are certainly very thousand. helpful to us. We respect very much the fine work of your Association. And, at the end of the road when we make our recommendations to the Governor, it may be that you will find provisions in the document that are an

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improvement on the present law. And if you do, I would hope that you might say so in the process of debate and discussion on the subject.

MR. HABER: Well, we feel that there there has been progress made since the first presentation. I would just like to comment that in a small town, having served as a Supervisor in, I guess a relatively small town, that if a person owns two or three lots that they perhaps inherited or bought as an investment throughout the years, I don't know that it is everyone's business. And if it discourages -- I mean if it is doesn't come in conflict to start with, and the provisions provide for it if it does, existing. If it has the effect of discouraging people, or people say "It is not everybody's business what I own and what my wife owns," and that kind of thing, and we lose people who are hesitant to get involved in public service because of those types of requirements. The real goal here is to get qualified people to serve at the local government level. And because of the problems that face all of us today at all levels of government, this becomes

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more and more difficult as time goes by. And we need not create something if it is not needed that would further discourage qualified people from serving their community.

CHAIRMAN FEERICK: The point of view you expressed is one we have given a great deal of thought to. And we have accepted that insofar as it is applicable to those who serve without compensation. And where we drew the line was, we felt that disclosure was useful from the public interest standpoint with respect to those who are elected officials or who are compensated by communities, recognizing that even in the compensation area there is a range of levels of compensation. So, that is where we drew the line. And, as I say, I recognize the concerns you express, and certainly appreciate your participation. I would like to turn to Commissioner Hagavern.

COMMISSIONER MAGAVERN: Mr. Haber, I don't want to try to use you as a sounding board for my own testimony. But I am interested in your feeling that the present Article 18 is satisfactory. And I have a number of points on

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which I found difficulty with it, and I would like to get your opinion on them. Taking first the point that Chairman Feerick raised, the disclosure requirements for communities over fifty thousand, if they don't have it now, under the 1987 Act, do you find those workable? Do you find that the form of disclosure required by the 1987 Act is workable in local government?

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MR. HABER: Let me say that that portion of the 1987 Act wasn't our favorite section of the law from the town government perspective. I guess we felt in accepting it, that it was applicable only to the very large towns and that it was not what we wanted but at least it was not an across-the-board inclusion of every town in New York State. I don't think that -- I am just uncomfortable when we evolve to -- I would like to assume that the people that are seeking office and are serving the public are honest citizens to begin with, an assumption of honesty rather than a feeling that they are about to embark on a Watergate type of career.

COMMISSIONER MAGAVERN: That is our

assumption, I must say. MR. HABER: And I think that we need to keep that in mind that these are honest people. And how much is served by all of this financial disclosure? Those provisions, as I recall -- and I am not absolutely positive that I am correct on it -- but it required salary disclosure and --CHAIRMAN FEERICK: Not our provisions MR. HABER: Not yours, but the existing law which you referred to, I think. And debt -- it was almost like a financial statement. I think that is out of line and way too far. COMMISSIONER MAGAVERN: We agreed with And that is why ours is so pared down. you. Would you agree that disclosure on a transactional basis ought to be required where an official has not a prohibited conflict, but some indirect conflict, say owns property

nextdoor to a property that is going to be developed, and therefore --

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I don't COMMISSIONER MAGAVERN: 1 believe it is. 2 3 MR. HABER: A planning board member is asked to disclose or is expected to disclose any 4 interest he may have in something that comes 5 before him. б 7 COMMISSIONER MAGAVERN: But the "interest" is very narrowly defined in Article 8 18, as you know. There is an interest in a 9 contract. And if there is no contract, there is 10 no requirement of disclosure. Another example 11 is the litigation in the Tuxedo Park case where 12 the public officials are employed by say an 13 advertising agency that is going to do a lot of 14 15 work for a developer. And the developer comes in with an application for development. There 15 is an obvious possibility of favoritism there, 17 and yet existing law does not require disclosure 13 here. The New York court said despite that, we 19 are going to rely on a common law rule of 20 21 appearance of impropriety. Now, at that point, the quidance that you got from Article 18 is 22 23 gone. MR. HABER: The appearance of 24

impropriety exists. And if that is subject to 1 that provision, I think it is adequate. 2 COMMISSIONER MAGAVERN: You think 3 disclosure on a transactional basis ought ought 4 to be required in such a situation? 5 MR. HABER: I think that a public б official should not be in conflict of interest 7 or give the appearance of impropriety. 8 COMMISSIONER MAGAVERN: Let me turn to 9 another case, a purchasing agent buying 10 goods from a corporation owned by his brother, 11 not prohibited under present law. Present law 12 doesn't even require disclosure. Do you think 13 14 at least disclosure ought to be required in that situation? 15 15 MR. HABER: Well, I am not sure that the -- you know, I don't what kind of money are 17 18 we talking about? What type of purchasing? COMMISSIONER MAGAVERN: Buying Say 19 copying equipment, copiers for say \$1,500 20 apiece. Maybe he buys three of them during the 21 22 year. I would hope that the MR. HABER: 23 ethical and moral standards of the individual 24

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1	would prevail in this situation; that he would
2	make known to the boss or the supervisor of the
3	town, or whatever, that this was his relative,
4	nad his relative had the best price.
5	COMMISSIONER MAGAVERN: My point would
б	be not to argue that point, but in fairness
7	to that official himself, he ought to have a
8	rule that tells him he should disclose that.
9	Otherwise, he may say, "Gee, my superior really
10	knew it a long time ago," or, "I told the
11	predecessor. And I thought it was okay; I never
12	had to put it in writing." And the superior
13	says, "Well, gee, I never heard about it."
14	MR. HABER: The question in that
15	particular case is purchasing agents have is a
16	code of ethics of their own. And part of that
17	code is that they are supposed to purchase the
18	best product for the least amount of monet. We
19	would have to assume that that the purchasing
20	agent, be it a corporation or town, is going to
21	follow that code of ethics. If his
22	brother-in-law has the best price and the best
23	quality piece of equipment, then he should buy
24	
24	that for the town. If he doesn't, he shouldn't.

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There is still COMMISSIONER MAGAVERN: discretion. How many people do you contact? You are supposed ito contacts three, and there are ten of them are out there. Who do you contact? Let me go on to another case which is a real situation. You have got a director of a bank, say it is very important to have him on the Industrial Development Agency of the town for his expertise. You also want his bank to buy bonds from that agency. Under the present law, he can't serve on the I.D.A. Even if he discloses the relationship and recuses himself and takes no part in it, it is still a prohibited conflict. That, to me, seems like an example where the present Article 18 is excessively rigorous. It doesn't provide the flexibility to deal with real problems of getting expertise and, at the same time -- and getting people to serve in an advisory capacity or even a decision making capacity on the one hand, and enabling the town to carry on business or, in this case, the town Industrial Development Agency. I guess it wouldn't be fair of me to press you any further on that. I will

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1	take the onus of just having made that remark
2	and let it go at that. Thank you very much.
3	MS. SCHACHNER: I have a few
Ą	questions. Again, on the issue of disclosure,
5	do you agree with the principle that the
6	public's confidence in the integrity of the
7	government officials would be increased if they
8	not only disclosed their interest in some matter
9	that was about to be voted on, but also
10	abstained from the vote?
11	MR. HABER: Right now, presently they
12	have to disclose any interest that they have.
13	MS. SCHACHNER: What about the
13 14	abstention issue, though?
14	abstention issue, though?
14 15	abstention issue, though? MR. HABER: Well, I think that the
14 15 16	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think
14 15 16 17	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual
14 15 15 17 13	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual himself as to whether or not he wants to vote as
14 15 16 17 18 19	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual himself as to whether or not he wants to vote as it exists under the present statute.
14 15 16 17 18 19 20	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual himself as to whether or not he wants to vote as it exists under the present statute. HS. SCHACHHER: You think that the
14 15 15 17 18 19 20 21	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual himself as to whether or not he wants to vote as it exists under the present statute. HS. SCHACHNER: You think that the public's perception of the integrity of their
14 15 16 17 18 19 20 21 22	abstention issue, though? MR. HABER: Well, I think that the present system has proved workable. I think that it should be the judgment of the individual himself as to whether or not he wants to vote as it exists under the present statute. MS. SCHACHNER: You think that the public's perception of the integrity of their government would be furthered by that, leaving

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lessened. I think if of the person is articulate and stands up and says, "I have to disclose this, but it is does not affect my decision. My position here is to votes for what I feel is the best interests of the town or the government that I represent. I feel for this reason and that reason I am casting my vote in this manner. And it is in the best interest of the town. That is what I am appointed or elected to do and I am carrying out that duty." And there are those people -- there are means to be criticized if the people don't feel -- if they feel differently. But I spent eight years as a town supervisor and four years as a town board member. And every single vote that I ever cast that came before my town board, I made that decision based on what I felt to be the best interests of the people I served, regardless of whether the people were my friends or not my friends, or anything like that. And I think that that is a level of integrity we can expect vithout regulation in every person who serves in public office.

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CHAIRHAN FEERICK: Any additional

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2	MS. MCNULTY: Yes, just one. I
3	understand that your association has several
4	objections to the annual disclosure provisions
5	as laid out. What I don't understand is what
6	annual disclosure on the part of public
7	officials would you favor?
8	MR. HABER: Well, I don't know that we
9	would favor any. I would have to see some
10	alternatives to see whether or not we could live
11	with it. But I don't see the necessity for it.
12	I think that if a town by town or village by
13	village, city by city wants to put that in, that
14	comes before the town board, and they feel that
15	if the circumstance in their town necessitate
16	that, let them go ahead and do it. We have no
17	objection to stricter home rule provisions,
18	stricter codes of ethics than exist on the
19	books. That is their decision. That is what
20	they are there for, to enact the legislation
21	that is particular to their circumstances. But
22	across-the-board imposition of disclosure, ve
23	don't favor as an association.
24	MS. MCMULTY: Thank you.

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CHAIRMAN FEERICK: Thank you very much. Louis Grumet is the Executive Director of New York State School Boards Association. Thank you for your participation. I will include as part of the hearing records a formal statement by Mr. Grumet that has just been handed to me. And I appreciate the effort that has been expended in connection with this statement. And, perhaps, if you would summarize the major points of the statement and we can go to questions.

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MR. GRUMET: Mr. Chairman, if I may, I am not even going to summarize the points in the statement. I am going to make some comments on what transpired this morning and another point. And you and your staff can deal with the testimony later. First, I would like to thank the Commission for something I have rarely seen since I have been in school boards. That is really paying a great deal of attention to a lot of letters we sent you. And I want to thank you and I want to thank your staff. I think you have been most responsive. We happen to think that you have come up with a good piece of work.

We do believe in disclosure. We have a great deal of disclosure. Most of my remarks, I would like to suggest will be dealing with the specific role of school boards and of the education system, because I am not quite sure that the draft yet understands some of the problems we are raising. Our problems are not with the substance of your draft. And there are some technical points in the testimony that I am not going to bother with right now. Our problems are, we are concerned maybe, if the draft works up to just the way it is right now without some other clarification, we are concerned there is going to be some duplication and overlap and confusion which we think will add to the chilling effect that the Mayor talked about. For one thing, four hundred of our members, over half of our member, are indeed small rural districts much like the Mayor described in the Village of Avon. The school district is the same size. One of the things we would ask you to consider conceptually is the

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issue -- I understand the distinction you made between the unpaid appointed official and unpaid

elected official. I would like you to rethink that. And I would like you to rethink it not because we are looking for any special exemptions. School board members, as I will get into in a minute -- have more checks and balances than one could imagine. And we think that's good. We think that is very good. But if you have conflicting and confusing sets of regulations and laws, we are afraid that you might inadvertently do that. We, too, are worried about the chilling effect on running for school board. It used to be in New York State, school boards are about half the elected officials in the State. So you are talking about ten thousand elected officials, and about five thousand are school board members. Every school district but three have elected school board members.

It used to be the average school board member would serve about ten years, which is a long period of time in a very complicated area. They run, to some degree, the largest enterprise in New York State, about an eighteen million dollar enterprise. And the problem is that the

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turnover right now because of the tremendous pools on their time and strains on their time, the turnover is down to about three years plus, between three and four years. People are serving one term. And they are guitting in the middle of the five-year term that they are serving. And you are getting less and less people serving. And we are very worried about the overall chilling effect. I am not talking about any particular provision, but I am just worried in general about the elected official. One of the reasons I think you should consider the separate status of school board members as elected officials is because there are already so heavily regulated on the very issue you are talking about. Right now, they can be removed by the Commissioner of Education. And I know you are aware of that. And, Carol, I thank you for your letter on that. They can remove each other, which I think is unique. I may be wrong, but I think that is unique among municipal officials. They also have an election pattern

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reason it was set up to be different was to deal with the very issues you are dealing with.

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School boards, except for one, have their elections in May. They also have budget votes ever year. So, there are, in effect, two elections they have to subject themselves to. And we think that is good; we don't think that's a problem. This does not include -- and I want to point that out -- big five cities which are dependent school districts. Much of what I am saying does not refer to the big five districts because they are dependent on other general municipal governments. But before I go any further, I would like to highlight what I think is a problem in the latest letter I got which is otherwise a wonderfully responsive letter, and I thank you, Carol, for it. It is a November 16th letter. On page 2, it says here, "I might add, we have recognized the unique status of school boards by treating them as a municipality rather than an agency of a municipality." Let me stop right there. They are not an agent of a

municipality. And that is going to precede some of what I am going to say. They are, except for

the five dependent school districts, separately elected with separate taxing powers. And, as such, I think that some of what I am going to say is going to reflect the fact that they are absolutely independent. It is not just -- they couldn't possibly be an agency of another municipality.

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CHAIRMAN FEERICK: Can I just note for the record that the witness is referring to a letter from staff counsel to the witness in response to a communication from the School Boards Association. That communication, as well as the response, would be deemed part of the record of these proceedings, for purposes of clarity.

NR. GRUMET: I'm sorry. I should have done that. And if I may again -- earlier in the letter which you can check later, you point out that there are other units such as BOCES. BOCES, for your information, are basically instrumentalities of school boards. They are subordinate instrumentalities. There is no -and I know municipal law fairly well. There is no parallel whatsoever between authorities and

school boards. They are really very different. I am not going to beat that to death, but I urge you to pay a lot of attention to that. In some of the points I am going to raise, I am not going to get very detailed, but I would like to raise some points for you. The Education Law, in addition to the General Municipal Law is extremely specific in many, many areas. One of the areas deals with staff. And that is something I would like you to consider. And you have made reference here. I would still like to to clarify further, if you would consider, so we don't have to have two hearings. We certainly believe that there should be disclosure. We have large staffs, and certainly -- we are dealing with children's lives. We are not just dealing with commodities here. And certainly, if there is something that should be disclosed -- for one thing, it may be the first time that the school boards hear about it. But, there are provisions of State law, very complicated provisions of State law and we don't like them. It's section 3020A of the Education And we are very, very concerned that an Law.

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already lengthy process -- If you have a teacher, a tenured teacher -- and all of our employees are tenured except superintendents who are under contract. There may be one or two others, but most of them are. When you have a tenured employee who has had an ethical breach -- and you can go well beyond an ethical breach, but I think this is ethical. When you have tenured employee who sells drugs to children on a Saturday and is convicted -- I am not talking about an allegation, but who is convicted of selling those drugs, it still takes four years and an one hundred ten thousand dollars to go through a process to remove that teacher from tenure. And I terribly concerned that one more hearing -- and I understanding what you say in your letter here about the fact that the hearings have nothing to do with each other. IT does. It is just one more hearing, one more cost, one more elongated process that frankly saps the will of the management and the school board to do anything, I am afraid it will have the opposite effect of what you want. What I am urging you to do, without a specific language

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which we can deal with your staff on, I am urging you to make specific reference to the 3020A provisions of the State Education Law. So that when you have an ethical problem with staff, there are not two separate hearings. I think it's a very, very serious problem. By the way, if you could help us amend 3020A to make that different, we would much rather have that. But we have been trying for ten years and have not succeeded.

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Something else I would like to raise which you may think is irrelevant, but I think is very, very basically relevant. We have over two hundred thousand employees, around 250,000 employees, give or take. Right now, the New York State Board of Regents -- and I believe in January the New York State legislature will be seriously considering a massive new proposal. And that proposal will be to make teaching into a profession. It is not currently a recognized profession, such as lawyers or doctors or

accupuncture or masseur or masseuse. Right now, teaching is not under the Professions Law. And both we and the teachers' unions are calling to

make teaching a profession. I might say we differ in our proposals. But we both agree that there should be a professional practices Board for teachers and another professional practices board for administrators. Please get yourself involved in that so whatever you are recommending and whatever the legislature does on that issue this year will go together and will not conflict with each other. I have this terrible concern that they are going to conflict with each other. In the same week, we can see two different pieces of legislation going off in different directions. And again, I am stressing our difference because the other municipalities do not have the same situation we have with teachers which are so highly regulated currently in terms of their certification provisions and, we believe this year in terms of what will become licensing provisions and removal from licensing and, certainly, ethical consideration will be very, very keyed to what the practices board will be doing. And again, I hate to create more work for you, but I urge you to look at that. And we would be happy to help if at

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all possible.

I would also like you to look very, very closely and remove the school districts from the County review you have. And I want to explain why. We don't have any problem with the State Commission, the State Ethics Commission or whatever emerges, which I assume will be the State Ethics Commission being able to look at We have a very serious problem with the this. counties. Our problem very simply is that school districts do not in any way, shape or form report to the counties right now. And I realize other minicipalities don't report to them, but there are many ways in which counties currently under municipal law regulate certain activities of cities, of villages and of towns. that it is not true with school districts. That is absolutely not true. And that is why I was raising the other point in your letter, respectfully, I hope. The issue has been brought out in the courts a number of times. For example, just recently Suffolk County, and Suffuolk County twice tried to regulate smoking in the schools and it was told they couldn't do

And Suffolk County tried to regulate school it. busses under their general powers, certain type of transportation, and they were told they couldn't do it. And, again, we would be happy to help you with that. I am very, very concerned that if you put the counties in some sort of review -- and I don't think you realize the problem I am raising here and that is why I am raising it so strongly. There is going to be litigation, and I believe it's going to fall based on the other court cases. And I would urge the school district review procedures go directly to the State Commission so we don't get into an issue. We are very concerned about the precedent of being regulated by county government because we are so strongly regulated by the Education Department on a common basis. Most of the other things I said I think are covered in my testimony. And if I can just make a couple of general comments -- again, as I have commented, I think that Professor Zimmerman is absolutely wrong on unpaid officials. I think that the Mayor was

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absolutely correct, particularly when the bulk

of our municipalities and school districts which 1 are smaller. And it is a very, very serious 2 But I do want to differentiate our issue. 3 position from our good friend Jeff Haber. Ą Ve are not afraid of disclosure, and we believe the 5 б time for some changes is coming. All we urge is that you pay very close attention to the 7 Education Law and some of the unique situations 8 we have, and recognize that we are not dependent 9 10 on other local governments. Thank you. 11 CHAIRMAN FEERICK: Thank you very 12 We appreciate your participation in these much. hearings. And it was my impression -- and I 13 will defer to staff counsel -- that we had 14 addressed the supervision issue in terms of the 15 16 relationship between the county and the school 17 board in our revised draft. But I will defer to 18 others to maybe comment further on that. HR. GRUMET: Hr. Chairman, if I may, 19 20 we do not need to argue specifics here. Me don't think it has been sufficiently, and we 21 would be happy to deal with your staff on 2223 specifics.

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CHAIRMAN FEERICK: We would be helped

by your additional participation in that work. 1 2 And I had not appreciated until you said it, that it is your information that there are ten 3 thousand elected officials in the State, five 4 thousand of whom are members of your 5 association. б 7 MR. GRUMET: That's right. CHAIRMAN FEERICK: And I take it, that 8 9 you don't see a problem with respect to the kind of disclosure that is reflected in this document 10 11 from the standpoint of your membership. No. sir. What we are 12 MR. GRUMET: concerned about -- I have rarely been so process 13 oriented as I am here. We are concerned with 14 who does what about it. We are not concerned 15 about disclosure. We just don't want to see two 16 17 or three sets of hearings on the same issue at 18 the same time. I am a tenured CHAIRMAN FEERICK: 30 law professor in a private institution. And it has 20 21 been my impression from my very limited experience that there are not very many hearings 2.223 involving tenured teachers. Certainly, I 24 reflect maybe more my view of the law teaching

profession. I would be curious as to any information you can provide us with reference to the level of activity in that area in terms of the public sector. Is there an extensive use of the hearing process to which you made reference under the Education Law?

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NR. GRUMET: Pirst, if I may, as a former law student, let me suggest that I would never remove the tenure of any law professor. (All of the are perfect.P And they certainly are not subject Board of Regents review. There is insufficient -- but considerably more than you are saying -- there is insufficient use of the 3020A process. Yet, it is quite widely used. Remember, we are talking about hundreds of thousands of teachers here. What happens with the 3020A process -- and I won't, unless you would like me to spend several hours dragging you through a harangue on this --CHAIRHAN FEERICK: No.

CHAIRMAN FEERICK: No.

HR. GRUMET: -- tell you that it is so incredibly complicated and expensive, that you tend to not go for the gray area; you only go for the bad one. Having said that, there are

still quite a few of them. And that is why the 1 2 teaching profession argument has been going on for the last ten years and will resolve this 3 year. I think our petition has changed somewhat 4 and so has the teachers' union. If it would be 5 helpful to your staff I would be happy to send 6 you both our document on this and the New York 7 State United Teachers, which differ 8 dramatically. They are both called 9 "blueprints," but ours is in a blue cover and 10 11 theirs is red. CHAIRMAN FEERICK: I would like in the 12 interest of total disclosure today -- in my past 13 life as a private attorney I did represent 14 teachers in connection with their collective 15 bargaining negotiations and have some 16 appreciation of the kind of issues that public 17 teachers -- the kind of issues to which you have 18

made reference.
COMMISSIONER MAGAVERN: 2just wanted to
be clear, Mr. Grumet On what provisions, if any,
you thinky might have a chilling effect on
candidates for school board. Do you think the
annual disclosure requirement that we have got

would --

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2	MR. GRUMET: If I were to make a
3	specific change, I would say the family aspect
4	of it, particularly in small school districts.
5	It really sometimes becomes a problem. When you
б	are dealing in a small school district, you
7	often have the problem and it usually does
8	come out; the Mayor is absolutely right about
9	this. And it may just be a matter of form. You
10	often have a situation where one spouse is a
11	teacher and one spouse is a business official
12	and the other is running for school board. In
13	these days of professional couples, you are
14	going to see more and more of that happening.
15	And it does scare people out of running,
16	although as the Mayor indicated, in a small
17	town, it does tend to come out anyhow.
18	COMMISSIONER MAGAVERN: Is there any
19	anything that we have got in here that
20	MR. GRUMET: That is our major
21	concern, really. Some of our members have a
22	concern about the real property situation that
23	Jeff Haber referenced.
24	COMMISSIONER MAGAVERN: Again,

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disclosure, annual disclosure. 1 2 MR. GRUMET: Yes. And again, I am not 3 sure how widespread that is. I think the most widely spread is the concern about the family. 4 COMMISSIONER MAGAVERN: You don't have 5 any problem with the transactional disclosure? 6 MR. GRUMET: No. As a matter of fact, 7 we think the changes you made on transactional 8 disclosure are very good. We had objections to 9 the original, and we think the changes you made 10 11 are very, very helpful. MS. SCHACHNER: We certainly have 12 appreciated the all the detailed comments and we 13 will be in further contact. I believe we have 14 addressed the issue of appeal at the county 15 16 level versus appeal going up to the State Commission and have, in fact, removed the 17 oversight in the appellate process from the 18 achool districts. 1.9MR. GRUMET: I will look at that 20 21 again, and my apologies if I have overstated 22that. 23 MS. MCNULTY: I am just a little 24 confused as to what you suggest you do with

respect to the ethics board hearing and the 1 2 3020A hearing. Are you suggesting that the 3020A stand alone as the ethics board hearing? 3 MR. GRUMET: I am suggesting if there 4 is a 3020A hearing, moving -- that is the 5 discipline hearing -- moving on the same б 7 situation, that it should take precedence. MS. McNULTY: Just a time precedence? 3 I wouldn't have both No. 9 MR. GRUMET: hearings. I certainly think if there is no 10 3020A, I think you would have the right to move 11 12 forward. My real concern is if you have both, they will become confused. One will be used as 13 a reason for delay for the other. And the other 14 is the one which absolutely has the right to 15 discipline. Believe me, from having looked at 16 this for five or six years, any reason used to 17 possibly delay a 3020A is used. And this will 13 be one of them. And I don't think that is what 19 you intend to happen, but that is what will 20happen. So, I am suggesting that if the action 21 is brought up for 3020A, and I may add to that, 22 if there is a professional practices board, if 23 it is brought up before professional practices, 24

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I think the ethics hearing should be dropped in preference for the other hearing.

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CHAIRMAN FEERICK: One, I want to end by thanking you again, and just saying that we would be helped considerably by any additional follow-up that you have on some of the points that you made. And you did indicate a few areas in which you would provide us with additional materials. As I mentioned at the outset of my statement this morning, it is our present plan to conclude our work with reference to the code for transmittal to of the Governor before the end of this calendar year. So we will be working hard on this over the next several weeks. When our final document is transmitted to the Governor, obviously, we will widely thereafter disseminate it. I am sure the process would be helped considerably after that by any public comments that your group might have with reference to the document. Our work insofar as the code is concerned will have been concluded when we transmit the document to the Governor. We are not a Lobbying agency. We basically have to give our best judgment to what

we think the law ought to be, what we see are the problems under the present law, and what we believe would improve the process. Certainly as citizens ourselves, and those of us who serve as Commissioners serve in an unpaid public service capacity, we have an interest in there being wide discussion throughout the State concerning our views and our work. And your association representing half of the elected officials of the State seems to me would be an important participant in that process of debate and discussion. And I would encourage it.

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HR. GRUMET: Mr. Chairman, if I may respond, first, I think -- and maybe I should have said this in the beginning -- Mr. Magavern asked several times as to what happens in terms of the view of public officials by the public. It is not as high as it should be. And I think the activity of your Commission has been very helpful, frankly, in helping to restore it, whatever happens to the code. But I would like to specifically invite you right now be be with our members after the code is out so you can explain is to them and they can then explain to

l	you our concerns sometime in the spring.
2	CHAIRMAN FEERICK: We would be happy
3	to. And I think you very much once again.
4	We will take one more witness before a
5	short recess. and that witness is Raymond
6	o'Connor, Councilman, Town of Wilton. Good
7	morning, and thank you for being here.
8	MR. O'CONNOR: It is a pleasure to be
9	here. I am honored to be here and actually
10	flattered that the Commission has recognized
11	what we have done in the Town of Wilton in terms
12	of addressing the issue of ethics and financial
13	disclosure.
14	CHAIRMAN FEERICK: Would you tell us a
15	little bit about your town in terms of size of
16	the community and any other comments you would
17	like to make.
18	MR. O'CONNOR: Sure. We are a
19	community of about nine thousand people located
20	in Saratoga County. Our only governing body
21	within the town is the town board.
22	Approximately a year ago, a little over a year
23	ago, there were a number of issues within the
24	\overline{t} own that prompted the addressing of ethics and

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financial disclosure. Our town supervisor was chairing a committee, and still chairs a committee in Saratoga County that is addressing the issue of the Ethics In Governemnt Act and what it means for municipalities with a population of over fifty thousand in terms of adopting an ethics and disclosure law. Our supervisor felt that chairing such a committee at the county level, it would only be appropriate -- and our town board agreed with him -- that our town should set an example in leading this issue in our community.

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There are a couple of other issues that led us to what we have done in our town. One is that we are a very rapidly growing community. Our population has doubled in about the last ten years, and there is a tremendous amount of commercial wealth and residential wealth coming into our town. And as we grow, we recognize the fact that the likelihood of unethical practices happening in our community is going to grow as well. There was also another issue -- I am sure the Commission is aware of "operation double-steal" which took

place in the recent past. Two of our closest neighboring communities had town officials that were indicted as part of that program. It had always been believed that in small, upstate communities that these things generally don't happen, that it happens in the big cities; that we are not Biaggi's Bronx or Mannes's Queens, and those things do not happen in a little town like Wilton. But we saw it did happen in our neighboring towns. So again, as a preventative measure, we decided to address the issue. So. in April of this year we became what we believe to be is the first town of our size and one of only a handful or so in the State of any size that has adopted an ethics and financial disclosure law. And in reviewing both the initial draft and the subsequent draft that the Commission on Government Integrity has sent me, this is a terrific tool that you put together. The issue of ethics isn't an easy one, and trying to have communities accept this type of document and implement it, I am sure that you know from going around the state has not been an easy task.

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1	This is a terrific tool that you have
2	given every community to utilize. And quite
3	frankly, I don't see why any community wouldn't
4	be anxious to use this or some adaptation of it.
5	CHAIRMAN FEERICK: You simply warm the
б	heart of those on the Commission staff who have
7	put a lot of time in on that. Let me ask you a
8	question that has always been of concern and
9	interest to me. Is it workable in terms of a
10	community of nine thousand, a smaller community?
11	Are we being realistic in terms of confidence in
12	government, in terms of getting participation in
13	government with this kind of approach?
13 14	government with this kind of approach? MR. O'CONNOR: Absolutely. One of the
14	MR. O'CONNOR: Absolutely. One of the
14 15	NR. O'CONNOR: Absolutely. One of the reasons that we wanted to do it in our town is,
14 15 16	MR. O'CONNOR: Absolutely. One of the reasons that we wanted to do it in our town is, we make the assumption in our town that most
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14 15 16 17 18 19	MR. O'CONNOR: Absolutely. One of the reasons that we wanted to do it in our town is, we make the assumption in our town that most communities do, that 99.9 percent of the people serving in government, whether on an elected or volunteer basis, are honest people. And having
14 15 16 17 18 19 20	MR. O'CONNOR: Absolutely. One of the reasons that we wanted to do it in our town is, we make the assumption in our town that most communities do, that 99.9 percent of the people serving in government, whether on an elected or volunteer basis, are honest people. And having this type of legislation within our town, we
14 15 16 17 18 19 20 21	NR. O'CONNOR: Absolutely. One of the reasons that we wanted to do it in our town is, we make the assumption in our town that most communities do, that 99.9 percent of the people serving in government, whether on an elected or volunteer basis, are honest people. And having this type of legislation within our town, we think lends greater credibility and integrity to

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And when we enacted this law in April, applies. we had our first financial disclosure statements had to be completed and submitted in May. Of the 31 officials to whom the law applies, only one resigned because of this law. Now, I know a lot of the testimony subsequent to mine has centered around, if we are in a small town or if we are in a smaller community, we don't get the volunteers. Our town board -- I get paid thirty-five hundred dollars a year to be on the town board, so I am not getting rich at it. Our planning board, zoning board, our ethics board, our ethics advisory council, all do this on a voluntary base. And, again, if we have to risk losing one out of thirty-one officials in order to have a law like this on the books, I think we are willing to take the chance.

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18CHAIRMAN FEERICK: I take it that the1931 officials who are subject to your financial20disclosure and other code of ethics provisions21include those who don't even receive any22compensation from government; is that correct?23MR. O'CONNOR: About two-thirds24receive no compensation at all.

CHAIRMAN FEERICK: I take it from your experience with your code -- and obviously, you and your colleagues ought to be commended for the effort you have made in terms of supporting improvement in government, I take it that your experience would suggest that it s workable.

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MR. O'CONNOR: Absolutely. There has been some concern, too, about not just getting people to serve, but getting the kind of quality people, professional people, et cetera, to serve on these types of boards. On our boards we have CPAs, we have bankers, investment bankers, we have administrators that work for the State, we have people who are in every line of work and profession that you could imagine. And, again, it seems regardless of what one's station is economically, politically, or financially, that it doesn't seem to make a difference. There is a lot of support for this in our town. And, again, as I have said before, having only one person object to it out of all the individuals to whom this law applies says a lot about how manageable this is.

COMMISSIONER MAGAVERN: I am just

curious if there are any unique circumstance in 1 2 your town that explain the apparent acceptance of this by your public officials so readily. 3 MR. O'CONNOR: Before it went on the 4 5 books it was not so readily accepted. It was -it was not easy getting it to the stage where б you could put it before the down board for a 7 vote. We had public meetings, and there were 8 some serious reservations generally. Everyone 9 would say, "Well, this is a great idea, but what 10 about financial disclosure? What about the 11 actual precepts sent within the ethics code 12 itself which is part of our law?" And once we 13 ironed out the language, once we had a 14 sufficient number of public meetings and 15 workshop sessions where everybody understood 16 exactly what the rules were, it became a bit 17 more acceptable. And, again, there was a little 18 gnashing of teeth over the issue. It didn't 19 20just slide through, but our town board was 21 committed to doing it and we were unanimous in 2.2 our commitment. 23 COMMISSIONER MAGAVERN: Having done

It, are the officials basically satisfied with

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the results, or have you had any continuing problems?

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MR. O'CONNOR: The system has No. been working well. There have been a number of appointments that the town board has had to make to our planning board, zoning board, et cetera. Before an appointment is made, we give any potential appointee a copy of the law, a copy of the disclosure statement. There is another statement that we have in our law. It is called an attestation statement where, after you have reviewed the ethics code and the law, you make a separate attestation where up sign where it is notarized, that says you understand the law and you understand its precepts and understand the difference between right and wrong as it is spelled out in the law. And every subsequent appointee to any level of our town government has had to review this and fill it out, and we have had no objections and we have had no shortage of volunteers to fill these positions when they have come up.

MS. MCNULTY: I have just a couple. I realize it is a very short time since

your act has been in place. But I am wondering 1 2 about some of the experiences that you have had. you have a public access section that sets out a 3 procedure for people to come in and review the 4 5 disclosure statements of your public officials. What has been the record of that; have people 6 7 actually come in and looked at it? 8 MR. O'CONNOR: Yes. 9 MS. MCNULTY: In any great -- more 10 than one or two? 11 MR. O'CONNOR: No, not more than a 12 There have been some inquires and some few. 13 requests for copies of certain officials' disclosure statements. Outside of, again, maybe 14 15 one, two, three instances tops, there have been 16 no others. MS. MCNULTY: Have there been 17 decisions by the ethics board under this new 13 19 law? 20 MR. O'CONNOR: There have been some officials in the town that have been requested 21 to appear before our -- what we call our quarter 22 23 first instance, our ethics advisory council. No one has yet appeared before our actual ethics 24

board. Those who have appeared before the ethics advisory council, I don't believe -- at least not to my knowledge, no action against any official has been taken yet. But there have been reviews of the financial disclosure statements. People called in subsequent to that. So, our system is working, and we have a system whereby our ethics advisory council has to meet four times a year, and they have been keeping on schedule. And, again, they have had some activity, but there hasn't been anything, that at least to date, that one would consider noteworthy.

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MS. McNULTY: Finally, You mentioned the attestation that is required and the education process that you went through in getting the law passed. Do you have plans for ongoing education, and how do you feel about what we have written in our draft about education; is it sufficient?

HR. O'CONNOR: That is one of the areas where I think we probably, on an ongoing basis, need to improve our system. Right now, we general don't have many occasions where we

have to educate somebody. So, it has been easy 1 to do on a case by case basis. If we are making 2 a single appointment to the planning board, 3 let's say, I can sit down with that person and 4 having chaired the committee that wrote this 5 law, and explain it to them. Our town attorney 6 avails himself to any legal questions coming up 7 regarding the law. So, we are able to do it on 8 a case by case basis. Perhaps, when our local 9 10 government becomes larger, we might have to 11 change that. 12 CHAIRMAN FEERICK: Thank you very much for your participation. 13 We will take a five-minute recess. 14 (A brief recess was taken.) 15 CHAIRMAN FEERICK: Our final witness 16 this morning is Edward Crawford, Executive 17 Director of the Association of Counties. I 18 would just note for the record that the 19 Association of Counties has been helpful, has 20 been very much a part of the process of our 21 development of the document that we are 22 receiving comments on this morning. And I would 23 like to acknowledge that and say thank you to 24

1	you and to your association, Mr. Crawford.
2	MR. CRAWFORD: Dean Feerick, I would
3	just like to file our testimony and limit my
. 4	comments to just two or three points. First of
5	all, to commend the Commission for what we think
б	are significant changes that have been made over
7	the original draft that was distributed for us
8	to review.
9	Secondly, I want to commend to you the
10	comments that will be made by the Mayor's
11	Conference after lunch, and the Association of
12	Towns preceding me, because in general we
13	support all of the observations that would be
14	made by those two organizations representing
15	local officials.
16	The third thing that I would like to
17	mention is that we do have some problems with
18	the Board of Ethics the County Board of
19	Ethics being the substitute board, if that is
20	the correct word, in the event a locality opts
21	not to come in and form a Board of Ethics. In
22	discussing this with a former county attorney
23	and your distinguished colleague Mr. Magavern,
24	this is a time when county government power and

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authority should be strengthened and expanded. And I do agree in general with that observation when it comes to normal governmental services. I do think that this has the potential in counties where this might apply, of getting the County Board of Ethics tangled up in local questions, ethical and otherwise, where I am certain the county would not want to be. It would seem appropriate that it go directly to the State. That is the way that PERB is handled, PERB disputes are handled. And it would seem to me that in the redrafting, as you consider the many suggestions that are being made today, that that might be something you might want to take into account.

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The other problem is the record retention. In court merger we are having these discussions as to what happens to these records. Responsibility is it. And it would seem again that that would pose a problem. My recollection is that it os a seven-year retention. And I won't state that for positive. But, in any event, there is some responsibility to look after those records. If the town or village

later opts in, where do the record go? Do they stay as a part of the county, or do they go to the municipality that chose not to in the first instance, to come in? It just seems as though there may be a problem, and there could be a jurisdictional problem where perhaps a hearing or hearings have been started under one and then there is a change. I think our suggestion would be that perhaps that be dropped. The other point I bring to you because it has been cited to me by some of our smaller Counties. One might think when you see me here that I representative the several Suffolk and Nassau -- and we do, and are proud to representat them. We also represent Hamilton and other counties starting in the Adirondacks and starting with the western part of the state. And you gave the option to all vllages cities and towns to not have a Board of Ethics. And I comment that you did not give that option to the counties. I am sure that that probably was in the context, Dean Feerick, of having the county have a role in lower level government. But because that observation has been made, I think

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it is only appropriate to suggest that to you. 1 The last item I would like to mention 2 is this whole question of disclosure. A large 3 number of the smaller units of government which 4 include the counties that I represent do pay 5 б their advisory boards and planning boards a small stipend. At one time, I was a town 7 supervisor in another life as well a county 8 official, again, in another life. And many 9 10 times, rather than gets tangled up in reimbursement for travel and conferences -- and 11 I mean a small stipend, under five hundred 12 dollars -- that I would justify to the health 13 board or mental health board, and so forth, give 14 them a particular stipend in lieu of travel. 15 I mean I think it would be considered 16 compensation. And although the disclosure 17 requirements have been considerably changed for 3.8 the better in the redraft, I hesitate to endorse 19 In fact, I cannot endorse them because 20 them. 21 volunteerism or near volunteerism across our 22 states is an essential part of the rendering of governmental service, particularly the policy 23 making aspect of services. I would hate to see 24

perception created -- and we can sit here and say there is no such thing -- you people up in Elba, in North Essex County -- you are not right. I think we have to be very, very careful with those appointed persons. I am leaving out appointed persons receiving nominal considerations as to any type of disclosure. And I would urge you to rethink that and perhaps check with us as to how many hundreds, thousands of people that this would apply to that earn what I would consider very, very small amounts.

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I will just give you this as an example as to what local government is all about. I attended the other night for an old friend of mine -- I was once on a broad of supervisors many years ago, and I was there with another gentleman, and he had stayed on as town supervisor in a town of five thousand, which is one of the larger towns just outside an urban area here in our State. And we were sitting and chatting, and after twenty-five years of being the chairman of that board and handling everything in that town, as kind of a going away present last year they raised his salary to five

thousand dollars. There are a lot of people that take much less than that from the public treasury that render invaluable services. And my only caution, while encouraging you to go on and implement accountability at the local government level, is to be certain we don't discourage that kind of participation from the broad range of people available and now willing for serve as the gentleman from the town of Wilton testifying just before. We thank you for the fine cooperation of your staff.

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CHAIRMAN FEERICK: We thank you, and 12 we really appreciate the cooperation of yourself 13 and your staff. And I would just reiterate what 14 15 I have said several times this morning; and that is, that we have been working through very 16 carefully the issue of discouraging 17 participation. That is of high value and needs 18 to be protected. And we will do the best we can 1.9in terms of our own process dealing with that 20 and, at the same time, on the other side of the 21 scale is the efforts that many of us are making, 22 your organization and many others, and our 23 24 Commission, to enhance confidence in government

at a time when public opinion polls are telling 1 us people in all areas of society have lost 2 faith in government. And we can, I suppose, 3 come at it from different point of view. This 4 is part of an era that Governor Cuomo has 5 correctly in my view said should be an era of 6 reform and change, and statements to the people 7 8 of our wonderful State; that all of those who serve the public are making every effort to 9 express through standards our values in terms of 10 ethics and in terms of conflicts of interest. 11 12 And, so, disclosure and conflicts of interest policies are efforts recognizing that there can 13 be areas for disagreement. 14 I sense in your comments, maybe 15 incorrectly, that you concede a difference, 16 perhaps, between an elected official and an 17 appointed official with respect to perhaps what 13 one would demand in the way of a conflict of 19 interest statement. 20 MR. CRAWFORD: I do, sir make a very 21 22 significant difference between the two, yes. CHAIRMAN FEERICK: So that with 23 respect to elected officials, putting aside what 24

standard we might be talking about, you would 1 expect higher standards as expressed through conflicts of interest laws? MR. CRAWFORD: Absolutely. Dean Feerick, we mention in our written testimony about the serious decline, I don't want you to mistakenly think I thought things were fine between local government and State government and the general public. But we will talk about things such as decline in public confidence teetering on the brink, and there has been a marked decline in public interest. CHAIRMAN FEERICK: We were struck, when our Commission undertook a public opinion poll which we released in the spring, I believe, which was designed to test the opinion of the people of this State's registered voters in all of the counties and areas in the State. And what ran through the poll in all areas of the State with respect to our campaign finance laws, which was the focus of the poll, was a sense on the part of individuals that the individual had very little influence in terms of government in our State today. That was expressed in the

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poll, and it was expressed in the context of questions that had to do with the inordinate domination in the campaign financing system with no maximum of PACs and unions. And, so, we were testing citizen opinion about their influence in the system. And what came out in a very striking way was the uniform opinion throughout the State of people that they have very little say in their government. So, we made many recommendations in that area that contemplate wholesale change of the campaign financing law of the State of New York that we think, if documented, would reverse that kind of finding. And this is part of that total effort we are making.

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MR. CRAWFORD: Dean, I might say that the Advisory Commission on Intergovernmental Relations based in Washington on which all levels of government participate, including the congress, that they have run a poll annually for the last three or four years. And one part of the poll is devoted to questions to the sample as to what level of government do they have the most confidence in, do they feel they get the

best bank from the buck from their tax dollars, who is the most responsive, and so forth. And needless to say, since I just brought this up, and you can guess at which level of government on a national -- ever year, it is consistent that -- I quess I would say that the State and federal governments do not fare as well as the local governments. There are these boards and participants at the local government which is not matched at the State level. On a person for person basis, we bring in far more volunteers into the average local government policy decisions than are at the other levels of government. I might say before I finish, I have complimented your staff. I would like to compliment you and Mr. Magavern because you have both been at the hearings we have testified before, and I don't think the list of volunteers for your jobs was very long. I think the Governor expressed great judgment in getting the two of you and your colleagues. But I commended you because you have certainly been even-handed and very fair with all of us who you knew at the outset were going to have differences of

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So, to you and to Commissioner opinion. 1 Magavern and the others, we thank you from our 2 Association. 3 Thank you so much CHAIRMAN FEERICK: 4 for that statement. And I know Commissioner 5 6 Magavern and I will benefit from that poll that you mentioned, or study that you mentioned that 7 you have brought back from the meeting in 8 Washington. If that is information you can 9 share with us, we certainly would appreciate 10 11 receiving that. I think we have a lot MR. CRAWFORD: 12 of copies of that available and use it quite 13 14 often in Rotary speeches. I made the CHAIRMAN FEERICK: 15 statement I think to the representative of the 16 School Board Association that when we finish our 17 work here and transmit it on to the Governor, 18 public demand for the leadership of the State to 19 express leadership with respect to these areas, 20 and I would certainly encourage your association 21 to -- and I am sure you will be a very active 22 participant in public discussion and debate. 23 24 And I know from your testimony what you have

said this morning, that if there are things with 1 which you agree, you will say so. And if there 2 are things that you disagree with, we will also 3 4 know that as well. But, I think it is healthy, because out of that may come change that 5 otherwise would not happen. б Thank you very much. 7 We will now recess and return to the 8 public hearing at one o'clock. 9 10 (The luncheon recess was taken.) CHAIRMAN FEERICK: This hearing is now 11 I would call Robert C. Newman, past 12 in session. Chairman of the New York State Board of Common 13 14 Cause. 15 MR. NEWMAN: Thank you, Commissioner. CHAIRMAN FEERICK: Welcome. And I 16 17 would just note for the record that we have received a copy of your written statement which 18 we certainly will include in the record of these 19 proceedings. We will also include in the record 20 of these proceedings an article that you wrote 21 for the Hofstra Law Review for the Winter '88 22 issue entitled, New York's New Ethics Law, 23 turning the tied on corruption. I am pleased to 24

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have a copy of that article as part of the record in this proceeding. It was suggested at the very outset of the proceeding this morning that it would be helpful in the case of witnesses with written statements if they were able to summarize the essence of the statements so as to enable those of us here to put some questions to the witness.

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MR. NEWMAN: I will try do that. I recall you testifying earlier this year before our Common Cause State Board, and I am happy to be able to return the favor, in effect, today.

Although Common Cause, as you know, plays a watchdog role by alerting the public to ethical lapses in government, we don't believe that the arena of ethics legislation is a matter of good versus evil where we simply want to make the laws as tough as we possibly can in order to punish as many corrupt officials as possible. We do recognize the concerns that I am sure were expressed by many of the witnesses this morning, although I wasn't here to hear it. We have to recognize that many positions in our smaller municipalities do not pay great sums of money,

and that we do need to attract a large and diverse group of citizens willing to undertake public service that often pays more emotionally than financially. Keeping this in mind, we do saulte the work of the staff on a much needed overhaul of the conflict of interest and disclosure laws. We are in great agreement with most of the draft act. It is much clearer than the current patchwork of ethics laws contained in the General Municipal Law, and it would be very beneficial to have a statute in place that would provide uniform guidelines for public officials. We particularly like -- I particularly like the section on receipt of gifts by public officials and the sections on soliciting employees in government to participate in political campaigns or to make political campaign contributions and the proposed prohibition on the solicitation of campaign funds from persons who are doing business with the municipality. This was something that was also covered in the Commission's recommendations on campaign finance reform, and we are glad to see it again in this

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We are happy to see a more complete proposal. set of financial disclosure requirements for public officials of municipalities of any size than is required now. We agree that it would be impractical and probably unduly onerous to try to impose upon all public officials in all municipalities the very strict and detailed financial disclosure forms that State officials under the Ethics In Government Acts as well as New York City officials are required to complete. We would prefer, though, that in the larger jurisdictions defined by the Ethics In Government Act as political subdivisions with more than fifty thousand people, that at least their top officials, the agency heads, chief executives, the members of the governing bodies, be required to file a form that is more specific than the minimum standard contained in this law that is closer to the State's financial disclosure form. We are happy to see the strong provisions on enforcement contained in the act, the provisions for creations and appointment of members to the county and regional and municipal ethics boards, the granting of subpoena power to

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those boards, and the granting of appellate power to the State Ethics commission.

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The most troublesome aspect of the law, and something that I have been thinking about right up until this morning, as Ms. Schachner can attest because when I spoke to her yesterday, I was not quite sure what I was going to say about this -- relates to the draft bill's emphasis and prohibited action by public servants and the elimination of the current restriction on prohibited interests of public servants. I certainly agree with the major emphasis on saying that a public official should not take an action or refrain from taking an action that is intended to benefit himself or herself or someone with whom he or she is associated. But I don't think that we can completely eliminate the basic idea that a public official should not have an interest in a contract with the municipality. The reason for this is that I feel in local government, people know each other. A lot of things are done not formally as in big cities and the federal government, ideally, perhaps. But it is done by

a web of friendships and relationships. And 1 these strong personal relationships do count for 2 a lot in local government. 3 In theory, the bill provides for 4 recusal by a public official. He disqualifies 5 himself when he has an interest in a proposed 6 contract. On paper, that is fine. But in 7 reality, the person's colleagues and friends on 8 the board of trustees, or whatever it is, will, 9 unless there is a citizen watchdog or opposing 10 party to call a halt to it, show favoritism. It 11 is human nature. What we want to do in this 12 act, among other things, is to provide for, in 13 effect, fair competition in the municipal 14 marketplace. We want both the appearance and 15 the reality that insiders don't have an inside 16 track in obtaining government contracts and 17 other financial benefits. That is why I think 18 19 that your draft act, in addition to what is 20 already there, should contain some provision that continues, clarifies and simplifies the 21 22 prohibition on a government official having an interest in a contract with the municipality 23 that he serves. And we might consider language 24

that allows the sale of goods and services only with competitive bidding, similar to what is contained in the State's Public Officers Law. Both the New York City law and the Massachusetts ethics law which is widely considered a national model, do prohibit both certain actions by public officials and certain interests of public officials that are seen to create a potential for conflicts of interest. But with that suggestion, I feel that you have done a very good piece of work, and Common Cause would look forward to working with you as hard as we can to persuade the legislature to adopt an overall reform of our municipal ethics act.

CHAIRMAN FEERICK: Thank you very much, Mr. Newman. I would like to note that your organization has given outstanding leadership to this subject. And we have been the beneficiaries in our work of the enormous assistance from groups like Common Cause, League of Woman Voters, as well the many associations which appear here today. As I noted this morning, this particularly work product of our Commission started more than a year ago. Even

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before we disseminated the preliminary municipal code, we had had considerable input from a range of organizations including your distinguished group. And so that in many ways, there has been a large sector of participation in our work by all of the groups, I believe, who appear here today, although there are different views as to the document as it presently stands. So, I thank you once again for the assistance you have provided to our Commission.

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The only note that I would make is with reference to your comment about communities over fifty thousand and perhaps certain regulation for top officials that might not exist for other officials because of a lesser impact in terms of their positions in the community. What we endeavored to do here was take the existing provisions of the General Municipal Law and see if we could formulate a uniform minimum kind of set of conflict of interest standards for the State that would recognize all the changes in New York and American society since the last time we looked at this in terms of the State. And my

impression is that that was a long time ago, and a lot has happened in New York and a lot has happened outside of New York since this subject was last looked at. And it seems to me, and it seemed to our Commissioners that all that has happened over the past ten or fifteen years since this subject was looked at extensively in the State, that demand of all of those who serve the State at the present time, that we reexamine and change where we should make change and reaffirm if we should reaffirm what shouldn't be changed. And I, for one, am saddened at times when some refuse even to look at the subject of change, because life without change is no life from my perspective. And we may disagree about the form of change, but once we lose the willingness and commitment to look at ourselves and see if we can improve our standards, if we lose that, it seems to me that representative democracy in this country is not going to last over the long haul. So, it has been a great strength of our society here in New York and elsewhere that we have been willing to look at ourselves. Every year, as the Dean of a law

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school, I am being implored by the American Bar Association, New York State Department of Education, by the legal community, by so many other community to look at our curriculum, to change our curriculum, to make improvements that reflect the demands and the pressures and the values of our society. So, I feel very strongly about this project. I feel very strongly about the need for change in this area. I recognize the tension between over-regulation that can drive people away from government about which you have commented and, at the same time, I recognize the need for change in standards. And our Commission has endeavored to try to balance the different considerations and lay it out for comments such as we are receiving today. I was heartened myself this morning when the head of the School Boards Association that represents, he said that five thousand of the ten thousand elected officials in local government in New York State, and where he said on behalf of his association that a lot of these kinds of standards were desirable, worthwhile and would be helpful in terms much enhancing confidence in

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government. So I have been very much encouraged in these hearings and prior to today by the willingness of many groups to reexamine and to support where they can, change.

I wanted to make that statement at the outset of the proceedings this afternoon because I have made similar statements this morning. And you and others who are here this afternoon were not present this morning, and I feel an obligation to say what I just said. And now, I would like to recognize Commissioner Magavern to see if he has any particular questions he would like to put to you.

COMMISSIONER MAGAVERN: Mr. Newman, I would like to a take you up on your suggestion that we add to the proposed code or proposed act a form of prohibited conflict. In your statement submitted, you very accurately described the problem that if you try to define "interest" too narrowly and then make it workable, you then end up with a maze of exceptions, and the like. What we have done, and you recognize this in your testimony, is provide a very broad form of disclosure for even

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the most indirect types of conflict of interest, 1 2 kinds that are captured in any way by the present Article 18. And we provided for 3 4 disclosure and recusal. If we add to that a form of prohibited conflict, that presumably 5 would only apply to the more direct types of 6 conflict. The problem, then, is how do we 7 define that type of conflict that should be 8 absolutely prohibited, albeit with some kind of 9 a waiver provision. I wonder if you have any 10 thoughts on how we might define it. Article 18 11 as it presently defines "interest" seems 12 inadequate because it doesn't cover the 13 situation, for example, of a client of your firm 14 may have an interest in a contracts which is not 15 16 attributed to you as an attorney sitting on a And yet, that is an obvious source of 17 board. potential favoritism. Would you just -- would 18 you call that a prohibited conflict or wouldn't 19 you, and where would you draw the line? 20 MR. NEWMAN: Well, I agree with you that the type of conflict that should be 22 prohibited would not be as broad as the type of conflict that should be disclosed under the

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draft or the type of interest that you should be under an obligation not to promote by official I would start with the prohibition that action. is contained in the Public Officers Law prohibiting the sale of goods or services by the official or firm that he has more than X percent of stock ownership interest in to the government agency for which he works. And if the person is a member of the governing body or the chief executive of the municipality, then that would be through the municipality at all. Massachusetts has done this, and I have not had a chance to study this particular aspect of the Massachusetts law in detail, but I would suggest that the Commission might do that. Section 20 of chapter 268A of the Massachusetts statute states that the municipal official is not allowed to have a financial interest, direct or indirect in a contract in which the city or town is an interested party. And then, there are some exceptions. You do run into some of the same difficulty there as you have in our currently law, with the general principle and then exceptions either way to the rule. I think

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the most obvious conflicts where it would be apparent to any outside person looking at it that this is a kind of thing where a public official is enriching himself or herself through his public office should be prohibited. COMMISSIONER MAGAVERN: Then you would stop short of the attribution, then; taje the words a "pecuniary benefit" directly to the

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official, him or herself, but if it is a financial benefit to a close relative or a corporation which the official owns some -- I'll leave out the corporation -- a corporation which has some financial relationship to the official, then a disclosure and abstention would be enough?

Here, I feel you have to 16 MR. NEWMAN: make a distinction between a person who you can 17 fairly consider to be a full-time public servant 18 and person whom you cannot fairly consider to be 19 In New York City, for example, where the 20 that. persons covered by the financial disclosure laws 21 tend to have high enough salaries so that any 22 other income they make can be considered to be 23 on the side, it is appropriate and it is done to 24

prohibit doing business with the municipality altogether. And that may be true in other municipalities when applied to agency heads, for instance, chief executive officers. I think it would also be appropriate when you are talking about members of governing bodies. And the reason for this is that if you were talking about a small municipality where the person may only be getting five thousand dollars a year or even less to, in effect, serve his community, there will be enough other opportunities serving -- if he is a county employee to serve townships, if he is a township employee to serve other nearby townships, and so forth. So that you are not seriously interfering with the person's ability to earn a living by restricting the person's ability to do business with his municipality.

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19COMMISSIONER MAGAVERN: Okay. Thanks20very much.

MS. SCHACHNER: In your statement, you talk about perhaps a good compromise would be barring elected paid municipal officials from holding paid political party office. I wonder

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1	if you would address that for a few minutes. We
2	had a similar prohibition in our earlier draft
3	and, as you know, it has been taken out of the
4	currently draft. What has been your experience
5	and research into that point?
б	MR. NEWMAN: Well, never having been a
7	party or public official, I can't say I have a
8	great deal of experience on the subject. In New
9	York City and in some of the larger suburban
10	counties, Nassau for example, there is one-party
11	domination of government, there is a great deal
12	of patronage, and the party official, the county
13	leader is able to use his ability to determine
14	who gets appointed to many positions within
15	government to influence governmental decisions.
16	He may not do it directly; it's simply that the
17	people know that this county leader has a lot of
18	power over who gets what jobs and who gets
19	nominated to what offices that the county leader
20	has influence over public officials. It is
21	important to reduce that concentration of power.
22	I really don't know what party officials outside
23	the city are paid and what ones are not. The
24	the reason I suggest that compromise is that it
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is the party officials who do get paid who are most likely to wield influence to the extent that the law must deal with the problem. Ι noticed recently in the new Suffolk County code of ethics, they have enacted a proposal that agency heads within the county government may not serve as county party leaders. Well, I didn't address that in my written testimony. I think that is also a good idea because it isn't really an ethics issue; it is more of a civil service issue. But I think it is a good idea to break the patronage connection between the involvement in partisan politics and the executive working positions in government.

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MS. MCNULTY: Mr. Newman, you suggest that the revolving door provisions should be extended from the particular matter focus it has taken to provide that a former employee can't make any appearance before his own agancy for least a year after leaving office. Could you please put on the record the rationale behind that recommendation?

MR. NEWMAN: The rationale for the revolving door prohibition such as we now have

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in the State ethics law, are that if a person knows that upon leaving government he will go to work for corporations or other businesses that appear before and lobby his government agency, his decisions while still in government may consciously or subconsciously be skewed by the desire to curry favor with and make a good impression on the future employer. Also, the particular provision relating to appearances before the former agency arises from the fact that the former employee, especially during that first year, is going to know that and have close personal relationships with the people who are still in this agency and will be making decisions on his client's application. These people will often be the former employee's former subordinates. And allowing the appearances offers the appearance, if not the reality, that is former official's client will gets special treatment.

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MS. MCNULtY: But you are suggesting that this particular clause be included in our revolving door section in addition to the ban particular matter type of appearances that we

1	already have; is that correct?
2	MR. NEWMAN: Yes. Now, seeing that
3	your statute is meant to be a minimum standard
4	and we are not going to oppose it if that
5	particular clause it is not there, but we would
б	prefer that it be there.
7	CHAIRMAN FEERICK: Thank you very
8	much, Mr. Newman. I appreciate all the time you
9	have given to this subject and all the
10	assistance you have given to us in the past.
11	Our next two witnesses are Edward
12	Farrell, Executive Director of New York State
13	Conference of Mayors and Other Municipal
14	Officials, and Mayor William Kelly of the
15	Village of Ashoken and President of the New York
16	Comference of Mayors and Other Public Officials.
17	I would note for the record that our Commission
18	and staff staff of the Commission has been in
19	extensive communication with the Mayors'
20	Conference since the beginning of this work. We
21	have been the recipient of many suggestions and
22	comments that have been helpful to us in the
23	development of the document that we are drawing
24	comments on today. I would also note that

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Commissioner Magavern, Judge Meyer who is 1 another Commissioner, and myself, along with 2 staff members had the opportunity which we 3 appreciated to appear before the Executive 4 Committee of the New York State Conference of 5 Mayors and other municipal officials at which 6 meeting we received additional comments and have 7 8 reflected. And I believe, many of the comments we have received are in the revised draft. Ι 9 would just like that to be included in the 10 record. Mr. Farrell? 11 MR. FARRELL: Mayor Kelly will lead 12 off. 13 MAYOR KELLY: Dean Feerick and 14 Commissioner Magavern, it is a pleasure again to 15 16 see you, albeit under these circumstances. 17 COMMISSIONER MAGAVERN: You should say 18 "especially inder these dircumstances. I did have lunch with Judge Meyer, and he is is 19 entrenched and as intransigent as some of the 20 21 other members of the Commission. CHAIRMAN FEERICK: Willing to listen, 22 23 I would note and willing to be educated. 24 ME. KELLY: A very pleasant

conversation at lunch.

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The New York Conference of Mayors and Other Municipal Officials involves more than just Mayors. We did a little run this morning on the Mayors alone. And of the six hundred plus mayors in the State of New York, thirty-five percent of them make \$1,500 or less, with over fifty receiving no salary. What the trustees and various other volunteers get in local government is something we didn't check. We probably have of the numbers. We also are probably responsible for 2,700 elected officials in the state. And that is a function of how many councilmen a city has and how many trustees a village has. So, it is an estimate, but a fair number of elected officials. Bearing that in mind, let me sat good afternoon again. The New York Conference of Mayors and Other Municipal Officials appreciates this opportunity to testify. And it is is also very appreciative of your consideration of our previous testimony. You have done quite a marvelous job in addressing some of the more critical areas that we and others have raised. In saying that, I

1	don't mean to imply that the Conference of
2	Mayors is still happy with the revised bill. I
3	hope my comments will lead you to a further
4	revision and reconsideration of what your
5	mission is all about.
б	It is forgotten that the
7	Constitutional Convention some two hundred years
8	ago, Benjamin Franklin made the motion that all
9	top government officials serve at no pay. This
10	motion was seconded by the New Yorker Alexander
11	Hamilton. And the vote taken on that motion
12	ended in the motion being tabled. Presumably,
13	the motion could still come up. But the
14	important message is that from the early days of
15	this republic we have seriously and actually
16	considered the importance of our volunteer
17	government official. And if any changes be
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	government official. And if any changes be
18	government official. And if any changes be considered and I agree with your comments on
18 19	government official. And if any changes be considered and I agree with your comments on change it should be to return to this goal of
18 19 20	government official. And if any changes be considered and I agree with your comments on change it should be to return to this goal of volunteerism. Your revised proposal about which
18 19 20 21	government official. And if any changes be considered and I agree with your comments on change it should be to return to this goal of volunteerism. Your revised proposal about which we testify this afternoon does nothing to
18 19 20 21 22	government official. And if any changes be considered and I agree with your comments on change it should be to return to this goal of volunteerism. Your revised proposal about which we testify this afternoon does nothing to encourage this noble ideal. To be in consonance

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volunteer government officials from disclosure, filing and other onerous requirements you put Think what a message you could send forth. forth to the people and the legislature and, incidentally, to the taxpayers if you exempted and encouraged non salaried, volunteer employees from local government, school boards and other governmental bodies. You would be sending a message not only in the cause of ethical government, but in the cause of volunteer government, one of the highest messages you can send, and one that is not antithetical to your I implore you to reconsider your Act, purpose. and consider the unpaid volunteer. In the meantime, well address some of the other problem Ned Farrell, my Executive Director, will areas. follow with his testimony and then, I think we will take whatever questions you have for us. But I would like to raise an area that I have raised before. That is, your confusion over the nature and function of political parties. your proposed ethics committee cannot contain, "more than three three members of the same political party." What party are you talking

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In the the 31 vllages of Suffolk County about? only two, Lyndenhurst and Patchogue have Republican and Democratic lines. In Nassau County only three vllages, Freeport, Hempstead and Valley Stream run candidates on the Republican or Democratic line, while the other sixty-one vllages run their candidates on citizens' party lines. The school board candidates run on no party lines. What parties do the school boards or the villages consider when they appoint members to your proposed ethics committee; Republican, Democratic, Save Our Shores, Taxpayer, Independent, Citizens, Preservation, Conservation, and so on. These are all names that come to mind. My village board could appoint three members from the Taxpayers Party, one member from the New Preservation Party, and one member from the Save Our Shores Party, only to find out that each of those people are either all registered Democrats or all registered Republicans or all registered Independent. Alternatively,, do we have to inject party politics into the appointment process where it has not intruded before? The

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partiy lines in the vllages in Nassau County have only surfaced in the last ten years. Nassau and Suffolk Counties are the two largest Counties in the State of New York outside of New York City. And out of a total of 95 villages, you have five with party lines. How are you going to distinguish the case of school board members?

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One other area, if you will forgive me, is that local government has sometimes been described as "petty." This may be true, but if it is, it is because we are passionately interested and believe in the cause of our communities and local government. Our village board was sued for fifteen dollars in small claims court. We offered the Plaintiff the fifteen dollars from our own pockets. But he said no, there was a principle involved, and the offer was refused. To go to small claims court as an incorporated village requires a lawyer under the law. Do any of you know a lawyer who will work for less than fifteen dollars an hour? We could not give taxpayer's money away in settlement of a frivolous and, as it turned out,

an illegal claim without opening us up to the 1 2 countercharge of wasting the taxpayers' money. My point is that your ethics committee is also a 3 lawyer's dream. If my local ethics committee 4 decides against a claimant, he has the right to 5 appeal to the State Ethics Commission. Who will 6 defend the village position if that is what is 7 A lawyer paid for by the village 8 upheld? taxpayers? If the State rules against the 9 Plaintiff, he has the right of an Article 78 10 proceeding and then recourse to the Appellate 11 Division and then, ultimately, to the Court of 12 Appeals. Presumably, the local ethics committee 13 will be represented all throughout this 14 procedure. Who pays? 15 In conclusion, for the most part, the 16 revised law imposes, at least on local 17 government, confusion and costs that are simply 18 intolerable. I can only direct you to Section 19 5, Transactional Disclosure And Recusal, which 20 will lead to a paralysis of local government, as 21 22 I read that. A lawsuit which benefits some 23 village residents more that others would require separate disclosure. A budget vote which 24

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1	affects all village residents, the mayor
2	included, would require separate disclosure.
3	Approval of vouchers which would also require a
4	separate disclosure. How far do we want to go
5	with this, and why would you paralyze local
б	government?
7	I will let Ed address some other
8	concerns that the Conference has.
9	CHAIRMAN FEERICK: Thank you, Mayor
10	Kelly.
11	MR. FARRELL: It is my pleasure on
12	behalf of the entire Conference of Mayors to
13	present some testimony on some of the other
14	points that Mayor Kelly did not touch upon. I
15	will leave my testimony with you for the record,
16	and if it's all right, I would just summarize a
17	few of the more salient points.
18	CHAIRMAN FEERICK: That would be
19	included in the record.
20	MR. FARRELL: I also want to thank you
21	for taking the time to appear before us with our
22	Executive Committee last October with
23	Commissioner Magavern and Judge Meyer as well as
24	Commissioner Schachner. I think that was a very

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good dialogue, and this revised draft does reflect that there was a lot of give and take, and many of the points that we did raise were taken out. I would like to note that just a few of the changes we did recommend, the elimination of unpaid elected officials such as our Planning Board and our Zoning Board people are no longer covered by the Act. Paid officials, public officials, may now hold political office and public office, and we think that is Administrative Law Judge good provisions say say a good provision. The Revision of the gifts provisions to the seventy-five dollars threshhold we think also makes a lot of sense. And the limitation of the appellate authority of local boards, we believe also is a step in the right direction. There are, however, certain basic problems that still remain, probably the most important of which is -- there was just a little over a year ago when the legislature acted on this particular subject matter. And at that point there was a determination on the part of the legislature and the bill that was signed

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by the Governor that fifty thousand population threshhold really was a reasonable standard to apply in areas such as this. That bill has been on the books a very short time, and we have not seen any indication or are aware of problems that would cause the legislature to come back and rethink that threshhold criteria. We think it was discussed amply at the time, and the legislators did act, which does not mean that at some point in the future that should not take a second look. One thing also that concerns us, though, is that when the legislature did act as it relates to community of fifty thousand population or higher which, by and large, are mostly full-time paid elected officials, that the standards that were set in the bill were standards that communities could opt in, or adopt their own standards. But there was not a requirement that the standards that the local government adopted be as strict as what was in the the Statewide bill. The proposal that you have put before us at this point goes entirely in the opposite direction and applies predominantly to officials who are not paid

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pusblic officials as a full time occupation but are, in many cases, volunteers, as Mayor Kelly had alluded to, or do it, in essence, as a public service because their remuneration is so small. To require a higher standard for these individuals than the legislature has put in place for the full-time elected officials, we don't think makes sense. And urge you to take a second look at that provision of the bill.

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One other that we want to point out is that under current law, the Article 18 provisions as it relates to disclosure, those forms and that information is left with the local ethics board. The way we read your draft provision is that the disclosure forms required under your proposal would, in fact, be subject to freedom of information requests. And whether or not there is a conflict or potential conflict as would apply under current law, the general information which may not involve any conflict at all, and probably would not involve any conflict, would be available just to the public for curiosity's sake. We think that there should be certainly disclosure in instances

where there is a potential conflict as is required under current law. But we think that the provision, if extended under your proposal, will have the effect of persuading qualified people in the vast majority of the communities that we are talking about to take a serious consideration as to whether they choose to seek public office. And I think that we have mentioned this type of effect in the past, and I think it is a very real effects, too. If only thirty-five percent of the elected mayors in New York State are making \$1,500 or less, that in essence, you have people who are really are providing community service. The extent to which they choose to disclose interest, either their own or their spouse's or immediate members of the family, we think will cause some qualified people to leave public service. And I am not sure that that is the goal that any of us are after.

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Finally, I just want to make a point as relates to the county ethics boards and the provision that if a local government chooses not to establish its own ethics boards, that the

county ethics board would apply. In the instances where the county chose to opt into a standard that was higher than that in your bill, that standard would therefore be imposed on the locality within the county. We think that some of the smaller jurisdictions may choose not to opt into the local ethics board provisions strictly on a monetary consideration. We have many small governments in New York. Just as an aside, we have over 525 members. Over fifty percent of those are populations of two thousand or less. So, there are many, many small governments in New York State and we always have to keep that in mind. If, in fact, the county board does become the local governing ethics panel, we think that the standard that the local government is at as opposed to what could be a more strict standard should be applied, and we would urge you to take that into consideration. In summary, I just want to reiterate

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that having had the opportunity to work with elected officials throughout New York State, I found the quality of dedication, competence and integrity to be of the highest level. I do

think that we often lose sight of the sixteen hundred general purpose governments in New York. There is a general consideration to think of the larger, be its either city, town or village, because those are the ones that are in the print more, and you tend to think of them when you think of government. But there are many dedicated people out there serving for little or no remuneration as a public service. And I think that whatever proposal finally comes forth from these hearings, that serious consideration be given to doing things that will encourage those people to remain in public service.

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CHAIRMAN FEERICK: Thank you very much, Mr. Farrell. I would just note that we certainly share that the concerns of your Conference with respect to not impeding participation and supporting the participation; that, indeed, all of the Commissioners serve as volunteers and citizens. And we are very sensitive to that point of view. And that sensitivity has played a major role in our work to date. And I can assure you that in our final recommendations we will becoming back again and

again to everything we recommended and measuring it on a scale, so to speak, where that is a very high value, and trying to balance it against other values. So, I would say just to fill out the record, again, I noted this this morning, that our Commission, as you know, was created in 1987 by the Governor and was funded by the Legislature in April '87 and refunded in April of '88, and we were given a mandate as a Maulen Act Commission probably larger than the mandate of any Commission in the history of this State under the Maulen Act. I have looked at all the charters of Maulen Act Commissions going back to 1907, and we are Commission #54 in terms of the history of the Maulen Act Commissions. And I would reflect my own view that no Commission has had a more difficult, more broader mandate, certainly, than our Maulen Act Commission. And the Executive Order creating our Commission specifically directed us to look at the subject of government integrity in general in both the State agencies as well as the political subdivisions of the state. And I was very much mindful of my own limitations as one person, so

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I spent all of last summer, the summer of '87 along with two members of our staff going to communities -- have different communities around the State and all parts of the State. And we have a beautiful State. There is no disagreement on not only the beauty of the State, but the quality, the excellent quality of the many public servants that serve us in all parts of the State. And, therefore, we don't enter this area with any other view. And we are fortunate to have so many people of dedication and integrity serving New York State. And many are never compensated for it. But, as we went through our own visits last summer in small communities and larger communities, many people suggested to our Commission that it would be helpful to them in monitoring their own affairs in local government, if we were able to provide some guidance and some education on it. So that when we started this particular project, we did so not with the point of view that there was a problem in terms of lack of integrity. Quite the contrary; we were heartened by people in the community wanting to get some help in dealing

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with different kinds of conflict of interest situations that they were not getting sufficient guidance in connection with under their existing codes of ethics, under the General Municipal Law of the state. And I have pads of notes of all my meetings with these local people. And I asked them, "Give me examples of the kind of conflicts of interest that you are not getting any guidance on." And those notes remain in my own personal files. But it was the sort of background that led us into this subject. The other concern as Chairman of the

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Commission that I had was that those who work at our Commission on this subject be the most knowledgeable people within our own group in terms of the concerns of local government. Judge Meyer, as you well know, had a steep history as a county leader, as a precinct leader, as a district leader, as a distinguished jurist in Nassau County. And I dare say that we have not had -- in certainly my generation at the Bar, a more able member of the legal profession. So he became intimately involved in this project. Commissioner Magavern, of the

other Party -- Judge Meyer is a member of the Democratic and Commissioner Magavern is a a distinguished member of the Republican party -has had a similar kind of background in local government in Buffalo and Erie County, and is constantly drawn on to represent and assist local government in his area. Our special counsel Tom Schwartz who became another important member of this project was a Mayor of a small community in Ocean Beach, Fire Island, who was very much involved in the formulation of a code of ethics for his community. And then Mark Davies, a staff member who worked full time on this project had been a district leader in Westchester County and very much involved in local government. So, we put together ourselves in terms of the process the best we had within the Commission. And then we reached out to get all of the assistance we could from your association, from the other associations, from all of the groups that have testified here today plus many others. So, we have been about this over a year and a half wanting very much to protect the important values that we all would

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agree with; participation, volunteer activity 1 and, at the same time, the interest of the 2 public. And the interest of the public -- part 3 of the interest of the public is to see that 4 those of us who serve the public express through 5 6 standards that are appropriate and that are 7 realistic the fact that we are a society of great value, which we are. So, that is what we 8 have been about as a Commission. And I can 9 assure you that particularly the Commissioners 10 who are volunteers don't have any less concern 11 than your Conference about encouraging and 12 protecting citizen activity in government. 13 14 With that, I will ask Commissioner 15 Magavern if he has any questions. After some of 16 COMMISSIONER MAGAVERN: the eloquence we have just heard, it is almost 17 embarrassing for me to get to some of these 18 little, picky argumentative little details. 19 Forgive me. But, let me start, though, with one 20 guestion we have heard a lot about today. 21 And that is the role of a county board of ethics as 22 23 substitute for a city, town or village board of 24ethics when the city, town or village chooses

not to creates one. Present law Article 18 already provides for such a mechanism. It does not mean it is good or that we ought to preserve it. But it has been criticized, I think, by both of you this morning and by others this afternoon. And my question is: have you had any adverse experience under present law? Are there examples where that present mechanism has proved to be disruptive or unsatisfactory?

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MR. FARRELL: I don't have any examples of the top of my head. But that is something we could look at and get back to you at a future date if we could provide those for illustrative purposes.

MR. KELLY: Since this is a litigious society we live in, the only problems I am aware of in Suffolk County is where the complainant would go directly to the District Attorney and allege an illegal or an unethical act and involve the District Attorney in an investigation. I am aware of two such instances, both of which came to naught, but did consume an enormous amount of time. Because, as I said before, local government tends to be

sometimes called "petty." Insofar as the county thing, I would like to say because someone brought it up before, Suffolk County just passed an extremely stringent ethics law. But what happens sometimes in a legislative involvement, it is not a prohibition on county employees holding party office; it is a prohibition on some county employees. That law makes express exemption for the county clerk who happens to be the town leader in Huntington. I don't think the vllages want to be governed by the town or the county board of ethics that has regulations that favor their friends and punish their enemies, even though they be more stringent. And I would also say, most vllages, if we had to, would probably do our own ethics board. We are strong and firm believers in home rule. And because of the confusion and the nature of the parties and who can serve on this ethics board, I think we would do everything possible to control it locally. It does incur some costs on us that are not paid for by the State who mandates it. But we would prefer that as opposed to being subjected to something that

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could become a political football. Because you, on the county level at least, would have Republicans and Democrats on the board, whereas in most cases that has no bearing on the villages.

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COMMISSIONER MAGAVERN: One more question, if I may. Mayor Kelly expressed criticizm of Section 5 of the draft act regarding transactional disclosure. And it may be that that section needs further tightening up. I, in looking at it at this moment, I don't see why it is troublesome. I don't see that a normal budget vote would require any kind of disclosure unless it included an appropriation say for a contract for say a member of the governing body's family. In that case, you would probably want disclosure.

MR. KELLY: I would agree with that. But I also read this thing very carefully. I read it six or seven times. And it says that any municipal official that is going to vote on something which would provide a pecuniary or material benefit to himself or herself or to any related person shall not participate. That

certainly if I read it, a budget in many cases 1 is not a benefit; it is a negative which causes 2 my taxes to go up. But, occasionally, taxes do 3 go down. I read that and say, well, gee, I have to disclose that this might affect my pocketbook, and therefore, I would not vote. Ι go over to Section 5 on page eighteen and it says I could do that; I could vote because it impacts everybody equally or relatively equally throughout the village. All I have to do is disclose it. I am contemplating two lawsuits or involved in two lawsuits. One would benefit a portion of the village more than it would the 13 other. I live in the portion that it would I am not the only one, but I am not benefit. the whole village. I would have to disclose It would tend to read to me -- and I have that. read it several times, and I see no reason why it wouldn't disclose and have a standard form for every village mayor and trustee that this impacts me and it impacts everybody else in the village, and I therefore disclose that I have an interest it. And it just, in my view, clogs up government. I don't think it's well written.

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It is not clear enough. I know the things that 1 you are trying to get at. But if I read it as a 2 3 layman, I would say in order to not go and be penalized by some ethics committee and pay a 4 fine, I would disclose every vote I do. 5 COMMISSIONER MAGAVERN: I think you 6 made a good point. I think we have to look at 7 this again. I am still looking for drafting 8 guidance, but is not fair to put to you today. 9 MR. KELLY: I don't want to help you 10 11 draft anything more here. COMMISSIONER MAGAVERN: You have done 12 13 a pretty good job so far. You have helped us 14 take away all of those things you objected to most strenuously. Maybe you ought to Keep the 15 16 process going. 17 MR. KELLY: I think -- and please don't misunderstand me, that --18 COMMISSIONER MAGAVERN: 19 One more meeting with you, Mayor Kelly, and you are going 20 21 to have won the whole ball game. 22 MR. KELLY: Well, hopefully, that 23 won't occur before the legislature. But I sumpathetic to your goals and aims, and I have 24

praised you on disclosure before, and I think that is important. My perspective comes from a very small village, seven hundred people, and being involved in lots and lots of things. Everybody you mentioned so far was a lawyer, as I have said before. But no layman -- and when I read this before, there were parts of this thing that I had to have a lawyer interpret to me, particularly about partnerships. And I didn't know what they meant by that. I thought they meant a limited oil and gas partnership. But they are talking about the lawyer and his partner. I couldn't understand it. And I have two degrees so I am not that dumb. I think it should be crisp and maybe tightened up a little. COMMISSIONER MAGAVERN: Mayor Kelly, the last word on that is: can you tell us what the present Article 18 means?

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MR. KELLY: I distribute Article 18 and my own ethics code to every village employee when they are appointed or elected. It seems very clear although people argue about it. One guy was going to vote on something which revolved around a bussiness his son ran. I

1	think that Article 18 is very clear on that.
2	That is a prohibited conflict of interest; no
3	big problem about that. The argument
4	COMMISSIONER MAGAVERN: You are one up
5	on me.
6	CHAIRMAN FEERICK: Anything further?
7	Thank you very much.
8	Our final witness, and we will then
9	open the hearing to anybody, any citizen here or
10	anybody else here who would like to add to the
11	record.
12	Page Bigelow. I would just note for
13	the record that our next witness is a member of
14	the senior staff of the Institute of Public
15	Administration who has provided assistance to
16	both our Commission and to the sovereign
17	Commission. And she has been steeped in the
18	area of conflict of interest codes for a number
19	of years, particularly as a very able member of
20	the National Municipal League and its projects
21	with reference to assisting State and local
22	governments in this area. It is nice to have
23	you here.
24	MS. BIGELOW: Well, it is nice to be

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1	here. And I appreciate your not saying how many
2	years.
3	CHAIRMAN FEERICK: I would never say
4	that.
5	MS. BGELOW: It has been my
6	pleasure to watch this draft as it developed and
7	progressed in the past year. Much of it is very
8	good. It is far better crafted than the State
9	Ethics in Government Act of 1987, both in making
10	the restrictions appropriate to those it covers,
11	and providing penalties with true deterrent
12	value. And I think you should be congratulated
13	on its progress. I will admit to a certain
14	amount of prejudice, having acted as a
15	consultant for you in some stages of this. I do
16	have a number of comments about it, some of
17	which involve changes made during the last two
18	drafts.
19	I have got some questions about
20	exempting all unpaid officials across the board
21	without any reference to their level of
22	authority or discretionary powers. I think it
23	is possible for an official to find that it
24	could be an unscrupulous person to find that

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it is financially beneficial to not be paid in terms of some of the things that they could do. One remedy for this would be to have every year the governing body, or the mayor and the governing body -- simply certify to whatever ethics board covers the local government those unpaid officials who ought to be covered by the full ethics law, including financial disclosure and limitations on appearances. I think it is possible that you could have local governments that would produce a Commission or some kind of body where you would give them substantial In New York City, it happens that it is power. a State Commission. But the municipal Assistance Corporation, I don't think Felix Rohatyn gets paid. I am not sure that I think it would be a good idea for him to be able to appear before any other agency of the city on behalf of a client, both in terms of how it looks and in terms of the kind of influence he would have as Chairman of the Municipal Assistance Corp. And you could have those kinds of situations. And I think that can be taken care of fairly easily without making everyone

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who isn't paid subject to it. The fact that you 1 2 are not paid doesn't mean you don't have power. In addition, the post employment 3 provision is fine as it goes. I don't think it 4 goes quite far enough. As it currently stands, 5 so long as you don't appear on a particular 6 matter that you dealt with personally, the day 7 after you leave government, you can go back 8 before the agency that you came from and 9 10 represent a client. You know the personalities who are involved that you are dealing with then. 11 12 They, in fact, may be contacting you because 13 somehow or other everybody I know who leaves government ends up talking to the offices they 14 left a lot for the first couple months because 15 16 they need help and information with the things still hanging on from before, which means you 17 18 really have a continuing personal relationship 19 with the people with whom you were there 20 representing clients before. I would recommend a cooling off period. They tend to run in 21 States from six months to two years. 22 I suspect for most local governments that six months would 23 be sufficient. But it does mean that you have 24

had some time for a public official or public employee to sort of clean up those things that they were doing when they left, and finish off the sort of regular consultation with their successors before their going back. And, in addition to everything else, one of the problems with their going back immediately is that the public looks at this, and they do not believe in the equity of the process. If you were the Chairman of the Planning Commission and you go back representing a client before the Planning Commission at their next meeting, even though this wasn't an issue that's before them, everyone says, "Aha, he has has the fix in." And the truth is he probably doesn't. But it is going to be real hard to convince an awful lot of people that his influence, having just been chairman, isn't so strong that he is not able to arrange things for a client.

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The provision in Section 9 which requires the disclosure of campaign contributions of more than one hundred dollars by applicants for various discretionary actions by the government, I think may be more

burdensome than is really worthwhile, primarily because the threshhold is so low, and also because it is very unclear when a contribution is to a candidate. In many local elections, you don't have candidate committees; you have multi-candidate committees, slate committees. Sometimes, you even have party committees. And the question is at what point to you trip the one hundred dollar threshhold. Is it the total contribution to a multi-candidate committee? IS it only the contribution divided by the number of candidates that the committee is for? What if you give one hundred dollars to a multi-candidate committee but you give it for a candidate who loses, does it count for those who win, too? Where do political party contributions fit into this, because we do, indeed, have local governments which do have partisan elections in New York State. I think some of those questions need to be dealt with if you are doing to continue to have this in. And quite frankly, I would increase the threshhold. I one hundred dollars, even in most local governments, is still pretty small. I don't

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think you want to make this kind of reporting so burdensome that, for instance, people -- I mean this will cover people who may contract with local government. We have a major problem in this State that a lot of companies and a lot of firms don't want to contract with government in New York State, period. I don't think we want to decrease the pool any, because that only increases the probability of corruption. I have spent a fair amount of time in the last two months talking to the Organized Crime Task Force, and one of the things that we are in agreement on is that among the things which contributes heavily to corruption in New York State -- and it happens we were talking primarily about the construction industry -- is the lack of competition. Well, anything that is going to discourage more people from contracting with government is going to decrease competition, which sets off a whole set of reactions we really don't want. You have a copy of this, so I am not going to cover everything in it.

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My final set of comments involves the

relationship between the State Ethics Commission and local ethics boards. There are no parallels in any other State for the kind of oversight and appeals processes that are provided for in this law. For instance, section 19 subsection 5 provides that a municipal or regional ethics board can refer any matters under its jurisdiction to the State Board. I think this can be interpreted as an open invitation that if the matter is too difficult or it is uncomfortable or too hot, you just don't deal with it; you keep sort of sending it on. It is sort of like initiative and referendum in California in the California State legislature. Because it is easy to get things on the ballot, they don't deal with the tough questions. They figure that when it gets to important things like insurance rates and reapportionment and campaign finance, let it go on the ballot and we are not going not deal with it because it is too big a liability. I don't think you want to put your local ethics boards in a position where they can opt out of dealing. I think that you can allow them to ask the State Commission for

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You can ask them to have the State advice. Commission relate whatever information they have about how other jurisdictions have dealt with this kind of problem. But, I think ultimately, it is important that the local boards be accountable for making the decisions and actually administering the law that they are supposed to administer. In addition to everything else, there is the risk of a real injustice being done to the individuals involved with the matter, because you are asking the State Board to rule on a matter covered by a law that is different from that that they normally administer. It is involving a situation with which they will probably have little if any familiarity, and where they have no particular knowledge of the precedents set before with prior decisions and prior advisory opinions. And I really don't think that it is a good idea. I think similar questions can be raised about the State Commission's exclusive authority to grant waivers with regard to contracts and refusal. These, too, are going to be granted or refused by a Commission which is unfamiliar with

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the situation in which they are being requested and unfamiliar with the specific legal provisions involved.

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Beyond that, there is the question of the Commission's ability to act in a timely manner. If they operate the way most State Commissions do, they will meet once a month, except maybe during the summer where they may only meet once or not at all. Generally, the agenda will be sets seven to ten days prior to the meeting and the materials will be sent out prior to that. Only in gravest emergencies are things added to the agenda, so you are talking about the possibility that it may be as much as two months from the time that the question comes up to the time you get a ruling from the State Ethics Commission. This can prevent the local government from taking action. It can prevent them from the doing any number of things that may be real emergencies. But also slows down the contracting process even further than it already is. And you hear constant complaints that it takes long time to get a contract through. Well, if you have to have an approval

from the State to get the contract through, and you are going to have to wait two months for that, if you are waiting for snow removal your problem has probably has disappeared. But a lot of other problems have appeared instead.

It seems to me that if it is felt that some kind of oversight is needed and that there is going to undue pressure applied to the ethics boards, that perhaps what you want to look at is a post review process where you require that if a waiver is granted by a local ethics board within 48 hours, they must file with the State Commission a written explanation of the action that was taken and why it was taken, and that the State Commission can then review and comment on it. And perhaps even the State Commission could prohibit any further waivers involving the same persons. And that should inspire sufficient caution so that you are not going to simply grant waivers because it is nice or favorable or it looks like a good idea that it is going to be important to have it. I think I would also question the mechanism providing for an appeal of a local ethics board decision at

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the State Commission. Not only is there no similar provision in any other state law, I think it really unacceptably undermines the authority of the local boards. It appears that the only people who can appeal are those told that they can't do something. It doesn't look like the ethics -- I mean there is no one else to appeal except the person that is asked to do something. If that person feels that the local law has been misapplied, he has recourse to the And it doesn't seem wise to establish a courts. policy where local government has even less authority than it currently has. It seems to me that this undermines all of the principles of home rule and further decreases the incentives of local ethics boards to establish strong, clear standards of conduct.

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18 I think local government is further 19 undermined by Section 22 subsection 4, saying 20 that the State Ethics Commission may, but it is 21 not required to -- it does not say that it is 22 required to. It simply states that it may refer 23 complaints against a municipal officer or 24 amployee to the local ethics board, except for

complaints against a member of the ethics board. I would require that they refer all complaints against municipal officers or employees to the local ethics boards with two exceptions: one of them would be complaints against a member or members of the board. And the other would be where there is a finding by the Commission that you are talking about a whistle blower who has a legitimate fear of retaliatory action being taken against him. Otherwise, you end up with -- if, then, it is a question where the State retains control because it is a whistle blower and they can initiate their own investigation and opt out. Then the people who actually made the complaints don't have to be involved. But I think if the conflict of interest provisions of this act and such local acts as may be adopted are to work properly, the responsibility for their administration and enforcement can't slide back and forth between the State and local boards. Somebody has to be accountable for it. To me, this means either they are administered and enforced by the local ethics board or by the State Ethics commission. And guite frankly, if

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it is to be the State Ethics Commission that is going to do it, you need a single law. You can't fave a plethora of laws where you have this main law as the floor and then you can documents more stringent standards tailored to what it is that you really need. I would prefer to see a greater degree of decentralization. I think its much more appropriate for New York State than the unitary model that, for instance, the State of Alabama has where the State law has everything for all local governments and everything goes to the State Ethics Commission and they make all of the rulings. But I think that no matter how you do it, you have got to have somebody accountable for enforcing this. And I simply don't think you can do it with the possibility of having things constantly slide back and forth between the State and local boards.

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20 Now, I think this has sounded fairly 21 negative, and I do want to say again that I am 22 very pleased with this law. I could not live --23 there are parts of the State ethics law that I 24 dislike sufficiently that I am not sure if I

lived in New York that I would take State 1 2 employment. And I could live with this law. CHAIRMAN FEERICK: I want to thank you 3 for participating in the hearing. I have found your comments in particular to be extremely helpful, and I hope we can draw you into continuing to assist our staff as we take this product to whatever its final conclusion is going to be. Let me ask you about some of your opening comments where, as I understood your comments, you were suggesting that some of the the exemptions we had for unpaid governmetn servants should be reconsidered. Rather than exempting them, they should be subject to some of those provisions. And I also heard you to say that there should be a cooling off period before somebody can get and be involved with the government that he or she served. MS. BIGELOW: With the agency. CHAIRMAN FEERICK: With the agency. What about the point made by the witnesses who testified before your testimony to the effect

> that our Commission needs to be very mindful of the extensive and important involvement of those

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volunteers throughout the State. And if we erect too many barriers we may be destroying volunteer activity in government. Aren't those recommendations that you made cutting against the grain of that as reflected by the earlier witnesses?

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MS. BIGELOW: Well, the recommendations that I have made when it comes to that aren't really any different than the laws in a number of states. I quess I have to disclose at this point, I have been working in this area since 1972. In 1974, the State of Washington passed a law -- it was passed under an initiative which involved very extensive financial disclosure for all elected officials, whether they were paid or unpaid. And if you vere appointed to what was at that point an elected spot, you were covered by it, and included also for some kinds kind of employees, And far more extensive than anything that is dealt with here, to the point where you revealed your clients and your customers. Only doctors and mental health practitioners didn't reveal those. And they had to fill out these great

long forms. And they said no one is ever going
to run for public office in Washington again.
Well, they have not had the problem and have not
had the problem with local government. And they
really do have contested elections with more
than one candidate for each office.

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And they have the same questions very seriously in Alabama where it is a very centralized system in Alabama, and actually guite a strict law. And it has more in the way of prohibited holdings than this does. I mean this says you recuse yourself, disclose. And in Alabama there are things that you absolutely simply cannot -- if you own a part of a company that contracts with a local government, you will either have to get rid of your holdings in the company or cannot hold public office in that local government. That is just the way the world is. And they said, oh, well, no one is ever going to run for local in Alabama. And they haven't had the problem either. I am a little bit more surprised about that one in some ways.

Hany of these provisions are not

nearly at burdensome when people actually get into being covered by them as they think they were going to be when they start. I think the financial disclosure provisions in this particular draft are very reasonable. And quite frankly, they are going to be local governments where they will really need to know more. But one of the things that a lot of people have found -- two things; one of which is you don't have all kind of people in there reading people's financial disclosure statements for recreation and because they are really dying to know what everybody has. Even for those people who have to do thinkgs like the desk audits from them, they are pretty dull tell reading, actually.

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17 The other thing is that in many places 13 where people did do some analysis of it, they 19 found that the public was really very supportive because they suddenly found out that people who 20 21 hold local office and, for that matter State 22 office, really aren't any different than most other citizens. And they are an awful lot of 23 people who have this feeling that if you hold 24

public office, that you have got a lot of money and you have a lot of realy heavy financial contacts, and that you are different somehow or other and you probably shouldn't be paid much money because you don't really need it anyway. Increasingly in this country, there is a tendency to assume that people who old government positions are somehow or other just a bit sleazy; that if they were really good people, they wouldn't be into something like that but into something respectable like real estate. And what is very interesting, in Colorado --CHAIRMAN FEERICK: Can I just ask you,

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are you saying, therefore, these kinds of standards are helpful in terms of -- I don't want to put words in your mouth, but I was not sure just what --

HS. BIGELOW: I think there are a lot of places where they have found that they are helpful in raising public estimation of people who hold public positions. In Colorado, after they had the first financial disclosure they actually got approval for a pay raise when it

was discovered that people in the Colorado Legislature actually made the same kinds of money that most other people did and weren't rich and did actually need the money they were being paid. But also, most of these provisions have not driven people out of government. And I have done this for a long time. I am getting ready to go to the conference of the Council on Governmental Ethics Laws, and one of the things that we talk about every year is that states and local governments simply haven't had the experience of having people leaving government wholesale because they are suddenly covered by an ethics law. This is a CHAIRMAN FEERICK: conference to which representatives of ethics

country belong?

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MS. BIGELOW: Yes. Also, as well, state governments, because you have a number of states where the laws are not administered by ethics commissions; they are administered by the Secretary of State or they are administered by the Attorney General, so that you end up with

commissions of the different states in the

quite a wide variety. We also end up at these 1 2 with State legislators who come as well. CHAIRMAN FEERICK: Has New York State 3 4 been an active participant in this conference? MS. BIGELOW: The Temporary Commission 5 on Lobbying has gone, and they have sometimes б had people there from the Board of Elections. 7 There is now someone from the Legislature who is 8 9 finally a member. These grew out of the National Municipal League's Ethics Conferences. 10 And as a general rule, no one from New York came 11 12 unless you asked them to be on the program. Me tended to be told that New York was unique and 13 could not benefit from the experiences of other 14 states in these areas. 15 COMMISSIONER MAGAVERN: I have one of 16 your suggestions I would like to follow up on a 17 bit, because it may prove to be useful in 13 19 resolving a difficult problem concerning 20 volunteers. That is, your suggestion that unpaid officials should be exempt, except to the 21 22 extent that they are certified by the mayor or 23 the governing body -- I take it, that would be the appointing body or the appointing officer --24

that they really should be covered. That seems to me to be something that wouldn't do a lot of damage to volunteerism because it would be worked out at the time of the appointment between the appointing authority and the appointee. I guess my guestion, if we are going to have to make a change in that respect, I think it might be acceptable. I wonder if it might not be criticized on the ground that the appointing authority is the person making the exemptions and, naturally, they are going to be appointing someone who they have a close relationship with. And the very kind of influence that you are worried about curbing is going to exist and is going to influence the decision whether to certify or not.

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17 MS. BIGELOW: Well, that is a very 18 good question. Most places I know that have that, those are the people who do it. However, 19 20 they are certifying the position; it is not the 21 And you can require that at the point person. 22 at awhich they create the position if it doesn't currently exist, it gets either added to the 23 list or it gets taken off, and that the question 24

has to be dealt with if you add powers to a 1 2 position. I don't know anyplace that has had a problem with it. I would assume that if you 3 were to have someone who were to be exempted and 4 did have substantial discretionary powers and, 5 6 particularly, if they abuse them, that you would probably end up with the press or Common Cause 7 or someone else finding out and making rather a 8 lot about it. 9 10 COMMISSIONER MAGAVERN: I quess the value of the provision focuses attention on the 11 12question early. MS. BIGELOW: And I think one of the 13 advantages of that particular provision is that 14 15 if you require annual or biannual certification 16 of those positions, that it also makes the governing body concentrate on how much power, in 17 a sense, they have delegated out. It is the 18 only way that I know of to do this where you are 1.9actually going to do it based on the level of 20 21 authority. 22 COMMISSIONER MAGAVERN: If we want to look for a good model for drafting purposes, 23

which one would we look at?

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MS. BIGELOW: I would have to look at 1 2 my files. Actually, there is a provision in the New York State law which isn't too bad where the 3 4 appointing authorities do that for Civil 5 Service, for -- because these originally started particularly to do with your professionals, your б public employees, where your taking a Civil 7 Service classification doesn't, in fact, define 8 9 your discretionary authority so that they --Well, actually, there are a number of states 10 where they have actual said, okay, define the 11 12 positions in each department which are to be 13 covered, particularly by the financial 14 disclosure provisions. That is where it gets 15 hot, as opposed to Alabama where everybody who 16 makes twenty-five thousand or more files a 17 financial disclosure whether or not they have 18 authority to do anything. 19 COMMISSIONER MAGAVERN: Thank you very 20 much. 21 MS. SCHACHNER: I have a question. 22 Perhaps on the basis of your comparative work 23 you have dealt with the situation of school 24boards asserting that either they are unique

entities insofar as they are regulated by other laws and that there will be a problem of holding dual hearings, if you will, under let's say the Education Law and the Ethics Code if there is a violation or alleged violation of one of the provisions. Can you share with us any of the experiences of some of the other states dealing with school boards?

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MS. BIGELOW: I don't have any experience dealing with the question of dual That is not even a question I have hearings. ever come up with. There are other states where school boards are covered one way or another. If you look at Mississippi these days, the State Constitution covers school boards with regard to ethics to such an extent that there are school boards that have had to resign entirely because a member of the school board can't have a spouse employed by the school board or has a financial interest in any of the financial dealings of the school boards. And the fact that the school board can buy supplies and equipment independently of local governments has -- I mean there is at least one county school board

where the entire school board was forced to 1 2 resign because of their financial connections with it. I don't know anyplace where it has 3 been a real major problem to cover the school 4 The time that it gets a little bit 5 boards. difficult -- and this, I think, has become a б problem increasingly with dual career families, 7 is if you have a member of the school board 8 whose spouse is a teacher and they have to 9 approve the new teacher contract, then you start 10 to get into questions of financial interest. 11 But I am not sure I can help you a whole lot on 12 that. 13 Thank you very 14 CHAIRMAN FEERICK: The next part of the hearing is to 15 much. provide anybody who is present in the hearing 16 room an opportunity to address the Commission on 17 the subject. Is there anybody who chooses to do 18 19 so? 20 Celia Bowers, velcome. Please have a And would you identify yourself. 21 seat. MS. BOWERS: Yes. I am Celia Bowers, 2.2 and I came here with John Whitcomb. And we are 23 representatives of the Greater Ithaca 24

Neighborhoods Association which is an association of all of the local neighborhood groups in the Town of Ithaca, New York.

I quess the aim of our presentation -we didn't know about your group earlier, and I think we are going to tell you a little about our situation in Ithaca. And this is basically an plea which opposes the Conference of Mayors' representatives plea. I think he pled very nobly for the poorly paid ethical elected official. We, however, come from a small town. And we are concerned that this new law should make it impossible for a poorly paid unethical official to line his or her own pockets at their constituents' expense. We in the Town of Ithaca have only eighteen thousand people, but we feel we have the right to have an ethical government; just as ethical a government as people who happen to live in a large municipality. We should not confuse poor ethics or trade off poor ethics with poor pay. Okay. I wanted to tell you a little about our situation in Ithaca and why we very much support a strong ethics bill. We represent concerned citizens in the

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Town of Ithaca who are afraid that the democratic process in our town is being subverted, and that serious conflicts of interest in both elected and appointed positions are jeopardizing both the will and the capacity of town officials to carry out their duties in an impartial manner for the good of those they govern.

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The Town of Ithaca is a relatively small "doughnut" of land, at no point more than a few miles wide, which surrounds the City of Ithaca. The Town has three main legislative bodies: a Town Board led by the Town Supervisor (who is also the Chairperson of the Town Board); the Planning Board, and the Board of Zoning Appeals.

The current Town Supervisor is Mr. 17 Noel Desch, who has occupied this position for 18 19 the past ten years. In 1980, Mr. Desch proposed and backed for the position of Chairperson of 20 the Planning Board Mr. Montgomery May, then part 21 owner and now, we believe, sole owner of a firm 22 known as Wheaton Sheet Metal. The fact that 23 24 this firm is one of the largest installers of

air conditioning and heating units in the Ithaca area ought at the time to have raised eyebrows. But even more disturbing to us is the fact that in 1979, Mr. Desch and Mr. May jointly purchased 122 acres of undeveloped land within the Town of This purchase, which predated Mr. May's Ithaca. appointment as Chairperson of the Planning Board, meant that the two most powerful officials in the Town of Ithaca now had a vested interest in a sizeable, jointly owned parcel of developable land. In Mr. May's case, there was a double conflict of interest, for as a major installer of plumbing and heating and air conditioning units, he was in a position to approve or disapprove projects from which he might expect to reap financial benefit. There is, in fact, some evidence that he solicited work from developers whose plans were coming before the Planning Board for approval, though it is difficult to get anyone to testify publicly to this.

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There is, however, a considerable amount of evidence suggesting that Mr. Desch and Mr. May have, over the years, made decisions

that would increase considerably the value of For example, in 1985, Town water their land. was extended to the corner of the Desch/May property. In 1986, the road linking the Desch/May property property to the major employer in the area was widened and improved over the protests of current residents. There were three residents on that road. The same year, sewer lines were extended closer to their property. In 1988, a bicycle path/recreational trail connecting their property to downtown Ithaca was approved. The cost to the local taxpayers was \$47,000,, plus matching state funds. All of these decisions were approved and voted for by Mr. Desch and Mr. May. At no time did either of them abstain from discussion of or voting on these projects, despite that fact that concerns about a potential conflict of interest had been raised as early as 1979 by the Ithaca Journal when the land was first purchased. At that time, Dssch and May denied the possibility of any conflict of interest on the grounds that they did not intend to develop the property. After his purchase of the land in 1979, however,

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Desch voted to give a tax break to developers. In 1986, the same year that the various projects mentioned above were approved, the Desch/May property was put on the market and in 1988 fifty acres were sold to a developer for \$140,000 --The whole parcel had cost Desch and May \$35,000 in 1981 -- pending development approval from the Planning Board and the Town Board.

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Desch and May have, under advisement from the Town lawyer John Barney, not been present at the particular sessions at which their own developments were being duscussed. Ιt is clear, however, that Mr. Desch's and Mr. May's votes on water, sewer, roads and bicycle paths which serve their property may have been motivated by self-interest. But, we feel that the problem goes beyond the rather obvious conflict of interest involving their own property and that the whole process of decision making has been tainted. In a very small town such as ours, development in one area inevitably encourages development in other areas. And both the Twon Supervisor and the Chairman of the Planning Board have consistently made decisions

l	favoring developers for the last eight years.
2	This undesirable situation has been
3	further exacerbated by a consistent policy of
4	obfuscation on the part of Town officials.
5	Townspeople eager to find out what is going on
6	are regularly told that the relevant information
7	is "privileged" and are made to file unecessary
8	"Freedom of Information Act" forms, which
9	unaccountably tend to get lost. Even when they
10	don't get lost, the net result of these tactics
11	is to delay access to publicly available
12	information and to discourage the public from
13	exercising its right to know. The Town
14	Supervisor has even written letters to the press
15	under other people's signatures in order to
16	promote his own views and to disparage
17	opposition candidates for local office.
18	Last Spring, a group of concerned
19	citizens on the advice of the Attorney General's
20	office, went to Mr. Benjamin Bucko, the local
21	District Attorney and asked him to investigate
22	the persistent allegations and assertions of
23	conflict of interest. His attention ws drawn to
24	the Town of Ithaca Local Law #2 which seems

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clearly to prohibit conflict of interest In our presentation to him we were situations. supported by representatives of both Common Cause and the League of Women Voters at the State and, in one case, at the National level. To our dismay, Mr. Bucko chose to have a luncheon meeting the the Town lawyer, Mr. Jophn Barney, to "clarify" what documents he needed to obtain in oder to investigate the allegations in question. As Mr. Barney has repeatedly and publicly asserted that a partnership in a develoment project between the Chairman of the Town Board and the Chairman of the Planning Board is no more a conflict of interest than is their owning their own homes in the Town of Ithaca. We were not surprised when he did nothing. Indeed, to the best of our knowledge, he did not even send the documents we presented him with to the Commission for Government Integrity, as he had promised he would do if he did not initiate prosecution himself. Members of the Commission, it is very difficult for people to stand up and publicly

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criticize their local government officials.

Local business people and contractors are 1 2 afraid, often with good reason, as I personally 3 have found, of retaliation, blackballing and 4 petty harrassment. We are law-abiding citizens of the Town of Ithaca who strongly object to 5 being deprived of our right to a fair and 6 impartial government. We have been shocked and 7 8 dismayed to discover that there is at present no mechanism whereby concerned and honorable 9 10 citizens can initiate an impartial investigation 11 of conflict of interest at the local government 12 level. We believe that government integrity at 13 all levels is essential to a free democracy and 14 we ask you to give us the tools that will allow 15 us to keep ourselves free. 16 Thank you very much. 17 CHAIRMAN FEERICK: Thank you. I would 18 just note for the record that, as I have in 19 previous hearings of the Commission, that anyone 20 whose name has been mentioned at any time during 21 the testimony of any witness has an opportunity to provide us with any statements he or she 22 23 might wish to submit to us. MS. BOWERS: I do believe that this 24

has some relevance, incidently, to your position 1 on party politics. It is of interest that in 2 the Town of Ithaca all of the officials we 3 mentioned, including the town lawyer, belong to Ą one party and that party politics were not 5 terribly active until very recently. And I do 6 think this is a major source of potential 7 trouble. Thank you very much. 8 CHAIRMAN FEERICK: Thank you. We call 9 as the next witness who wishes to make a 10 statement George Demas. I ask the witness to 11 identify himself, plesae. 12 MR. DEMAS: My name is George Demas. 13 14 I live in Rockland County. 15 CHAIRMAN FEERICK: Do you mind stating your business affiliation? 16 MR. DEMAS: I do renovation and 17 maintenance of multi-family buildings. 18 Hy name is George Demas. I live in 19 20 the Torne Valley, which is just north of New 21 York City. I was informed of this hearing today based on a complaint which I recently filed with 22 23 my local ethics commission. Because I sent a 24 copy of my complaint to this Commission, I was

contacted and invited to comment here today. I would like to publicly thank this Commission for taking the time to review my complaint and for responding to my concerns. I am pleased to be here. I am impressed that a Statewide Commission would take the time to hear the views of a non-official, a private citizen who thinks he has something to say.

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I do not, however, feel that it would be appropriate for me to go through the particular complaint I have concerning a situation in my municipality. Rather, I drove up here to Albany today to tell you how your draft Municipal Ethics Act relates to a situation like mine.

Section 2 of your draft refers to the "vigilance of local communities." I can assure you that I am vigilant. That is not always what they call it, but that's another matter. The question is, is this vigilance alone enough to -- to use your phrase -- "enhance the accountability of government to the people?" The answer is, of course, no,; at least not in a situation like mine, a situation in which one

party or group of any kind has complete control. A situation in which every single elected position in the municipality is held by the same party is a situation which tends to invite the kind of arrogant disregard for the rights of others which creates the need for such bodies as ethics commissions. While I would be the first to agree with your statement that "The assurance of ethical conduct rests primarily on the personal integrity of the elected officials," we would not all be here today if that alone would do it. In a situation in which there is some political balance, the danger is lessened by an opposition party or group which, though they may be in the minority, at least have some stature and, therefore, some ability to "keep the officials honest." The real danger lies in a situation in which no such elected opposition exists. That is the situation in which the "powers that be" can, and often do, take complete advantage of their complete control. At that point, we must look past the hoped for "integrity and commitment" of the officials and give the "vigilant community" a tool with which

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to fight back. This draft legislation is, it 1 2 seems to me, just such a tool. It is in this light that I offer the following apecific 3 comments on this draft legislation. Ą The gift limitations in Section 4 are 5 just the sort of thing we need, although I see б no reason why public officials should accept 7 gifts of any value whatsoever from those with 8 whom they deal in their official capacities. 9 As for the non-solicitation of 10 employees for participation in politicl 11 campaigns (Section 4.1.g) and the 12 non-solicitation of campaign funds from 13 14 employees (Section 4.1.h), or those who do business with the municipality (Section 4.1.i.), 15 these, too, are ideas whose time has clearly 16 There are certainly sufficient inherent come. 17 18 campaign advantages to office holders without allowing them to stron-arm those around them 19 20into financing and/or supporting their own re-election. When I look at the filed financial 21 22 reports of local officials whose campaigns are 23 overwhelmingly funded by municipal employees and municipal contractors (and I am not mentioning 24

specific names here today) I wonder just where they would get the money to run, if and when this draft becomes law. They may just have to look for support to those who believe in them instead of to those who depend of them. And that, I suggest to you, might be a very good idea indeed. Most important of all of the idesas in this proposal are those which deal with the question of just what a single citizen, aggrieved or upset by an apparent violation of such loftioly inspired laws as thesse, can do for redress of his grievance. While parties and groups who are aggrieved can often find the means to look to the courts, just as often the single citizen cannot do so. He must depend on the "system" to provide him with that recourse. And it appears to me that Sections 22 through 27 do just that. Not only do the appeal procedures in these sections allow an unjust situation to be reviewed on a higher level, and a level removed from the municipality), but the mere existence of the appeal process may well discourage those who might otherwise attempt to break the law and/or to subvert the process,

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question of the concept that the more stringent reporting standards and the disclosure requirements, the less people will be involved in government because it will drive people out. I have very little personal experience in this area. I have only been involved for a relatively short period of time. But I think the situation in my particular locality is quite the opposite. And that is, that there are fewer and fewer people involved in the process. And we have situations in which elected officials also hold other elected portions, other appointed positions, combinations of two or three or four or more elected and appointed positions. And the explanation that I often hear for that situation of which I totally disapprove, is that there are are not enough qualified people; that these are the people that know what is going on and there is no inherent conflict because these are the people that can then do the job. It seems to me guite the opposite. It seems that the situation in which complaints are discouraged, minority viewas or opposing views are discouraged, et cetera, and

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people who make the complaints and express the views are strong-armed and bullied and harassed, that situation is the cause for so few people being involved in government. So, my feeling is that these kinds of ethics legislation, if passed, are the kinds of things that give citizens the tools to undo the damage done by people with too much power, will open up the government and allow more people. I am in the process now of talking to people, trying to get people involved in local government. And invariably, their answer is, "Who would want to put themselves in that position of going up against the people who presently hold the power in an election, knowing that if you lose, and you probably will, you are going to be subject to their power and harassment and abuse of power?" And those are the kinds of concerns that I am involved with. And those are the kinds of concerns that motivated me to come here today.

CHAIRMAN FEERICK: Have you ever before testified before a government agency? HR. DEMAS: On the State level?

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1	municipalities throughout New York State. And
2	once we have done so, that represents really our
3	judgment and conclusions on the subject. And
Ą	thereafter, the political process must work its
5	will as it will.
б	So, with that, I thank everyone who is
7	here today and who has participated today. And
8	I will now close the hearing.
9	(The proceedings in the above-entitled
10	matter were concluded at
11	approximately 3:00 p.m.)
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1	CERTIFICATION
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	IN THE MATTER OF: State of New York
3	Commission on Gov er nment Integrity
4	PUBLIC HEARING
5	AT: Justice Building, Courtroom #2 Empire State Plaza
б	Albany, New York
7	ON: November 22, 1938
8	
9	
10	I, Beth S. Goldman, Certified
11	Shorthand Reporter, Registered Professional
12	Reporter and Notary Public do hereby certify
13	that the foregoing is a true and accurate
14	transcription of the proceedings conducted in
15	the above-entitled matter, as reported by me,
16	to the best of my knowledge and belief.
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19	DATE: 1700 55 , 1988
20	DATE: $/au SV$, 1988
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24	BETH S. GOLDMAN, CSR, RPR
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