THE FUTURE OF HONEST SERVICES FRAUD

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> JUSTICE BREYER: Well, the Sherman Act criminalizes price fixing. You see, I can say that in two words, intentional price fixing. Do you think what we have been talking about this morning can be reduced to anything like these two words?
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> [DEPUTY SOLICITOR GENERAL MICHAEL] DREEBEN: I think I have got it down to around eight.[1]

This exchange took place at the Supreme Court in December of 2009 as the Justices heard oral arguments in the first pair of three cases accepted for the term to tackle a particularly knotty problem in the law of white-collar crime. The problem was what to do with 18 U.S.C. § 1346, a twenty-eight-word statute criminalizing what is known as "honest services fraud."[2] The brevity of the statute is deceptive, since the conduct it addresses has proven very difficult to pin down. In its entirety, § 1346 reads: "For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."[3] There are two reasons why it is hard to say exactly what is criminalized by this language. First, the idea of "intangible rights" often means there is no direct pecuniary harm to the person whose rights are violated. Second, the conflicts of interest which typically lead to the violation of intangible rights are only sometimes prohibited, and only sometimes subject to disclosure requirements. The qualifications and conditions surrounding the criminalization of nondisclosure are what made it difficult for justice and counsel to gloss the statute easily.

In June of 2010, the Court handed down its decision on the honest services fraud statute, confining the behavior criminalized by § 1346

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[1] Transcript of Oral Argument at 44, Weyhrauch v. United States, 130 S. Ct. 2971 (2010) (No. 08-1196) [hereinafter *Weyhrauch* Oral Arg.].

[2] *Id.* at 3.

[3] 18 U.S.C. § 1346 (2006).

to bribery and kickback schemes only.[4] Excluding the more uncertain territory occupied by various forms of nondisclosure and self-dealing protects the statute from vagueness, and allowed the Court to settle on a core of behavior which at least can be described in two or three words. Even with its difficulties, however, the former, fuller reach of § 1346 was essential in enforcing an important aspect of the public trust. This comment suggests that further legislation is needed to delineate an acceptably clear standard for criminalizing nondisclosure of a conflict of interest. Congress should amend § 1346 to add a limiting principle for non-disclosure requiring scienter, materiality, official action, and benefit, and should consider adding a second statute addressing material nondisclosure violations not captured by the first.

Discussion will begin with a capsule history of honest services fraud and § 1346, a topic that has been canvassed thoroughly in the last twenty years. The next section will detangle the concepts of intangible rights and conflict of interest nondisclosure, using the facts of *Weyhrauch v. United States*[5] and its argument before the Court as the chief illustration. All fifty states have addressed the ethical dimensions of honest services in some way, and the rationales and methods of the states will be explored. Finally, the reasons for the necessity of some federal enforcement in the area of honest services fraud will be addressed, along with a brief detour, for historical context, to the New York City of the Tammany Hall era. The comment will conclude with recommendations for Congressional amendment of the honest services fraud statute.

I. THE HISTORY OF HONEST SERVICES FRAUD

The honest services fraud statute is a companion to the mail fraud statute which first uses the term "scheme or artifice to defraud."[6] Section 1346 was enacted by Congress in 1988,[7] but the mail fraud statute itself is much older; the original version was passed in 1872.[8]

The mail fraud statute, also known as "the white-collar federal

[4] Skilling v. United States, 130 S. Ct. 2896, 2907 (2010).

[5] Weyhrauch v. United States, 130 S. Ct. 2971, 2971 (2010) (mem.), *remanded to* No. 07-30339, 2010 WL 3733553 (9th Cir. Sept. 27, 2010).

[6] 18 U.S.C. § 1341 (2006).

[7] Honest Services Fraud Statute, Pub. L. No. 100–690, § 7603, 102 Stat. 405 (1988) (codified at 18 U.S.C. § 1346 (2006)).

[8] Mail Fraud Statute, Ch. 335, § 301, 17 Stat. 323 (1872) (codified as amended at 18 U.S.C. § 1341 (2006)).

prosecutor's Louisville Slugger,"[9] has been used broadly to prosecute all manner of frauds. While "[i]nitially, the statute served to prevent the use of the mails to carry instruments of fraud such as false advertisements of get-rich-quick schemes,"[10] the idea that people can be defrauded of things other than money or property—of "intangible rights"—gradually came to be accepted by the courts.[11] In the 1970s, on the strength of a post-Watergate federal interest in cleaning up public corruption, the mail fraud statute enabled a "flood tide"[12] of prosecutions aimed at public officials who were said to have defrauded the public of its "intangible right" to the honest services of its elected representatives. As a recent commentator noted, "[i]t's especially useful for prosecuting secret deals that are corrupt but do not involve an obvious transfer of money."[13] A representative case is *United States v. Mandel*[14] in which the Fourth Circuit addressed the Governor of Maryland's hidden business involvement with, and payment by, entities which benefitted from Mandel-aided state legislation on racetracks. "The fraud involved," the court said, "lies in the fact that the public official is not exercising his independent judgment in passing on official matters. . . . [T]he public is not receiving what it expects and is entitled to, the public official's honest and faithful service."[15]

The mail fraud statute has enabled many prosecutions that would have been impossible without it. Using an honest services fraud charge, "[t]he government is able to prosecute corruption not only by federal government officials but also by state and local government officials."[16] Crucially, "[t]he government does not need to prove that a fraud resulted in a loss to the public of money or tangible

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[9] Jack D. Arsenault & Joshua C. Gillette, *Federal Honest Services Mail Fraud: The Defining Role of the States,* N.J. LAW., Oct. 2008, at 37 (citing Jed S. Rakoff, *The Federal Mail Fraud Statute (Part 1)*, 18 DUQ. L. REV. 771, 771 (1980)).

[10] George D. Brown, *Should Federalism Shield Corruption?—Mail Fraud, State Law and Post-Lopez Analysis*, 82 CORNELL L. REV. 225, 246 (1997).

[11] Joshua A. Kobrin, *Betraying Honest Services: Theories of Trust and Betrayal Applied to the Mail Fraud Statute and § 1346*, 61 N.Y.U. ANN. SURV. AM. L. 779, 790 (2006) ("[J]udicial interpretations of several federal fraud statutes endorsed the 'intangible rights' doctrine, holding that an act of fraud did not require a material loss.").

[12] John C. Coffee, Jr., *Modern Mail Fraud: The Restoration of the Public/Private Distinction*, 35 AM. CRIM. L. REV. 427, 432 (1998).

[13] David G. Savage, *Supreme Court Report: An Honest Debate*, A.B.A. J., Dec. 1, 2009, http://www.abajournal.com/magazine/article/an_honest_debate.

[14] United States v. Mandel, 591 F.2d 1347, 1354–55 (4th Cir. 1979).

[15] *Id.* at 1362.

[16] Joseph J. Lisa, *Honest Services Fraud: The Future of Prosecutions for Environmental Crimes?*, FED. LAW., June 2009, at 55, 55.

property."[17]

In 1987, the Supreme Court put a sudden stop to honest services prosecutions with its decision in *McNally v. United States*.[18] McNally was an associate of a Kentucky official who received kickbacks from certain insurance companies in exchange for the state's business.[19] No loss to the state of money or property was alleged.[20] The Court held squarely that "[t]he mail fraud statute clearly protects property rights, but does not refer to the intangible right of the citizenry to good government."[21] Justice Stevens's dissent notwithstanding, the Court was not inclined to read the mail fraud statute as expansively as lower courts had done: "If Congress desires to go further, it must speak more clearly than it has."[22]

Congress took up that challenge promptly, enacting § 1346 the following year with the avowed goal of restoring pre-*McNally* case law to its former effect.[23] One of the bill's sponsors, Senator Biden, explained that the intent was simply to "reverse the McNally decision and allow Federal prosecutors to bring the kinds of public corruption charges that they were able to bring before 1987."[24] Prosecutors picked up where they had left off. Sections 1346 and 1341 together were used in recent years to charge prominent public figures such as Connecticut Governor John Rowland,[25] Illinois Governor Rod Blagojevich,[26] New York State Senator Joseph Bruno,[27] Congressman Robert Ney,[28] and lobbyist Jack Abramoff,[29] among others. Honest services mail fraud was also extended to financial fraud in the private sector; thus, one of the cases before the Supreme Court in the 2010 term was that of Enron Chief

[17] *Id.* (citation omitted).

[18] McNally v. United States, 483 U.S. 350, 355–56 (1987).

[19] *Id.* at 352–53.

[20] *Id.* at 352.

[21] *Id.* at 356.

[22] *Id.* at 360.

[23] 18 U.S.C. § 1346 (2006).

[24] 134 CONG. REC. 30,766 (1988).

[25] Plea Agreement at 1, United States v. Rowland (2004), *available at* http://news.findlaw.com/hdocs/docs/rowland/usrowland122304plea.html.

[26] United States v. Blagojevich, 594 F.Supp.2d 993, 994 (N.D. Ill. 2009).

[27] Indictment, United States v. Bruno, 700 F. Supp. 2d 175 (N.D.N.Y. 2010) (No. 09-CR-29-(GLS)).

[28] Plea Agreement, United States v. Ney (2006) *available at* http://fl1.findlaw.com/news.findlaw.com/wp/docs/abramoff/usney91506pleasof.pdf .

[29] Plea Agreement, United States v. Abramoff (2006), http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/abramoff/usabrmff10306plea.pdf.

Executive Jeffrey Skilling.[30] Proposals for further expansion included use of the statute against Major League Baseball players and against the perpetrators of environmental crimes.[31]

Meanwhile, a growing chorus of voices suggested that some limits on the reach of the honest services statute would be prudent.[32] There were charges of vagueness; there were federalism concerns. Referring to honest services, Justice Scalia wrote in a dissent early in 2009 that "this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct."[33] A growing body of lower court opinions espoused a variety of limiting principles, putting the circuit courts in serious conflict.[34] The Third Circuit limited the application of the honest services statute to situations where the defendant violated a fiduciary duty established by any state or federal law.[35] The First Circuit required more than a "conflict of interest alone."[36] The Seventh Circuit put forward the "misuse-of-position-for-private-gain limitation,"[37] and the Eighth and Tenth Circuits required materiality and fraudulent intent.[38] The Supreme Court rejected all of these principles, even as it stopped short of invalidating the statute altogether.

The theory of honest services fraud has thus expanded and contracted repeatedly from its inception, first cut off by *McNally* and restored by § 1346, then limited unevenly over time by the circuit courts, and now contained by *Skilling v. United States* to

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[30] Skilling v. United States, 130 S. Ct. 2896, 2907 (2010).

[31] *See* Joshua M. Kimura, *The Return of the Natural: How the Federal Government Can Ensure That Roy Hobbs Outlasts Barry Bonds in Major League Baseball*, 16 SPORTS LAW J. 111, 114 (2009) (major league baseball players); Lisa, *supra* note 16, at 55 (perpetrators of environmental crimes).

[32] *See, e.g.,* Randall D. Eliason, *The Truth About "Honest Services,"* NAT'L L.J., Oct. 5, 2009 at col. 1 ("Vague criminal fraud standard has led to chaos: Judge-made rules vary across U.S."); Jess Bravin, *Justices Question Antifraud Law: Measure Used to Prosecute Politicians and Executives Could Be Struck Down*, WALL ST. J., Dec. 9, 2009, http://online.wsj.com/article/SB126028995066582097.html ("[T]he congressional fix—explicitly recognizing a right to 'intangible' honest services—has sown confusion among lower courts over its breadth . . . .").

[33] Sorich v. United States, 129 S. Ct. 1308, 1310 (2009) (Scalia, J., dissenting).

[34] For a useful summary of the circuit split, see James T. Van Strander, *A Potent Federal Prosecutorial Tool:* Weyhrauch v. United States, 5 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 80, 83–85 (2009).

[35] *See* United States v. Murphy, 323 F.3d 102, 116 (3d Cir. 2003).

[36] *See* United States v. Urciuoli, 513 F.3d 290, 298–99 (1st Cir. 2008).

[37] *See* United States v. Sorich, 523 F.3d 702, 708 (7th Cir. 2008).

[38] *See* United States v. Cochran, 109 F.3d 660, 667 (10th Cir. 1997); United States v. Jain, 93 F.3d 436, 442 (8th Cir. 1996).

bribery and kickback schemes only. There remains a need for a flexible standard that preserves the theory's intent—to punish conduct that erodes the public trust. The next section will examine that intent more closely.

II. INTANGIBLE RIGHTS AND CONFLICT OF INTEREST NONDISCLOSURE—*WEYHRAUCH V. UNITED STATES*

The Fifth Circuit's "state law limiting principle" was at issue in *Weyhrauch v. United States*,[39] the public sector honest services case argued in late 2009 before the Supreme Court.[40] In 1997, the Fifth Circuit delivered a strongly federalist opinion in *United States v. Brumley*[41] which established the principle. Brumley, a Texas state official, accepted "loans" from attorneys who appeared in worker's compensation board hearings before him.[42] There was no evidence he changed the outcome of any hearings as a result of the payments.[43] The Court of Appeals, following Congress's direction to pre-*McNally* case law, found that "before *McNally* the doctrine of honest services was not a unified set of rules. . . . Congress could not have intended to bless each and every pre-*McNally* lower court 'honest services' opinion. . . . Congress, then, has set us back on a course of defining 'honest services,' and we turn to that task."[44] Ultimately, the court held that the "services" required by the statute to be "honest" were those the corruption of which was already punishable by the state: "We decide today that services must be owed under state law and that the government must prove in a federal prosecution that they were in fact not delivered."[45]

Fast forward eleven years to the Ninth Circuit in 2008. Bruce Weyhrauch, an Alaska state representative, is accused of scheming to arrange post-public service employment for himself with an oil company in exchange for favorable votes on tax legislation of interest to the company.[46] His defense was that failing to disclose

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[39] Weyhrauch v. United States, 548 F.3d 1237, 1244–45 (9th Cir. 2008), *vacated and remanded to* 130 S. Ct. 2971 (2010).

[40] *Weyhrauch* was decided on the same day as *Skilling* in a per curiam opinion that vacates and remands to the Ninth Circuit "for further consideration in light of *Skilling v. United States*." *Weyhrauch*, 130 S.Ct. at 2971.

[41] United States v. Brumley, 116 F.3d 728, 733–34 (5th Cir. 1997).

[42] *Id.* at 731.

[43] *Id.*

[44] *Id.* at 733.

[45] *Id.* at 734. The court found that Brumley had violated Texas law and affirmed his conviction. *Id.* at 735–36.

[46] United States v. Weyhrauch, 548 F.3d 1237, 1239 (9th Cir. 2008), *vacated and remanded*

his job negotiations was not a violation of Alaska law, so he could not be guilty of honest services fraud.[47] The Ninth Circuit, looking to its own pre-*McNally* decisions and the legislative history of § 1346, declined to follow the Fifth Circuit's state law limiting principle: "We . . . cannot find any basis in the text or legislative history of § 1346 revealing that Congress intended to condition the meaning of 'honest services' on state law."[48]

That the Supreme Court granted certiorari in Weyhrauch's case, as well as in the private sector honest services cases of Conrad Black[49] and Jeffrey Skilling,[50] was most likely a reaction to Justice Scalia's dissent from the Court's denial of certiorari in the similar case of *Sorich v. United States*.[51] There the Justice wrote a strongly worded criticism of the honest services statute, addressing both its lack of standards and its overreaching into state concerns, and concluded, "I would grant the petition for certiorari and squarely confront both the meaning and the constitutionality of § 1346. Indeed, it seems to me quite irresponsible to let the current chaos prevail."[52] It is often true that strong dissents have their primary effect on events beyond the case of immediate concern. If there was a growing feeling among the justices that the honest services statute should be addressed, Scalia galvanized them into action. "Within the next few months, the court granted review in the three cases that challenge the use of honest-services fraud theory. 'It looks like some of the others read Scalia's dissent and decided he might be right,'"[53] according to one observer.

There is not much question that a limiting principle was needed for the honest services statute. Public servants (and others) must have notice that certain actions will constitute a federal crime. Federalism concerns about the statute, when used to prosecute

to 130 S. Ct. 2971 (2010).

[47] *Id.* at 1240.

[48] *Id.* at 1245–46.

[49] Black v. United States, 129 S. Ct. 2379, *cert. granted*, 77 U.S.L.W. 3632 (U.S. May 18, 2009) (No. 08-876).

[50] Skilling v. United States, 130 S. Ct. 393 (mem.), *cert. granted*, 78 U.S.L.W. 3206 (U.S. Oct. 13, 2009) (No. 08-1394).

[51] Sorich v. United States, 129 S. Ct. 1308, 1308 (2009) (Scalia, J., dissenting). Sorich awarded Chicago city jobs to campaign workers for Mayor Richard Daley, violating a consent decree barring patronage hiring. *Id.* at 1310–11.

[52] *Id.* at 1311. Justice Scalia concurred in the decision in *Skilling*, but wrote separately to reiterate his preference for invalidating the entire statute "on the basis that [it] provides no 'ascertainable standard.'" Skilling v. United States, 130 S. Ct. 2896, 2940 (2010) (Scalia, J., concurring).

[53] Savage, *supra* note 13, at 2 (quoting Julian Solotorovsky, "a former federal prosecutor in Chicago").

state officials, can be answered satisfactorily with a clear limiting principle that delineates what conduct is implicated by the statute. The new limited rule will decrease the role played by the discretion of prosecutors, yet still allow for the federal government's legitimate interest in reducing corruption at the state level. The question of whether we now have the proper limiting principle, however, is more difficult. How to delineate its territory was one of the primary issues brought to the Supreme Court by the combination of *Weyhrauch, Black v. United States,* and *Skilling v. United States*, even though the actual question presented by each of these cases is more narrow.

It seems clear that the state law limiting principle enunciated by the Fifth Circuit in *Brumley* was not the standard needed. First, a state law is besides the point; existence of a state law is not necessary to establish that a public servant owes a duty to the public, because the fiduciary duty well-settled in common law[54] already does so.[55] Second, the Ninth Circuit was correct in concluding that there is no legislative history to support the idea that Congress intended to refer to state law.[56] Indeed, there is evidence that Congress chose not to include such a reference.[57] Third, the honest services statute would still lack clarity if the state law limiting principle were applied. Which state laws would qualify and which would not? Would a regulation violation be enough, or would a criminal act be required?[58] How could this be fair treatment of conduct which is a misdemeanor in one state, a felony in the next, and not punishable at all in a third? The result would be to "fragment federal criminal law in a way harmful to federal policy interests"[59] without providing the desired clear standard.

The core area of conduct within the statute's reach charged as honest services fraud is acceptance of bribes or kickbacks.[60] *United*

[54] An unusual complication in *Weyhrauch* is that Alaska law has explicitly superseded the common law in the area of legislative ethics. *See* discussion *infra* text accompanying notes 65–70.

[55] Brief for Appellee-Respondent at 28, Weyhrauch v. United States, 130 S. Ct. 2971 (2010) (mem.) (No. 08-1196).

[56] *Id.* at 38–39.

[57] *Id.* at 39. ("Although the legislative provisions from which Section 1346 evolved included textual references to state law for two other purposes, the core prohibition on honest-services fraud, from the Department of Justice's initial legislative proposal onward, never did.").

[58] The *Brumley* court did not reach this question and declined to speculate on the answer. United States v. Brumley, 116 F.3d 728, 734 (5th Cir. 1997).

[59] Brief for Appellee-Respondent, *supra* note 55, at 28.

[60] Randall D. Eliason, *Surgery with a Meat Axe: Using Honest Services Fraud to Prosecute Federal Corruption*, 99 J. CRIM. L. & CRIMONOLOGY 929, 960 (2009).

States v. Mandel was a bribery case;[61] *United States v. McNally* was a kickbacks case.[62] Bribery, of course, is criminalized independently, but proof under the bribery statute is more demanding. There must be evidence of a clear quid pro quo exchange, something resembling a purchase; this is not necessary under honest services.[63] In fact, the absence of a direct exchange, a straightforward A-is-in-payment-for-B agreement, in what is clearly a corrupt relationship, is one factor that makes honest services fraud so difficult to pin down. In the oral argument in *Black*, argued the same day as *Weyhrauch*, the Justices explored this issue:

> JUSTICE GINSBURG: Now, you could have a bribe or a kickback that will line the pockets of the person who takes it, doesn't deceive the person who is giving it, and doesn't harm the company to whom a duty of loyalty is owed.[64]
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> . . . .
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> [COUNSEL FOR PETITIONER MIGUEL] ESTRADA: [It] takes understanding what—what the problem really was that Congress was trying to fix, and that the intangible rights cases were trying to fix. And it's really one of symmetry.
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> . . . Now, in classic fraud, the defendant intends to harm the victim by obtaining, in a corrupt manner, his property. So there is a perfect symmetry between the intended harm to the victim and the expected gain of the defendant, because the gain comes from the victim's pocket.
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> The problem of bribes and kickbacks that the intangible rights cases were trying to deal with is . . . the lack of symmetry where the person giv[ing] the payoff is not deceived and the harm to the victim is non-quantifiable.[65]

To make out a fraud in such a case, in other words, something besides money must be taken from the victim by deception. "This [is] a significant issue because, in many types of public corruption cases, even though public officials profit through bribes or kickbacks, it is often difficult to prove that the government or the

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[61] United States v. Mandel, 591 F.2d 1347 (4th Cir. 1979).

[62] United States v. McNally, 483 U.S. 350 (1987).

[63] *See* 18 U.S.C. § 201 (2006) (the federal bribery statute, which applies only to federal officials, and requires receipt of "anything of value . . . in return for" action); *cf.* 18 U.S.C. §§ 1341, 1346 (2006) (with no such requirement).

[64] Transcript of Oral Argument at 8–9, Black v. United States, 130 S. Ct. 2963 (2010) (No. 08-876) [hereinafter *Black* Oral Arg.].

[65] *Id.* at 14–15.

public has suffered a monetary or property loss."[66] As the Seventh Circuit memorably asked in *United States v. Holzer*, "[h]ow can anyone prove how a judge would have ruled if he had not been bribed?"[67]

Black, a private sector case, does propose a requirement of economic harm, but because the mail fraud statute alone covers frauds that result in loss of money or property, the requirement makes no sense as a standard for § 1346, as the government made clear in oral argument:

> MR. DREEBEN: [T]o contemplate economic harm, . . . would knock out, immediately, many of the critical pre-*McNally* public official cases, in which the legislator takes a bribe for action that doesn't implicate the pecuniary interests of the holder or the fiduciary duty or in which a union official accepts payment for someone who wants to apply for membership. Membership fees are fixed. It's not as if the union is losing money.
>
> And it's really inconceivable that Congress would have passed a statute to say, we don't want this law to be limited to property rights. And somehow, through the back door, smuggle in the same test of contemplated economic harm.[68]

Section 1346 exists specifically to expand the mail fraud statute beyond the limitation of property rights, and cannot be so limited without negating its meaning altogether.

The third area of conduct typically charged as honest services fraud is no longer within the reach of the statute: nondisclosure of a conflict of interest which sometimes, but not always, occurs in combination with bribery and kickbacks. Here is the twist in the very center of the idea of honest services. The difficulty courts have experienced in construing the statute to provide a clear limiting principle may be seen to stem in large part from the contradictions of nondisclosure. It is not surprising, then, that the Court excluded it, but nevertheless an important restriction may have been lost with its exclusion.

First, consider a situation in which a public official accepts a bribe in exchange for his vote. The Court examined this scenario during the *Weyhrauch* argument:

> [COUNSEL FOR PETITIONER DONALD] AYER: The

[66] Lisa, *supra* note 16, at 56–57.
[67] 816 F.2d 304, 308 (7th Cir. 1987).
[68] *Black* Oral Arg., *supra* note 64, at 49–50.

> materiality of a nondisclosure in that setting is—is coherent in the context of what he did wrong. In other words, I hid the fact that I took a bribe.
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> JUSTICE SOTOMAYOR: I am not sure that—that whether he did it with disclosure or nondisclosure, what would make the nondisclosure more meaningful? Meaning, it's taking the bribe whether he discloses it or not—
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> . . . .
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> JUSTICE SOTOMAYOR: —and if he gets up on the floor of—of the legislature and says: You know, I am going to vote for this bill because somebody paid me money, he disclosed it. It doesn't make it any better.[69]

Since it is often the case that keeping conduct hidden—nondisclosure—is what satisfies the deception element of the fraud claim, Justice Sotomayor does pose an interesting question: is it still fraud if there's no secret? More importantly, however, there is something else wrong here: "it doesn't make it any better" to disclose wrongdoing, and presumably this lawmaker is still guilty of a crime. It seems unusual that wrongdoers would be expected to disclose prohibited conduct; the protection against self-incrimination alone would forbid it. Yet the logic of conflict of interest disclosure requires the wrongdoer to speak, since accepting a bribe has certainly created a conflict of interest. The failure to speak becomes an independent offense.

A further question asked at oral argument extends this line of thought:

> JUSTICE ALITO: What if there's a statute that prohibits a legislator from engaging in certain conduct and attaches a significant penalty to it, but there is no statute that requires the disclosure of the conduct?[70]

Just such a situation is presented in the facts of *Weyhrauch*:

> JUSTICE SCALIA: You—you say he violated State law? I—I thought that the—that the court found that he didn't. You say he violated State law when he voted.
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> MR. DREEBEN: Substantive State law prohibited him from taking official action with respect to a company whose interests would be benefited when he was negotiating employment—

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[69] *Weyhrauch* Oral Arg., *supra* note 1, at 14–15.

[70] *Id.* at 26.

> JUSTICE SCALIA: I thought it was accepted in this case that—that there was no violation of Alaska law.
> MR. DREEBEN: It's accepted, Justice Scalia, that there is no duty to disclose under State law.
> JUSTICE SCALIA: I—I see.
> MR. DREEBEN: That is solely what Petitioner argues as being the deficiency in the government's case; there is no State law duty to disclose.
> JUSTICE SCALIA: Right.[71]

Weyhrauch's case came before the Court on an interlocutory appeal from the Ninth Circuit's ruling allowing the government to present certain evidence at the district court trial of Weyhrauch and another defendant, Kott.[72] The district court ruled that the evidence in question—Alaska legislative ethics publications, testimony that Alaska legislators commonly acknowledge conflicts on the floor of the house, testimony regarding ethics training given to legislators, and testimony that Weyhrauch served on a legislative ethics committee—was all relevant to a duty to disclose imposed by state law,.[73] However, it found that, although Weyhrauch's alleged conduct in taking official action that could "substantially benefit or harm the financial interest of" anyone with whom he was "negotiating for employment" was prohibited by state law,[74] "the statute itself does not include any requirement for the disclosure of such negotiations; rather, it simply prohibits certain conduct."[75] Furthermore, because Alaska has specifically superseded "the provisions of the common law relating to legislative conflict of interest," the government cannot rely on the fiduciary duty of a public official that is well established under common law.[76] The district court declared itself persuaded by *Brumley* that "any duty to disclose sufficient to support the mail and wire fraud charges here must be a duty imposed by state law."[77] Because "in Alaska any common law fiduciary duty to disclose that might be owed by a legislator to the State as his employer has been abrogated and replaced by AS 24.60."[78] Weyhrauch was not subject to any duty to

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[71] *Id.* at 54–55.
[72] United States v. Weyhrauch, 548 F.3d 1237, 1239 (9th Cir. 2008).
[73] United States v. Kott, No. 3:07-cr-00056 JWS, 2007 WL 2572355, at *1–2, *6 (D. Ala. Sept. 4, 2007).
[74] ALASKA STAT. § 24.60.030(e)(3) (2008).
[75] *Kott*, 2007 WL 2572355 at *2.
[76] *Id.* at 3.
[77] *Id.* at 6.
[78] *Id.*

disclose in this situation. Weyhrauch may or may not have had a duty to refrain from actions he took in his capacity as legislator, but since the government's evidence was meant to demonstrate he knew he should disclose such actions, it was not admissible.[79]

To use Justice Sotomayor's phrase once more, the complication inherent in the idea of nondisclosure is that sometimes there is something else wrong—as when someone takes a bribe, or votes to benefit a future employer—and sometimes there is not. It is very possible to have a conflict of interest that is created from perfectly legal circumstances; moreover, such a conflict is not necessarily prohibited or even undesirable. Only the nondisclosure of the conflict is prohibited. In the context of honest services fraud, knowing nondisclosure may indicate intent to deceive, as the government attempted to show in *Weyhrauch*, or it may be an independent offense. An examination of how states other than Alaska treat disclosure will show the range of possibilities.

III. STATE LAWS ADDRESSING CONFLICTS OF INTEREST AND NONDISCLOSURE

Any state legislature that meets part-time and is comprised of "citizen legislators," as they are often called, is full of lawmakers who have other jobs, their own businesses, and their own interests.[80] Thirty-two states[81] include a statement of general intent in their ethics laws, and nineteen[82] of those acknowledge the complex position of citizen legislators. Nevada's statute explains the situation nicely:

> State Legislators serve as 'citizen Legislators' who have other occupations and business interests who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family

[79] The Ninth Circuit Court of Appeals, as discussed *supra* text accompanying note 49, reversed the district court and declined to adopt *Brumley* and the state law limiting principle, thereby sending Weyhrauch to the Supreme Court as petitioner.

[80] A recent informal survey of the outside employment of New York State lawmakers revealed a range of job titles: vice president of a bank, sales representative for a drug company, vice president and sales representative for a wind power company, landlord, lawyer, snow plow operator, pharmacist, and liquor store owner. *See* James M. Odato, *Capitol Secret: Two Out of Three Lawmakers Refuse to Reveal Their Outside Income*, ALB. TIMES UNION, Jan. 24, 2010, at A11.

[81] *See infra* App. A.

[82] *Id.*

> and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted."[83]

Conflicts of interest, then, are more than tolerated; they are viewed as useful. Legislators "cannot and should not be without all personal and economic interest in the decisions and policies of government,"[84] as Wisconsin puts it. At the same time, however, conflicts of interest are a major focus of restriction under state ethics laws. Thirty-seven states directly prohibit conflicts of interest for their legislators.[85] These states either define the nature of the interest prohibited (pecuniary; substantial; personal) or define the circumstances under which a conflict is prohibited (when voting; when taking official action). The rationale is one of caution: "Regulation of conflicts of interest is regulation of evil before the event; it is regulation against potential harm. These regulations are . . . one remove away from the ultimate misconduct feared. The bribe is forbidden because it subverts the official's judgment; the gift is forbidden because it may have this effect."[86]

The disclosure requirement is introduced as a way of both ensuring and demonstrating compliance with conflicts laws. Thirty-nine states require disclosure of conflicts of interest.[87] An opinion from the Third Circuit explains the need to do so: "One reason why federal and state law mandates disclosure of conflicts of interest, . . . is that it is often difficult or impossible to know for sure whether a public official has acted on a conflict of interest. . . . Recognizing the practical difficulties . . . , disclosure laws permit the public to judge for itself."[88] Disclosure thus constitutes a shift of the responsibility for identifying improper conduct away from the legislative body and onto the public. The failure of the legislature to write a law that effectively targets the individuals in question—public officials who have acted on a conflict of interest—means that the public is given that targeting responsibility.

Introduction of a disclosure requirement means that exactly *when* a conflict of interest becomes problematic can vary. A conflict which is a crime in itself, such as a bribe, is a violation when it occurs. A

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[83] NEV. REV. STAT. § 281A.020(2)(c) (2008 & Supp. 2009).

[84] WIS. STAT. ANN. § 19.45(1) (2003 & Supp. 2009).

[85] *See infra* App. B.

[86] ASS'N OF THE BAR OF THE CITY OF NEW YORK, CONFLICT OF INTEREST AND FEDERAL SERVICE 19–20 (1960).

[87] *See infra* App. C.

[88] United States v. Panarella, 277 F.3d 678, 697 (3d Cir. 2002) (citation omitted).

conflict which is not a crime, but must be disclosed, must logically be either (a) a violation when action is taken that is required to be preceded by disclosure or (b) a violation when the deadline for disclosure has passed. *When* enforcement will take place is also uncertain. The ultimate enforcement tool for an elected official is the next election, and disclosure promises to allow the public to wield that tool, but time is an important factor. How long is the official's term of office? How long is the public's memory?

Extending the idea of allowing the public to see for itself, forty-five states have statutes requiring financial disclosure from their legislators.[89] Financial facts are the raw material of conflicts of interest; the public is asked to judge not only whether a lawmaker is acting in accordance with declared self-interest, but whether and where self-interest exists in the first place. This is desirable because, as many states' intent sections point out, maintenance of the public trust is essential to a representative form of government. Twenty-seven states directly invoke the idea of the public trust and the public's confidence in government. [90] Maryland is an example:

> The General Assembly of Maryland, recognizing that our system of representative government is dependent upon the people maintaining the highest trust in their government officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of those officials and employees will be maintained.[91]

Preservation of the public trust may even require avoidance of the *appearance* of self-interested conduct. Maryland continues: "It is evident that this confidence and trust is eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence."[92] Maine is of the same opinion: "If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct."[93] Overall, twenty-three states assert a public right to disclosure and avoidance of the appearance of impropriety.[94] Failure to disclose makes it impossible for the

[89] *See infra* App. D.
[90] *See infra* App. A.
[91] MD. CODE ANN., STATE GOV'T § 15-101(a)(1) (Lexis Nexis 2009).
[92] *Id.* at § 15-101(a)(2).
[93] ME. REV. STAT. ANN. tit. 1, § 1011 (1989).
[94] *See infra* App. A.

public to carry out its charge of identifying wrongdoing. This explains why the public often feels it has a "right" to disclosure that should be enforced, even though the idea of enforcing the public's corresponding "duty" to scrutinize public officials is clearly laughable. Disclosure both strengthens the public trust by increasing the accountability of public servants, and makes it more vulnerable by introducing a new transgression against it of which public servants may be guilty. Thus, we have arrived at a situation in which the nondisclosure of perfectly innocent conduct, or a blameless set of financial circumstances, is a wrong in itself.

Although the details of the statutes vary, there exists an overall consensus among states that public servants have a conflict and disclosure duty roughly equivalent to that of a common law fiduciary: "a person having a [legal] duty, created by his undertaking, to act *primarily for the benefit of another* in matters connected with his undertaking."[95] Legislators who interact with their constituents and bring varied experiences to lawmaking are valued. Avoidance of the occasion for corruption (conflict) and the appearance of corruption are emphasized, in the interest of strengthening the public trust.

IV. SCOPE OF THE HONEST SERVICES FRAUD STATUTE

Returning for a moment to the oral argument in *Weyhrauch*, we find the Court debating whether some definition of nondisclosure might be covered by the honest services fraud statute. In order to avoid charges of vagueness and over-breadth, the government has qualified the bare idea of nondisclosure considerably.

> JUSTICE BREYER: [N]o bribes, no kickbacks, and no conflicts of interest where that is defined in the narrow way you have defined it. You have to know you are not disclosing, you know you have the obligation, you know action will be taken on it, and the action will be taken to help somebody else or to the detriment of the employer or something like that. Right?
>
> MR. DREEBEN: Something like that.
>
> JUSTICE BREYER: Something like that. Okay.[96]

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[95] Haluka v. Baker, 34 N.E.2d 68, 70 n.3 (Ohio Ct. App. 1941) (quoting RESTATEMENT OF LAW OF AGENCY § 13 cmt. a (1933)). Again, in Alaska this is not the case. *See supra* text accompanying note 68.

[96] *Weyhrauch* Oral Arg., *supra* note 1, at 38.

> Another attempt:
>
> MR. DREEBEN: It's when the official takes action that furthers his undisclosed interest without telling the decision-making body to which he belongs that he becomes a fraud.[97]

Here the government has introduced a new element, the idea that official action must benefit the officeholder's undisclosed interest.

> JUSTICE STEVENS: You say in order for the violation to be complete he must follow up by voting in the interest of the company rather than the post?
>
> MR. DREEBEN: He has to take official action. That's where the breach of fiduciary—
>
> JUSTICE STEVENS: And it has to be a specific kind of official action.
>
> MR. DREEBEN: Official action that furthers his undisclosed interest. And to criminally prosecute him, he has to know that is what he is doing, and just to top it off, there are materiality ingredients in both the conflict of interest and in the implied misrepresentation.[98]

The end result is a description of nondisclosure so changeable and unwieldy that it does indeed seem vague to the point of engendering complete confusion instead of a clear standard. The court's frustration is certainly understandable:

> JUSTICE SCALIA: Why would it have been so difficult for Congress to say no bribes, no kickbacks, and—and—and the third thing, however you want to describe it?[99]

It is not surprising that the Court set its limits so as to exclude that third indescribable thing, but it is regrettable because the concept of nondisclosure, and the entire idea of honest services fraud as a punishable offense, is worth saving. It is valid to conceive that the public can be defrauded of something valuable without losing money or property. Moreover, there are good reasons why nondisclosure without more should be among the acts that constitute the crime. As Joshua Kobrin points out in his study of honest services and betrayal: "A betrayal of trust is damaging regardless of the gravity of the underlying duty. . . . The underlying violation merely defines the trust—it is the scheme to betray that trust that is criminal."[100] Disclosure both forces and allows the

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[97] *Id.* at 31–32.
[98] *Id.* at 52–53.
[99] *Id.* at 41.
[100] Kobrin, *supra* note 11, at 821.

public to make up its own mind concerning when conduct is honest; to stymie disclosure is to render the public unable to fulfill its role.

Moreover, it is valid to hand the job of preventing such fraud to the federal government, even in cases with state actors. The federal interest in dealing with state governments that are trustworthy and principled is buttressed by a list of practical considerations: "State prosecutors may lack the time and resources to pursue such cases, which often are complex and time-consuming. They may sometimes lack the will to pursue them, particularly if the targets are powerful state officials."[101] Furthermore, "[i]n some cases, state laws or criminal procedures may make the successful investigation or prosecution of such cases more difficult."[102] In the civil arena, even in well developed areas, such as corporate fiduciary jurisprudence where state law might be expected to provide sufficient enforcement without federal intervention, the reality is that civil sanctions do not have much bite. Lisa L. Casey's recent article on honest services fraud and corporate fiduciary duties explains the relatively late-blooming application of § 1346 to private corporate actors by positing that state civil liability is an insufficient deterrent:

> State law . . . provides a host of potential sanctions available to the corporation whose executives breached their duties. Yet, enforcement of those fiduciary duties is infrequent at best . . . . Even if more vigorously enforced, civil liability probably will not deter fiduciaries' wrongdoing; they . . . view potential sanctions as a cost of doing business.[103]

Since the federal government seems to have taken on final responsibility for private corporations considered "too big to fail," it does make sense to give it a role in preventing the next Enron or WorldCom disintegration.

Historically, of course, federal interest in local corruption existed long before § 1346. One such interest was political: Franklin Roosevelt's New Deal welfare programs were intended, at least in part, to weaken the grip on local voters of Tammany Hall,[104] the New York City Democratic political machine that ruled city government from the 1850s through the 1930s.[105] Appealing to the voters through welfare assistance meant competing with a political

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[101] Eliason, *supra* note 60, at 952.

[102] *Id.*

[103] Lisa L. Casey, *Twenty-Eight Words: Enforcing Corporate Fiduciary Duties Through Criminal Prosecution of Honest Services Fraud*, 35 DEL. J. CORP. L. 1, 85 (2010).

[104] *See* SEAN J. SAVAGE, ROOSEVELT: THE PARTY LEADER 1932–1945 48 (1991).

[105] JAY P. DOLAN, THE IRISH AMERICANS: A HISTORY 138–39 (2008).

boss who handed out, to give one example, "thousands of socks and shoes, . . . free Christmas dinners, . . . [and] coal," not to mention a summer picnic complete with parade and fireworks.[106] Roosevelt must have thought the desired end result—voters less loyal to local figures and more responsive to national political issues—worth the expense.

It is worth pausing to examine the Tammany Hall context more closely. Here is a political system notorious for public corruption and dishonesty of all kinds, taxing the city and the state with huge inefficiencies and yet prevailing, more often than not for eighty years, with equally huge political support. Tammany accomplished the lion's share of its political effectiveness by thorough and unabashed patronage.[107] A first-person account in the words of a Tammany district leader, George Washington Plunkitt, describes the general situation: "Every good man looks after his friends, and any man who doesn't isn't likely to be popular. If I have a good thing to hand out in private life, I give it to a friend. Why shouldn't I do the same in public life?"[108] It is said that at the turn of the last century in New York, "control of the city government meant 12,000 public jobs,"[109] all to be handed out to supporters in exchange for their votes; Tammany-controlled private jobs brought the total to 40,000.[110] Plunkitt himself was a master at obtaining jobs for his constituents. As he put it: "When I get up in the mornin' I can almost tell every time whether a job has become vacant over night, and what department it's in and I'm the first man on the ground to get it."[111]

Plunkitt described the self-dealing typical of Tammany politicians as "honest graft," by which he meant making use of advance knowledge of city projects to buy or sell land, win contracts, or sell materials. [112] There was plenty of "dishonest graft" about as well: the infamous Boss Tweed is estimated to have collected $45 million

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[106] *Id.* at 145.

[107] WILLIAM L. RIORDON, PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS 37 (Signet Classics 1995) (1905). Recall that *Sorich*, the honest services case the Court refused over Justice Scalia's dissent, describes a present-day patronage scheme involving city jobs that sounds quite familiar in the context of Tammany. United States v. Sorich, 523 F.3d 702, 705 (7th Cir. 2008).

[108] RIORDON, *supra* note 107, at 5–6.

[109] Peter Quinn, *Introduction* to WILLIAM L. RIORDON, PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS xvii (Signet Classics 1995) (1905); *see also* DOLAN, *supra* note 105, at 140.

[110] *Id.* at 141.

[111] RIORDON, *supra* note 107, at 47.

[112] *Id.* at 3–5.

in bribes and kickbacks.[113] The cost of the Tweed courthouse was inflated by these practices from $250,000 to $13 million, and the project took more than twelve years to complete.[114]

Voters in New York at the time of Tammany Hall clearly expected politicians to provide for them. The district leader was the source of jobs, food, and special favors, such as bail or a word on the side to a judge.[115] This relationship between the public and its servants was quite openly understood. George Washington Plunkitt summed it up:

> When the voters elect a man leader, they make a sort of a contract with him. They say, although it ain't written out: "We've put you here to look out for our interests. You want to see that this district gets all the jobs that's comin' to it. Be faithful to us, and we'll be faithful to you."[116]

What these voters did not expect, it seems clear, was the "honest services" of their leader, in the sense we understand that phrase today. They would have found the idea of a disclosure requirement quite ridiculous if it prevented the distribution of "some good thing." Plunkitt's "honest graft" did not defraud the city of money or property:

> The books are always all right. The money in the city treasury is all right. . . . All they can show is that the Tammany heads of departments looked after their friends, within the law, and gave them what opportunities they could to make honest graft. Now, let me tell you that's never goin' to hurt Tammany with the people.[117]

Beyond Tammany Hall, the same ethic prevailed. Peter Quinn mentions, as one example, the New York State legislature during "the struggle over the Erie Railroad, when men on both sides of the aisle openly sold their votes."[118] Examine for a moment the triviality of state legislator Bruce Wehyrauch's alleged offense in this milieu: he hoped to land a private job for himself by voting in a way that would please his potential employer.[119]

The point is that the public asserts no "intangible right" to honest services if honest services are not what the public expects. A

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[113] DOLAN, *supra* note 105, at 139.
[114] *Id.* at 140.
[115] *Id.* at 145.
[116] RIORDON, *supra* note 107, at 36.
[117] *Id.* at 5.
[118] Quinn, *supra* note 109, at xi.
[119] United States v. Weyhrauch, 547 F.3d 1237, 1239 (9th Cir. 2008).

"betrayal of trust" by a Tammany district leader would look quite different than the "betrayal of trust" we ascribe to a Bruce Weyhrauch, or a Conrad Black, or a Jeffrey Skilling. Interestingly, Plunkitt describes the effect of the civil service exam, which he abhors, in terms that conjure the very same disengaged, nonparticipating, cynical public we now think of as the result of damage to the public trust.[120] He tells the story of "a bright boy that I had great hopes of. . . . [H]e was the most patriotic boy in the district. . . . [N]obody was as fond of waving a flag, and nobody shot off as many firecrackers on the Fourth of July."[121] This boy was required to take a civil service exam in order to "serve his country in one of the city departments."[122] The "fool questions" on the exam caused the boy permanently to lose his patriotism; he was last seen at the Memorial Day parade, "[s]tandin' on the corner, scowlin' at the whole show";[123] the next thing we know, he is dead.

Damage to the public trust through upending of the public's expectations, whatever they may be, should be taken seriously. While certainly it would not have been preferable to scrap the civil service exam and let George Washington Plunkitt hand out jobs because that is what the public expected, the story illustrates that the depth of feeling engendered by the loss of what the public considers its rights is real, and is responsible for the strength of our demands on our public servants. The honest services fraud statute is an essential law because it enforces an important aspect of the public trust.

The limitations imposed by the Court will strengthen the statute's core. However, Congress would do well to act once more on this subject and restore a carefully circumscribed type of nondisclosure as a covered offense. In *Weyhrauch*, the government chose to concentrate on the limited conduct laid out by Mr. Dreeben: nondisclosure must be knowing, it must be of a material conflict, it must be accompanied by official action, the action must be material, and the action must benefit the undisclosed interest.[124]

It is important, for reasons argued here, that "lack of candor" or nondisclosure be reinstated as an honest services offense. The public should, and does, take its oversight responsibilities which depend on disclosure seriously, and the public trust is injured when

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[120] RIORDON, *supra* note 107, at 11.
[121] *Id.* at 38–39.
[122] *Id.* at 39.
[123] *Id.*
[124] *Weyhrauch* Oral Arg., *supra* note 1, at 53.

disclosure is promised and not delivered. It is probably wisest to cabin a nondisclosure addition to § 1346 to the conduct the government sought to delineate in *Weyhrauch*; unless this is done, the statute's constitutionality becomes once again questionable, and its reach uncertain. If Congress wishes to go further, a new statute could address violations of nondisclosure alone, without requiring the element of benefiting the undisclosed interest.[125] Materiality of the conflict and knowing nondisclosure would still be required. Violation of the common law duty to inform would qualify; so would violation of any state disclosure requirement. The cousin of the "state law limiting principle" thus created does not have the drawbacks that such a principle has when applied to the original § 1346. Legislative intent would not be missing in the case of the new statute. Common law duties are considered along with state statutes. States are given the autonomy to decide what must be disclosed, under what conditions, and by whom; these state rules determine what the public expects to be told and therefore what is its "intangible right" to be told. Any state-level disclosure requirement would potentially qualify; the materiality requirement would serve to sort the trivial from the serious. Finally, separating the honest services fraud statute from the nondisclosure statute would allow for different levels of penalty for each, relieving any uneasiness about imposing the same twenty-year jail sentence for crimes as different as bribery and nondisclosure.

V. CONCLUSION

Even after its recent clarification by the Court, what to do with the twenty-eight words of § 1346 remains a difficult problem implicating statutory interpretation, state law, and the complex concepts of intangible rights and conflict of interest nondisclosure. A broad contextual and historical perspective suggests the

[125] In *Skilling*, Justice Ginsburg provides some guidance for Congress as to what the Court would expect from such a statute:

> If Congress were to take up the enterprise of criminalizing "undisclosed self-dealing by a public official or private employee," . . . it would have to employ standards of sufficient definiteness and specificity to overcome due process concerns. The Government proposes a standard that . . . leaves many questions unanswered. How direct or significant does the conflicting financial interest have to be? To what extent does the official action have to further that interest in order to amount to fraud? To whom should the disclosure be made and what information should it convey? These questions and others call for particular care in attempting to formulate an adequate criminal prohibition in this context.

United States v. Skilling, 130 S. Ct. 2896, 2933 n.44 (2009) (citations omitted).

importance of reviving the nondisclosure aspect of this law in some form; it is widely addressed in state law and is crucial to maintenance of the public trust. Congress should amend § 1346 to add a limiting principle for nondisclosure requiring scienter, materiality, official action, and benefit, and should consider adding a second statute addressing material nondisclosure violations not captured by the first.

APPENDIX A: CONTENT OF STATE LEGISLATIVE ETHICS STATUTES DECLARING GENERAL INTENT

State	Statute	Public Trust or Public Confidence Language Included	Public Right to Disclosure, Avoidance of the Appearance of Impropriety Asserted	Complex Position of Legislators as Citizens Acknowledged
AL	ALA. CODE §36-25-2(a)(4), (b), (c) (West 1973) (amended 1995).	**x**	**x**	**x**
AK	ALASKA STAT. § 24.60.010(3), (4) (1984).	**x**		**x**
CA	CAL. GOV'T CODE § 81001 (b) (West 1974).			
CO	COLO. REV. STAT. ANN. §§ 24-6-201, 24-18-101, -103 (West	**x**	**x**	**x**

	2010).			
DE	DEL. CODE ANN. tit. 29, § 1001(b), (b) (1990).	**x**		**x**
FL	FLA. STAT. ANN. § 8 (West 2008).	**x**	**x**	**x**
GA	GA. CODE ANN. § 45-10-21 (West 1983).	**x**	**x**	**x**
HI	HAW. REV. STAT. § 84 (PMBL) (West 1972) (amended 1981).	**x**	**x**	
ID	IDAHO CODE ANN. § 59-702 (2010).	**x**	**x**	**x**
KY	KY. REV. STAT. ANN. § 6.606 (West 1993).	**x**	**x**	

LA	LA. REV. STAT. ANN. § 42:1101 (1980).	**x**		**x**
MD	ME. REV. STAT. ANN. tit. 1, § 1011 (1975).	**x**	**x**	**x**
ME	MD. CODE ANN., STATE GOV'T § 15-101 (West 1995).	**x**	**x**	
MS	MISS. CODE ANN. § 25-4-101 (West 1983).	**x**	**x**	
MT	MONT. CODE ANN. § 2-2-103 (1977) (amended 2001).	**x**		
NE	NEB. REV. STAT. ANN. § 49-1402 (West		**x**	**x**

	1976) (amended 1997).			
NV	NEV. REV. STAT. ANN. § 281A.020 (West 1977) (amended 2009).	**x**		**x**
NH	N.H. REV. STAT. ANN. § 15-A:1 (2010).		**x**	
NJ	N.J. STAT. ANN. § 52:13D-12 (West 1971).	**x**	**x**	**x**
NM	N.M. STAT. ANN. § 10-16-3 (West 1993) (amended 2007).	**x**	**x**	
NC	N.C. GEN. STAT. §§ 138A-2 (West 2006), 138A-21 (West 2006).		**x**	**x**

ND	N.D. CENT. CODE § 16.1-09-01 (1981).	**x**	**x**	
OK	OKLA. STAT. ANN. tit. 74, § 257:20-1-1 (West 2009)	**x**	**x**	**x**
OR	OR. REV. STAT. § 244.010(1), (5), (6) (West 1974) (amended 2009).	**x**		**x**
PA	65 PA. CONS. STAT. § 1101.1 (West 1998).	**x**	**x**	**x**
RI	R.I. GEN. LAWS § 36-14-1 (1987).	**x**	**x**	
TN	TENN. CODE ANN. § 3-6-102 (West 2006) (amended 2008).	**x**	**x**	

TX	TEX. GOV'T CODE ANN. § 572.001 (Vernon 1993).	**x**	**x**	
VA	VA. CODE ANN. § 30-100 (West 2001).		**x**	**x**
WA	WASH. REV. CODE ANN. § 42.52.900 (West 1994).	**x**	**x**	
WV	W. VA. CODE ANN. §6B-1-2(a), (c) (d) (West 1989).	**x**		**x**
WIS	WIS. STAT. § 19.41(1) (1973).	**x**		**x**

APPENDIX B: STATE STATUTES PROHIBITING CONFLICTS OF INTEREST

State	Citation	Text
AZ	ARIZ. REV. STAT. ANN. § 38-503 (1968) (amended 1987).	"Any public officer . . . who has . . . a substantial interest in any decision of a public agency . . . shall refrain from participating in any manner as an officer . . . ."
AR	ARK. CODE ANN. § 21-8-803 (West 1988) (amended 1989).	"take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him . . . which is distinguishable from the effects of the action on the public generally"
CA	CAL. GOV'T CODE § 87102.8 (West 1999) (amended 1991).	"make . . . or use his or her official position to influence, any governmental decision . . . where he or she knows or has reason to know that he or she has a financial interest"
CO	COLO. CONST. art. V, § 43 (emphasis added).	"A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly . . . shall not *vote* thereon."
CT	CONN. GEN. STAT. ANN. § 1-84, 1-85 (1971).	"any financial interest . . . which is in substantial conflict with the proper discharge of his duties . . . . if he has reason to believe or expect that he . . . will derive a direct monetary gain or suffer a direct monetary loss . . . by reason of his official activity"
DE	DEL. CODE ANN. tit. 29, § 1002 (1990).	"personal or private interest in any measure or bill . . . which tends to impair a legislator's independence of judgment in the performance of his or her legislative duties"

FL	FLA. STAT. ANN. § 112.311 (1967) (amended 1995).	"have any interest, financial or otherwise, direct or indirect . . . which is in substantial conflict with the proper discharge of his or her duties in the public interest"
HI	HAW. REV. STAT. § 84-14 (1972) (amended 1978).	"take any official action directly affecting . . . a business or other undertaking in which he has a substantial financial interest"
ID	IDAHO CODE ANN. § 59-704 (2008).	"take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose"
IL	5 ILL. COMP. STAT. ANN. 420/3-107 (West 1967) (amended 1968).	"engage in . . . conduct which is unbecoming to a legislator or which constitutes a breach of public trust"
IA	IOWA CODE ANN. § 68B.2A (2008) (amended 2009)	"engage in any . . . [o]utside employment or . . . activity that . . . give the person . . . an advantage or pecuniary benefit that is not available to . . . the general public"
KY	KY. REV. STAT. ANN. § 6.731(1) (West 1976) (amended 1993).	"[u]se or attempt to use his influence as a member . . . in any matter which involves a substantial conflict between his personal interest and his duties in the public interest"
LA	LA. REV. STAT. ANN. § 42:1112 (2009).	"participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know"

ME	ME. REV. STAT. ANN. tit. 1, § 1014 (1978) (amended 2009) (emphasis added).	"***votes*** . . . in connection with a conflict of interest . . . includes . . . direct substantial personal financial interest, distinct from that of the general public"
MD	MD. CODE ANN., STATE GOV'T §§ 15-511(b)(1), 15-511(2) (West 1979) (amended 1999).	"if the legislator's interest tends to impair the legislator's independence of judgment. . . . disqualifies . . . from participating in any legislative action . . . to which the conflict relates"
MA	MASS. GEN. LAWS ANN. ch. 268A, § 6A (West 1978) (amended 1984).	"knowingly to take an action which would substantially affect such official's financial interests"
MN	MINN. STAT. ANN. § 10A.07 (West 1974) (amended 1999).	"take an action or make a decision that would substantially affect the official's financial interests . . . unless the effect on the official is no greater than on other members of the official's business classification"
MO	MO. ANN. STAT. § 105.452 (West 1978) (amended 2008).	"favorably act on any matter that is so specifically designed so as to provide a special monetary benefit . . . materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected"
MT	MONT. CODE ANN. § 2-2-112 (1977) (amended 1995).	"When . . . required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety . . . the legislator shall disclose . . . ."

NE	NEB. REV. STAT. § 49-1499 (1976) (amended 2005).	"take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her . . . which is distinguishable from the effects of such action on the public generally"
NC	N.C. GEN. STAT. ANN. § 138A-37 (West 2006) (amended 2008).	"participate in a legislative action if the legislator knows the legislator . . . may incur a reasonably foreseeable financial benefit . . . and if . . . the legislator's judgment would be substantially influenced by the financial benefit"
ND	N.D. CENT. CODE § 44-04-22 (1995) (emphasis added).	"[if] a direct and substantial personal or pecuniary interest in a matter . . . may not participate in or ***vote*** on that particular matter without the consent of a majority of the rest of the body"
NV	NEV. REV. STAT. ANN. § 281A.400 (West 1977) (amended 2009).	"seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in [his] position to depart from the faithful and impartial discharge of . . . [his] public duties"
NJ	N.J. STAT. ANN. § 52:13D-18 (1971) (amended 2004) (emphasis added).	"*voting* or any other action . . . in the enactment or defeat of legislation in which he has a personal interest . . . reason to believe that he . . . will derive a direct monetary gain or suffer a direct monetary loss. No . . . personal interest . . . if . . . no benefit or detriment could reasonably be expected to accrue . . . to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such . . . group"

NY	N.Y. PUB. OFF. LAW § 74 (McKinney 1954) (amended 2010).	"any interest, financial or otherwise, direct or indirect . . . which is in substantial conflict with the proper discharge of . . . duties"
OK	OKLA. STAT. tit. 74, § 257:20-1-7 (2009) (emphasis added).	"introduce . . . promote, or ***vote*** on any legislation if . . . [he] has a pecuniary interest in; or a reasonably foreseeable benefit from,; the legislation . . . greater . . . than the pecuniary interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class"
OR	OR. REV. STAT. § 244.120 (1974) (amended 1993).	"[W]hen met with an actual or potential conflict of interest, a public official shall . . . announce publicly . . . the nature of the conflict before taking any action thereon in the capacity of a public official."
PA	65 PA. CONS. STAT. §§ 1102–1103 (2008).	"[C]onduct that constitutes a conflict of interest"; "Use . . . of the authority of his office . . . for the private pecuniary benefit of himself . . . does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass."
RI	R.I. GEN. LAWS § 36-14-5 (1987) (amended 2005); § 36-14-7 (1987).	"any interest, financial or otherwise, direct or indirect . . . which is in substantial conflict with the proper discharge of . . . duties"; "reason to believe . . . that he or she . . . will derive a direct monetary gain or suffer a direct monetary loss . . . by reason of his or her official activity"
SC	S.C. CODE ANN. § 8-13-700 (1991).	"participate in making, or in any way attempt to use his office . . . to influence a governmental decision in which he . . . has an economic interest"

TX	TEX. GOV'T CODE ANN. § 572.001 (Vernon 1993).	"direct or indirect interest, including financial and other interests . . . in substantial conflict with the proper discharge of the officer's . . . duties in the public interest"
UT	UTAH CODE ANN. § 76-8-109 (West 1973) (amended 2010) (emphasis added).	Must disclose (but may *vote*) on legislation or action by a legislator that the legislator "reasonably believes may cause direct financial benefit or detriment to [him] . . . distinguishable from the effects of that action on the public."
VA	VA. CODE ANN. § 30-108 (West 2001) (emphasis added).	"*vote* on the transaction in which he has a personal interest"
WA	WASH. REV. CODE ANN. § 42.52.020 (West 1996).	"have an interest, financial or otherwise, direct or indirect . . . that is in conflict with the proper discharge of . . . official duties"
WV	W. VA. CODE § 6B-2-5 (West 1989) (amended 2008) (emphasis added).	"*vote* on a matter in which they . . . have a financial interest"
WI	WIS. STAT. ANN. § 19.46 (West 2009).	"Take any official action substantially affecting a matter in which the official . . . has a substantial financial interest."
WY	WYO. STAT. ANN. § 9-13-106 (2009) (emphasis added).	"make an official decision or *vote* on an official decision if . . . [he] has a personal or private interest in the matter. . . . which is direct and immediate . . . provides the public official . . . a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated"

APPENDIX C: STATE STATUTES REQUIRING CONFLICT OF INTEREST DISCLOSURE

State	Statute	Disclose When Taking Any Official Action	Disclose Only When Specific Situations Arise	Scope of Disclosure
AL	ALA. CODE § 13A-10-62 (a), (c) (1977).		**x**	[w]hen contracting with government, "public announcement or notification"
AK	ALASKA STAT. §§ 24.60.070 (a), (b), (c) (1984) (amended 2007), 24.60.100 (1984) (amended 1998).		**x**	When a legislator has a close economic association with a supervisor, another legislator, a public official, a lobbyist, or a legislative employee, make "[a] disclosure . . . sufficiently detailed that a reader of the disclosure can ascertain the nature of the association . . . [if legislator is married to or living with a lobbyist] also disclose the name and address of each employer of the lobbyist and the total monetary value received by the lobbyist from the lobbyist's employer."

AZ	ARIZ. REV. STAT. ANN. § 38-503(b) (1968) (amended 1987).	**x**		When a legislator has "a substantial interest in any decision . . . make known such interest."
AR	ARK. CODE ANN. § 21-8-803(a) (West 1988) (amended 1989).	**x**		When "required to take an action . . . that may affect his or her financial interest . . . [p]repare a written statement describing the matter requiring action and stating the potential conflict."
CO	COLO. CONST. art. V, § 43.	**x**		When a legislator has "a personal or private interest in any measure or bill proposed or pending . . . disclose the fact to the house of which he is a member."
CT	CONN. GEN. STAT. ANN. § 1-86(a) (West 1977) (amended 2005).	**x**		When "required to take an action that would affect a financial interest . . . excuse himself or herself from the matter or prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the potential conflict and explaining why despite

				the potential conflict, such official . . . is able to vote and otherwise participate fairly, objectively and in the public interest."
DE	DEL. CONST. art. II, § 20	**x**		When legislator has "a personal or private interest in any measure or bill . . . disclose the fact to the House of which he or she is a member."
FL	FLA. STAT. ANN. § 112.3143(2), (3)(a) (West 1975) (amended 1999).		**x**	When required to vote: "disclose the nature of his or her interest."
HI	HAW. REV. STAT. § 84-13 (4) (1972) (amended 1984).		**x**	When taking legislative action favorable to the legislator: "file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action."

ID	IDAHO CODE ANN. § 59-704 (1990).	**x**		When "legal advice is that a real or potential conflict may exist . . . disclose the nature of the potential conflict of interest and/or be subject to the rules of the body of which he/she is a member."
IL	5 ILL. COMP. STAT. ANN. 420/3-202 (West 1967).		**x**	When taking official action favorable to the legislator: "disclose that fact to his respective legislative body."
IN	IND. CODE ANN. § 35-44-1-3(a), (d) (West 1978) (amended 1981).		**x**	When contracting with government: "in writing . . . describe the contract . . . describe the pecuniary interest that the public servant has . . . under penalty of perjury."
IA	IOWA CODE ANN. § 68B.2A(1)(c) (West 1993) (amended 2009).	**x**		When a legislator has outside employment or activity "subject to the official control . . . of the person's . . . office . . . disclose the existence of the conflict."

KS	KAN. STAT. ANN. § 46-239(a), (e) (1974) (amended 1991).		**x**	When paid to represent another person before government: "the name of the employer . . . the purpose of the employment . . . and the method of determining and computing the compensation for the employment."
KY	KY. REV. STAT. ANN. § 6.761(2) (West 1993).	**x**		"[D]isclose his interest to the house of which he is a member."
LA	LA. REV. STAT. ANN. § 42:1113 (D)(4)(a) (1979) (amended 2009).		**x**	When contracts with government exist "identify[] the parties to and the value and term of each contract."
ME	ME. REV. STAT. ANN. tit. 1, § 1016-D (2003).		**x**	When bidding on a government contract: "file a statement . . . that discloses the subject of the bid and the names of the Legislator, associated organization and state governmental agency."

MD	MD. CODE ANN., STATE GOV'T § 15-513 (b) (West 1979) (amended 1999).		**x**	When paid to represent another person before government: "report . . . in writing . . . the name of the person represented, the services performed, and the consideration."
MA	MASS. GEN. LAWS ANN. ch. 268A, § 6A (West 1978) (amended 1984).	**x**		When "required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public . . . file a written description of the required action and the potential conflict of interest."
MN	MINN. STAT. ANN. § 10A.07 (subdiv. 1) (West 1974) (amended 1999).	**x**		When "required to take an action or make a decision that would substantially affect the official's financial interests . . . unless the effect on the official is no greater than on other members of the official's business classification . . . prepare a written statement describing the matter requiring

				action or decision and the nature of the potential conflict of interest."
MO	MO. REV. STAT. § 105.461 (1) (West 1991) (amended 1997).	**x**		When a legislator has "a substantial personal or private interest in any measure, bill, order or ordinance proposed or pending . . . file a written report of the nature of the interest."
MT	MONT. CODE ANN. § 2-2-112(3) (1977) (amended 1995).	**x**		"When . . . required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety . . . disclose the interest creating the conflict."
NE	NEB. REV. STAT. § 49-1499(1) (1976) (amended 2005).	**x**		When "required to take any action or make any decision . . . that may cause financial benefit or detriment . . . which is distinguishable from the effects of such action on the public . . . [p]repare a written statement describing the matter requiring action or decision and the nature of the potential conflict . . . [and, if not

				requesting to be excused] state why, despite the potential conflict, he or she intends to vote or otherwise participate . . . ."
NV	NEV. REV. STAT. ANN. § 281A.420(3), (4) (West 1977) (amended 2009).		**x**	When paid to represent another person before government: "disclose . . . [t]he name of the client; . . . [t]he nature of the representation; and . . . [t]he name of the state agency . . . in writing . . . ."
NC	N.C. GEN. STAT. ANN. § 138A-21 (West 2006) (amended 2008).	**x**		"Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests . . . ."
ND	N.D. CENT. CODE § 44-04-22 (1995).	**x**		When a legislator "has a direct and substantial personal or pecuniary interest in a matter . . . disclose the fact to the body of which that person is a member."

OH	OHIO REV. CODE ANN. § 102.03(C) (West 1973) (amended 2010).		**x**	When making a sale to government: "file[ ] a written statement acknowledging that sale."
OK	OKLA. STAT. ANN. tit. 74, § 257:20-1-11 (West 2010).		**x**	When required to take official action in a matter affecting a person with whom the legislator is negotiating for employment: "promptly disqualify."
OR	OR. REV. STAT. ANN. § 244.120(1) (West 1974 (amended 1993).	**x**		"[W]hen met with an actual or potential conflict of interest . . . announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict . . . ."
PA	65 PA. CONS. STAT. ANN. § 1103(j) (West 1998).		**x**	When required to vote: "publicly announce and disclose the nature of his interest . . . in a written memorandum."
RI	R.I. GEN. LAWS § 36-14-6 (1987).	**x**		When "required to take an action, make a decision, or refrain therefrom that will or can reasonably be expected to directly result in an economic

				benefit . . . [p]repare a written statement sworn to under the penalties for perjury describing the matter requiring action and the nature of the potential conflict . . . [and, if not requesting to be excused] state why, despite the potential conflict, he or she is able to vote and otherwise participate fairly, objectively, and in the public interest . . . ."
SC	S.C. CODE ANN. § 8-13-700(B) (1991).	**x**		When "required to take an action or make a decision which affects an economic interest of himself . . . prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision."

TX	TEX. GOV'T CODE ANN. § 572.025 (Vernon 1993).		**x**	When paid to represent another person before government: "report . . . the name of the agency; .. . . the person represented by the member; . . . and the category of the amount of compensation received by the member for that representation."
UT	UTAH CODE ANN. § 76-8-109(2)(b) (West 1973) (amended 2010).	**x**		"[D]uring . . . any legislative matter in which a legislator has actual knowledge that [he] has a conflict of interest which is not stated on the financial disclosure form, [that] legislator shall orally declare to the committee or body before which the matter is pending that the legislator may have a conflict of interest and what that conflict is."
VA	VA. CODE ANN. § 30-110(C) (West 2001) (amended 2006).	**x**		When a legislator "has a personal interest in any transaction pending . . . disclose his interest in accordance with the applicable rule of his house."

WA	WASH. CONST. art. II, § 30.	**x**		When a legislator "has a private interest in any bill or measure proposed or pending . . . disclose the fact to the house of which he is a member."
WV	W. VA. CODE ANN. §6B-2-5(d)(1), (j)(3) (West 1989) (amended 2008).		**x**	When contracting with government: "fully disclos[e] the extent of his or her interest in the contract." When required to vote: "fully disclos[e] his or her interests."
WI	WIS. STAT. ANN. § 19.45(6) (West 1989) (amended 2008).		**x**	When contracting with government: "ma[de] written disclosure of the nature and extent of such relationship."
WY	WYO. STAT. ANN. § 6-5-106(b) (1982).		**x**	When contracting with government or making any appointment: "disclose[ ] the nature and extent of his pecuniary benefits to all parties concerned therewith."

APPENDIX D: STATE STATUTES REQUIRING FINANCIAL DISCLOSURE

State	Statute
AL	ALA. CODE § 36-25-14(a) (1973) (amended 1997).
AK	ALASKA STAT. § 39.50.030 (1975) (amended 2007).
AZ	ARIZ. REV. STAT. ANN. § 38-542(A) (1974) (amended 1984).
AR	ARK. CODE ANN. § 21-8-901 (1991) (amended 1999).
CA	CAL. GOV'T CODE §§ 87206(a), (b), (c), (d), 87207(a) (West 1980) (amended 2000).
CO	COLO. REV. STAT. ANN. § 24-6-202(1) (West 1979) (amended 2010).
CT	CONN. GEN. STAT. ANN. § 1-83(a)(1) (West 1977) (amended 2007).
DE	DEL. CODE ANN. tit. 29, § 5813(a) (1983) (amended 2010).
FL	FLA. STAT. ANN. § 112.3145(2)(a) (West 1974) (amended 2008).
GA	GA. CODE ANN. § 21-5-50(a)(1) (West 1986) (amended 2010).
HI	HAW. REV. STAT. ANN. § 84-17(d) (West 1972) (amended 2007).
IL	5 ILL. COMP. STAT. 420/4A-102 (West 1967) (amended 2009).
IN	IND. CODE ANN. § 2-2.1-3-2(2)(a) (West 1979) (amended 1999).
IA	IOWA CODE ANN. § 68B.35(1), (2) (West 1992) (amended 2009).
KS	KAN. STAT. ANN. § 46-239(b), (c) (1974) (amended 1991).
KY	KY. REV. STAT. ANN. § 6.787 (West 2000).
LA	LA. REV. STAT. ANN. § 42:1124.2(A) (2008).
ME	ME. REV. STAT. ANN. tit. 1, § 1016-A (1989) (amended 2007).
MD	MD. CODE ANN., STATE GOV'T § 15-607 (West 1999).
MA	MASS. GEN. LAWS ANN. ch. 268B, § 5(a) (West 1978) (amended 2009).
MN	MINN. STAT. ANN. § 10A.09 (West 1974) (amended 2002).

MS	MISS. CODE ANN. § 25-4-27 (West 1979) (amended 2008).
MO	MO. ANN. STAT. § 105.485(2) (West 1990) (amended 2008).
MT	MONT. CODE ANN. § 2-2-106(1)(a), (b), (c) (1995) (amended 2005).
NE	NEB. REV. STAT. ANN. § 49-1496 (Westlaw 1976) (amended 2005).
NH	N.H. REV. STAT. ANN. § 15-A:5 (2010).
NM	N.M. STAT. ANN. § 10-16A-3(A) (West 1993) (amended 1995).
NY	N.Y. PUB. OFF. LAW § 73-a (McKinney 1987) (amended 1996).
NC	N.C. GEN. STAT. ANN. § 138A-24 (West 2006) (amended 2009).
ND	N.D. CENT. CODE § 16.1-09-01 (1981).
OH	OHIO REV. CODE ANN. § 102.02(2)(a) (West 1973) (amended 2010).
OK	OKLA. STAT. ANN. tit. 74, § 257:15-1-7(a) (West 2007).
OR	OR. REV. STAT. ANN. § 244.060 (West 1974) (amended 2009).
PA	65 PA. CONS. STAT. § 1105 (1998) (amended 2007)
RI	R.I. GEN. LAWS § 36-14-17 (1987) (amended 2006).
SC	S.C. CODE ANN. § 8-13-1120 (1995).
SD	S.D. CODIFIED LAWS § 3-1A-5 (1974).
TN	TENN. CODE ANN. § 8-50-502 (1972) (amended 2003).
TX	TEX. GOV'T CODE ANN. § 572.023(a) (Vernon 1973) (amended 2003).
UT	UTAH CODE ANN. § 76-8-109 (4)(a) (West 1973) (amended 2010).
VA	VA. CODE ANN. § 30-111 (West 2001) (amended 2010).
WA	WASH. REV. CODE ANN. § 42.17.241 (West 2008).
WV	W. VA. CODE ANN. §6B-2-7 (West 1989) (amended 2005).
WI	WIS. STAT. ANN. § 19.44 (West 2009).
WY	WYO. STAT. ANN. § 9-13-108(a) (2010).