

**STATEMENT
OF**

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**BEFORE THE
PENNSYLVANIA STATE SENATE
COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS**

**PUBLIC HEARING ON SENATE RESOLUTION NO. 228
PROVIDING FOR THE ADOPTION OF ETHICAL CONDUCT RULES OF THE
SENATE**

FEBRUARY 3, 2010

MR. CHAIRMAN, VICE CHAIR ORIE, MINORITY CHAIR MELLOW, AND MEMBERS OF THE COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS, THANK YOU FOR INVITING ME TO APPEAR TODAY IN CONNECTION WITH YOUR CONSIDERATION OF SENATE RESOLUTION NO. 228.

I AM PLEASED TO BE HERE TODAY TO SHARE MY PERSPECTIVE AS A LONG-TIME CAPITOL HILL STAFFER, HAVING WORKED FOR BOTH THE UNITED STATES HOUSE AND SENATE ETHICS COMMITTEES IN WASHINGTON, DC, ADVISING MEMBERS AND STAFF ON THE CODES OF OFFICIAL CONDUCT THAT GOVERNS THEIR OFFICIAL AND CAMPAIGN ACTIVITIES. CURRENTLY, I AM THE CHIEF COUNSEL AND STAFF DIRECTOR OF THE SENATE SELECT COMMITTEE ON ETHICS.

LAW REQUIRES, AND THE PUBLIC HAS THE RIGHT TO EXPECT, THAT OFFICIAL GOVERNMENT RESOURCES MAY NOT BE USED IN CONNECTION WITH CAMPAIGN ACTIVITIES BY ELECTED OFFICIALS AND THEIR STAFF.

RULES OF THE UNITED STATE SENATE AND HOUSE OF REPRESENTATIVES, AND THE INTERNAL GUIDELINES OF THEIR ETHICS AND RULES COMMITTEES, IMPLEMENT STATUTORY RESTRICTIONS ON THE USE OF OFFICIAL RESOURCES FOR CAMPAIGN PURPOSES. THESE RULES AND INTERNAL GUIDANCE CREATE AN “ETHICS WALL” BETWEEN OFFICIAL AND CAMPAIGN ACTIVITIES. THESE PROVISIONS REFLECT THE BASIC PROPOSITION THAT GOVERNMENT FUNDS MAY NOT BE SPENT TO HELP INCUMBENTS GAIN REELECTION.

IN MY REMARKS TODAY I WILL DISCUSS THE KEY FEATURES OF THE RULES AND STANDARDS IN THE UNITED STATES SENATE AND HOUSE OF REPRESENTATIVES RELATED TO CAMPAIGN ACTIVITY, THINGS THE MEMBERS OF THE PENNSYLVANIA SENATE NO DOUBT CONSIDERED WHEN DRAFTING S. RES. 228. THESE RULES AND STANDARDS CONSTITUTE A SET OF “BEST PRACTICES,” REFLECTING WELL-CONSIDERED GUIDELINES THAT HAVE EVOLVED OVER TIME

TO ADDRESS CONCERNS ABOUT THE RESOURCES OF INCUMBANCY BEING USED TO FURTHER REELECTION CAMPAIGNS.

AS DEFINED IN OUR REGULATIONS, OFFICIAL RESOURCES INCLUDE ANYTHING – INCLUDING STAFF TIME – THAT IS PAID FOR WITH TAXPAYER DOLLARS, SUCH AS COMPUTERS, EQUIPMENT, FACILITIES AND SUPPLIES. CLEARLY THEN, A WIDE VARIETY OF ACTIVITIES MAY NOT TAKE PLACE IN OFFICIAL SPACE OR USING OFFICIAL RESOURCES.

THE LIST OF PROHIBITED ACTIVITIES IS TOO LONG TO STATE HERE BUT WOULD INCLUDE, AT A MINIMUM, SUCH ACTIVITIES AS SOLICITING CONTRIBUTIONS; DRAFTING CAMPAIGN SPEECHES, PRESS RELEASES, STATEMENTS OR LITERATURE; COMPLETING FEDERAL ELECTION COMMISSION REPORTS; AND HOLDING CAMPAIGN STRATEGY MEETINGS, JUST TO NAME A FEW.

ADDITIONALLY, CAMPAIGN PHONE CALLS MAY NOT BE INITIATED IN CONGRESSIONAL SPACE AND, AS A GENERAL MATTER, SUCH CALLS MUST BE CONDUCTED OUTSIDE OF THE OFFICE.

FURTHER, MEMBERS ARE PROHIBITED FROM REQUIRING CONGRESSIONAL STAFF TO PERFORM CAMPAIGN DUTIES AS A CONDITION OF EMPLOYMENT, AND STAFF ARE GENERALLY PROHIBITED BY CRIMINAL LAW FROM MAKING A CONTRIBUTION OR ADVANCING ANY FUNDS FOR A CAMPAIGN EXPENDITURE ON BEHALF OF THEIR SUPERVISING MEMBER.

TO FURTHER PREVENT THE MISUSE OF OFFICIAL RESOURCES FOR CAMPAIGN PURPOSES, FEDERAL LAW AND RULES OF THE SENATE AND HOUSE IMPOSE MORATORIA ON OFFICIAL EXPENDITURES BY MEMBERS FOR CERTAIN COMMUNICATIONS IN ADVANCE OF AN ELECTION. THESE MORATORIA, OR “BLACK-OUT” PERIODS, RELATE TO THE PROHIBITION ON USE OF OFFICAL ALLOWANCES FOR MASS MAILINGS, THE USE OF SENATE AND HOUSE RECORDING STUDIOS, FORWARDING OF TOWN HALL MEETING NOTICES, AND THE USE OF

THE INTERNET TO SOLICIT CONSTITUENT INPUT OR INQUIRIES, AS WELL AS OTHER MATTERS.

THE MISUSE OF OFFICIAL FUNDS AND RESOURCES THAT A LEGISLATURE ENTRUSTS TO ITS MEMBERS FOR THE CONDUCT OF OFFICIAL BUSINESS IS, AND SHOULD BE, A VERY SERIOUS MATTER. IN THE SENATE AND HOUSE, SERIOUS CONSEQUENCES HAVE RESULTED FROM SUCH MISUSE, INCLUDING DISCIPLINARY ACTION. ADDITIONALLY, FOR THE MOST SERIOUS CASES, REFERRAL TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITY FOR CRIMINAL PROSECUTION CAN RESULT.

IT IS ALSO IMPORTANT TO NOTE THAT BOTH CONGRESSIONAL ETHICS COMMITTEES ADVISE THAT THE SUPERVISING EMPLOYEES' MEMBERS ARE ULTIMATELY RESPONSIBLE FOR KNOWING THE RULES AND ENSURING THAT THEIR STAFFS ARE ALSO AWARE OF AND ADHERE TO THE RULES. IN OTHER WORDS, MEMBERS THEMSELVES ARE RECOGNIZED AS – AND ARE RESPONSIBLE FOR – THE FIRST LINE OF ENFORCEMENT OF THE RULES OF ETHICAL CONDUCT.

WHILE RULES AND GUIDANCE SET FORTH BRIGHT-LINE RESTRICTIONS ON THE USE OF OFFICIAL FUNDS AND RESOURCES FOR CAMPAIGN PURPOSES, THE ETHICS COMMITTEES DO ALLOW THAT CERTAIN LIMITED ACTIVITIES IN A CONGRESSIONAL OFFICE, WHILE RELATED TO THE CAMPAIGN, ARE PERMISSIBLE.

CAUTION IS NEVERTHELESS URGED THAT WHILE ENGAGING IN THESE LIMITED, PERMISSIBLE ACTIVITIES MEMBERS AND STAFF MUST BE MINDFUL OF APPEARANCES CONCERNS THAT MAY ARISE, AND THAT THESE INDIVIDUALS MAY BE SUBJECTING THEMSELVES AND THE OFFICE TO THE FILING OF AN ETHICS COMPLAINT.

THE SORTS OF LIMITED ACTIVITIES THAT MAY TAKE PLACE IN A CONGRESSIONAL OFFICE RELATE TO SCHEDULING; REFERRING MISDIRECTED COMMUNICATIONS TO THE APPROPRIATE OFFICE, BE IT THE CAMPAIGN OFFICE FOR ELECTION-RELATED MATTERS OR THE CONGRESSIONAL OFFICE FOR ALL OFFICIAL MATTERS; HANDLING

CAMPAIGN PRESS INQUIRIES THAT ARE OTHERWISE INCIDENTAL TO A CALL ON AN OFFICIAL MATTER; AND REDIRECTING OR RETURNING MISDIRECTED CAMPAIGN CONTRIBUTIONS.

OF COURSE, WHEN CONGRESSIONAL EMPLOYEES HAVE COMPLETED THEIR OFFICIAL DUTIES, NO LAW, RULE OR STANDARD OF CONDUCT PROHIBITS THEM FROM ENGAGING IN CAMPAIGN ACTIVITIES, ON THEIR OWN TIME, AS VOLUTEERS OR FOR PAY, PROVIDED THE RULES I HAVE OUTLINED ARE BEING OBSERVED. ULTIMATELY, THE DECISION WHETHER A STAFFER MAY PERFORM ANY CAMPAIGN ACTIVITY, OR WHEN SUCH ACTIVITY MAY BE CONDUCTED, IS LEFT TO THE DISCRETION OF THE SUPERVISING MEMBER.

SIMILAR TO DEFINITION CONTAINED IN S. RES. 228, ONE'S "OWN TIME" IS GENERALLY UNDERSTOOD TO MEAN LUNCH TIME, AFTER WORK, DURING THE WEEKEND, PERIODS OF ANNUAL LEAVE AND WHILE ON LEAVE WITHOUT PAY STATUS.

STAFF ARE ALSO PERMITTED TO REDUCE THEIR HOURS IN THE CONGRESSIONAL OFFICE WITH A COMMENSURATE REDUCTION IN PAY. BECAUSE OF THE IRREGULAR WORK HOURS IN CONGRESS, HOWEVER, APPLICABLE STANDARDS PROVIDE SOME FLEXIBILITY IN DETERMINING WHEN A STAFFER IS FREE TO PARTICIPATE IN OUTSIDE ACTIVITIES.

TO REDUCE THE POTENTIAL FOR MISCONDUCT, IT IS GOOD PRACTICE FOR CONGRESSIONAL OFFICES TO SPECIFICALLY DEFINE IN AN OFFICE MANUAL OR PERSONNEL BOOKLET A POLICY ON WHAT CONSTITUTE'S A STAFFER'S "OWN TIME."

ADDITIONALLY, TIME SPENT ON CAMPAIGN ACTIVITIES SHOULD BE A REGULAR, PREDICTABLE SCHEDULE TO THE HIGHEST DEGREE FEASIBLE, AND ALL STAFF WORKING FOR THE CAMPAIGN SHOULD BE ENCOURAGED TO KEEP A CAREFUL RECORD OF THEIR TIME SO THEY CAN ALWAYS ACCOUNT FOR THE TIME SPENT ON OFFICIAL ACTIVITIES AND, SEPARATELY, TIME DEVOTED TO CAMPAIGN WORK.

DO THESE SYSTEMS OF RULES, STANDARDS AND RESTRICTIONS THAT I HAVE DESCRIBED GO FAR ENOUGH TO PROHIBIT ALL POTENTIAL FOR MISCONDUCT RELATED TO THE CAMPAIGN? PERHAPS NOT.

OF COURSE, MEMBERS AND STAFF WHO RUN AFOUL OF THESE RULES MAY BECOME THE SUBJECT OF AN ETHICS INVESTIGATION. IN BOTH THE HOUSE AND SENATE, PRIVATE INDIVIDUALS – INCLUDING THE LOYAL OPPOSITION – MAY FILE COMPLAINTS THAT INITIATE INQUIRIES. THE COMMITTEES ALSO HAVE THE AUTHORITY TO “SELF-INITIATE” INVESTIGATIONS BASED ON SPECIFIC ALLEGATIONS RAISED FROM VIRTUALLY ANY CREDIBLE SOURCE.

AS A GENERAL MATTER, PENALTIES THAT MAY BE IMPOSED AT THE CONCLUSION OF AN ETHICS INVESTIGATION INCLUDE PUBLIC OR PRIVATE LETTERS OF DISAPPROVAL OR ADMONISHMENT, IN CASES OF DE MINIMIS INFRACTIONS.

FOR THE MORE SERIOUS CASES, STAFF MAY BE REQUIRED TO MAKE A PAYMENT OF RESTITUTION OR BE SUBJECT TO SUSPENSION OR DISMISSAL. IN THE CASE OF A MEMBER, ACTIONS RANGE GENERALLY FROM REPRIMAND TO RECOMMENDATIONS REGARDING A MEMBER'S SENIORITY, THE DENIAL OF RIGHTS AND PRIVILEGES, CENSURE, OR EXPULSION, IN THE MOST SERIOUS CASE.

AS IMPORTANT AS THESE ETHICAL RULES AND REMEDIES ARE TO UPHOLDING THE INTEGRITY OF THE INSTITUTIONS, IT MUST BE NOTED THAT THEY MERELY COMPLIMENT – NOT SUPPLANT – THE CRIMINAL LAW AND APPROPRIATE LAW ENFORCEMENT FUNCTIONS. MEMBERS AND THOSE STAFF WHO PERFORM CAMPAIGN FUNCTIONS REMAIN FULLY SUBJECT TO STATUTORY PROVISIONS, INCLUDING THOSE OF THE CRIMINAL LAW, INCLUDING FALSE CLAIMS, FRAUD, THEFT OF GOVERNMENT RESOURCES AND OTHER PROVISIONS THAT PROHIBIT IMPROPERLY INFLUENCING ELECTIONS.

WHILE PENALTIES AND CRIMINAL ENFORCEMENT PLAY IMPORTANT PART OF ANY MEANINGFUL COMPLIANCE PROGRAM, I URGE THE COMMITTEE NOT TO FORGET THAT PREVENTION OF IMPROPER CAMPAIGN CONDUCT IN THE FIRST PLACE IS PARAMOUNT.

KEY TO ANY PREVENTION REGIME IS A ROBUST PROGRAM OF EDUCATION AND TRAINING ON THE APPLICABLE LAWS AND RULES THAT GOVERN ETHICAL CONDUCT.

RECENT ENACTMENTS, INCLUDING THE HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007, MADE MANDATORY THE ALREADY EXISTING PRACTICES IN THE SENATE AND HOUSE OF PROVIDING TRAINING ON THE CODE OF OFFICIAL CONDUCT.

IN THE UNITED STATES SENATE, FOR EXAMPLE, ALL MEMBERS, OFFICERS AND EMPLOYEES MUST PARTICIPATE IN ETHICS TRAINING WITHIN 60 DAYS OF ASSUMING OFFICE. ADDITIONALLY, IN ELECTION YEARS SPECIAL TRAINING IS GIVEN ON THE PROVISIONS

OF THE CODE AND OTHER LAWS AND RULES THAT RELATE TO CAMPAIGN ACTIVITY. ALL OFFICES MUST CERTIFY TO THE ETHICS COMMITTEE THAT NEW PERSONNEL HAVE RECEIVED THEIR MANDATORY ETHICS TRAINING.

FURTHER, MEMBERS AND STAFF SHOULD HAVE A PLACE TO GO TO RECEIVE CONFIDENTIAL ADVICE ON THE APPLICATION OF THE CODE OF OFFICIAL CONDUCT TO THEIR PROPOSED ACTIVITIES. RULES IN THE SENATE AND HOUSE AUTHORIZE THE RESPECTIVE ETHICS COMMITTEES TO RENDER ADVISORY OPINIONS ON PROSPECTIVE CONDUCT.

INDIVIDUALS WHO RELY UPON SUCH AN OPINION, AND WHO ACT IN GOOD FAITH IN ACCORDANCE WITH THE GUIDANCE AND LAWS AND RULES ADDRESSED IN THE OPINION, MAY NOT BE LATER SANCTIONED FOR THEIR CONDUCT.

IN CLOSING, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE
THE COMMITTEE TODAY ON THIS IMPORTANT RESOLUTION.

I WOULD NOW BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY
HAVE. THANK YOU.