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President's Message **Patricia Young, President**

Dear COGEL Colleagues –

I am pleased to present you with the summer issue of The Guardian.

The 2014 Steering Committee met during the first weekend of May at the Omni William Penn Hotel in downtown Pittsburgh, the site of this year's annual conference. One outcome of the meeting was the decision to explore the feasibility of COGEL offering certification programs in one or more of COGEL's disciplines: Campaign Finance, Elections, Ethics, Freedom of Information and Lobbying. Gauging interest in such a program begins with the survey which was sent to all COGEL members on May 27 and what you say in your responses. I urge you to take a minute and complete the survey. Your comments and suggestions are important to the Steering Committee and help inform us in our decisions. If you need another copy of the survey, please contact Diane Gill at director@cogel.org.

The 36th Annual COGEL Conference will be held December 7 to 10, 2014, in Pittsburgh, Pennsylvania. The Program Committee has been very successful in developing this year's program. Think of it—four days, over 35 educational sessions, countless connections and opportunities! The "First Look" conference agenda and information on the conference location is posted to COGEL's website, www.cogel.org. Also now available on the website is the on-line registration form. Remember, the early birds get a discounted registration fee!

Many of you may already know that the Steering Committee had a change of leadership earlier this year. Jane Feldman retired as Executive Director of the Colorado Independent Ethics Commission and stepped down as President of COGEL. Per our bylaws, I, as president-elect, assumed the position of President. I am much honored to serve as President of this great organization—great because of you, the members. I look forward to working with you and meeting you in Pittsburgh in December!

The Guardian provides reporting on recent developments in areas of COGEL interests. COGEL provides a medium, through its publications and conferences, for the exchange of useful information and significant developments in all of its member disciplines. COGEL endeavors to present accurate information, but does not warrant the accuracy or completeness of the information included. Opinions expressed in articles are those of the authors credited and do not necessarily represent the views of the membership or steering committee of COGEL.

COGEL

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Click on these links to get more information about COGEL's Steering Committee and Bylaws.

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Beyond the Headlines— An Interview with Dr. James A. Thurber Founder and Director, Center for Congressional and Presidential Studies

**Wesley Bizzell, Assistant General Counsel
Altria Client Services Inc.**



Beyond the Headlines, a regular Guardian feature, brings you interviews with the professionals who are involved in campaign finance, lobbying, ethics, elections, and FOIA issues.

For this installment, we interview Dr. James A. Thurber, American University's Distinguished Professor of Government and Founder and Director of the Center for Congressional and Presidential Studies. Dr. Thurber is editor of the journal *Congress and the Presidency*, and served on the American Bar Association Task Force on Lobbying Reform. He is the author of numerous books and more than 80 articles on American politics and is a frequent guest on national news including CNN, NPR, and the Today Show.

Recently, Dr. Thurber received the 2013 Hatfield Public Policy Scholar of the Year Award, which is given in recognition of an "exceptional scholar" whose career exemplifies former Senator Mark Hatfield's commitment to public interest and public service.

1. In 1979, you founded the Center for Congressional and Presidential Studies. Can you tell us about the Center, its history, and how what prompted its founding?

I founded the Center for Congressional and Presidential Studies (CCPS) in 1979. There were no other research centers in Washington, DC, focused on two major institutions of government. The founding philosophy was to merge academic knowledge and the wisdom of those involved in government and politics. CCPS has focused on academic and applied research, education, and training and outreach to the public on issues related to Congress and the presidency. That has evolved into additional programs on campaigns and elections, and lobbying and interest groups. CCPS has a foundation of teaching students to be ethical participants in government and politics. We have had thousands of students who have gone into government, lobbying, and campaigns since its founding. CCPS has organized over 250 conferences and academic forums since 1979.

Beyond the Headlines

(Continued from page 2)

The research focus of the Center has been on Congress and the presidency, elections, lobbying and issues and policies facing the two institutions. CCPS founded and manages the Campaign Management Institute, Public Affairs and Advocacy Institute, and European Public Affairs and Advocacy Institute and weekend workshops on lobbying and campaigns. The Center established and administers the Benefactor's Fund for student scholarships for Center programs. It has also established and administers the Gill Foundation Ph.D. Scholarship for quantitative research in the School of Public Affairs. The Bryce Harlow Foundation has supported a special course on ethics and lobbying for the past six years. The Center has supported 12 Ph.D. dissertations, and CCPS scholars have published over 30 books and 150 scholarly articles and chapters since its founding. The Center has co-produced three award-winning BBC documentaries on Congress and elections. CCPS publishes the refereed journal, *Congress and the Presidency* (since 1984). The Center has successfully solicited funds for its research, educational activities and student scholarships, and has sponsored over thirty visiting research fellows. Please visit www.american.edu/spa/ccps for details on all Center videos, programs, publications, and future events.

2. Looking back at the Center's many activities and accomplishments over the past 34 years, of which are you most proud?

I am most pleased with the placement of hundreds of young professionals in positions on the Hill, the White House, in election campaigns, and in the advocacy/lobbying business. We currently have over 150 of our students in important positions in Congress. There are four Members of Congress from American University. I am also proud of our research and publication program, especially the work associated with a 7-year Pew grant to study campaign conduct and ethics. We are also well known for our books on Congress and the president, and elections. Finally our involvement in trying to improve government (committee reform, campaign finance reform, redistricting reform, lobbying and ethics reform, especially work with Senator Obama on the topic) has allowed us to apply our research to major issues facing our democracy. Starting the Campaign Management Institute, the Public Affairs and Advocacy Institute and workshops that bring in professionals to teach and mentor our students is a major accomplishment.

3. You are considered one of the country's leading experts on lobbying. How did you first become interested in the issue of lobbying and lobbying reform?

I became interested in ethics and lobbying reform when I worked in the Senate for U.S. Senator Hubert H. Humphrey in 1973. I have testified before congressional committees and been involved and interested in ethics and lobbying reform since 1976 when I worked on the Senate Stevenson-Brock Committee, in 1978 with the Obey Commission, in 1995 with the Lobbying Disclosure Act, in 2007 on the Honest Leadership and Open Government Act, and most recently with the American Bar Association's Task Force on Lobbying Reform. I am currently involved with an ad hoc group in Washington, DC, interested in lobbying and ethics reforms. I have also been involved with the Transparency Initiative (lobbying reform) with the European Union (EU) Commission and EU Parliament. I founded and teach the Public Affairs and Advocacy Institute (lobbying institute), the European Public Affairs and Advocacy Institute (in Brussels), and a special workshop on Ethics and Lobbying. From these institutes I have helped start similar programs in Croatia, Hungary, Italy and Ukraine. I have consulted in those countries in their attempts to pass lobbying reform legislation. I continue to do research and publish about lobbyists and lobbying in the US and Europe. I continue to be interested in improvements in our lobbying regulation system, especially improving enforcement.



The COGEL Steering Committee offers its thanks, on behalf of the membership, to State and Federal Communications for the many services it has provided to the organization. Included among those is "News You Can Use," which is made available to all COGEL members on the COGEL Web site.

Beyond the Headlines (Continued from page 3)

4. When states and localities are attempting to improve the regulation of lobbying, what do you believe should be some of their key considerations? What are some key hurdles states and localities face in this area?

I have not studied state and local lobbying law. However, I know that states and localities vary widely in their attempts to regulate lobbying. State and local governments should define lobbying clearly and consistently, with the goal of bringing more transparency and reducing conflicts of interests and corruption without limiting the First Amendment rights of citizens. The National Conference of State Legislatures has compiled an excellent summary of lobbyist registration requirements for all of the states. California, Oregon and Washington seem to have the most progressive regulations of lobbyists.

Internationally there is a movement over the last decade to improve lobbying regulations. Lobbying in Europe is a dirty word, but it goes on and is as common as in the United States. The EU Commission and Parliament have a voluntary reporting system calling for much more transparency. The EU Transparency Initiative has weak or no enforcement, but has improved what is known about advocacy in Brussels. Several European nations have proposed or passed new legislation regulating lobbyists. The OECD is also working on lobbying reform, especially on problems revolving door and conflict of interest issues, money and politics, and transparency.

5. Much of your research has focused on the conduct of campaigns. How do you think campaigns will evolve over the next 20 years?

The next 20 years will see a continuation of massive amounts of money being spent in a permanent campaign for candidates. Increased amounts of campaign money will continue to be associated with the increase of money in lobbying campaigns. There will be innovation and evolution of the use of social media and the Internet in election campaigns. The expansion of independent expenditures and super PACs will continue to be a problem unless a future Supreme Court and Congress re-regulates campaign finance. Campaign will have explicit efforts to reach and mobilize Latinos and other minorities. There will be continued efforts to expand early voting, to make it easier for Americans to vote.

6. Finally, much has been written about the dysfunction of Congress. One of the Center's recent events was entitled "What's Wrong With Congress And What Can Be Done About It?" So, what can be done about it?

Briefly, I suggest several reforms that are unlikely, but would help reduce the current dysfunction in Congress:

- Redistricting reform is absolutely essential. Citizen redistricting commissions, like in California and ten other states, could reduce partisan redistricting and bring more competition in the general election. Currently, the primary is the real election, with only 30 to 40 competitive districts in the U.S. House of Representatives. Primaries are low-turnout elections dominated by the party activists often on the far left or far right, which creates the foundation of polarization and deadlock. More competitive districts in the general election would create more moderation and less polarization in Congress.
- Enlarge the electorate through open primaries, early voting, and easy registration so elections do not result in the far right and far left dominating nominations.
- Return to comprehensive campaign finance reform with limits and transparency (immediate reporting electronically) on giving and spending. Reform the Federal Election Commission so it is functional and enforces the law.
- Improve lawmaking (return to the regular order, stop the Tuesday to Thursday Club, with a required schedule of work in DC, and return to regular conference committees between the House and Senate).
- Push for forthright and balanced commentary by the media and reduce entertaining "tribalism" among the media.

Beyond the Headlines

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- Do comprehensive committee reform (reduce number of committee and subcommittees (Congress has 214 panels), committee assignments and realign jurisdictions (Homeland Security has 109 panels with jurisdiction; 58 panels cover energy and environment).
- Improve the civic education of the American public. Improving our civic education starting in grade school and continuing throughout a person's life so that people understand and become more involved in government and politics, which is fundamental to our democracy.
- Enforce the budget and appropriations calendar and return to the regular order (stop the omnibus appropriations bills, stop the growth in CRs, establish biennial appropriations, stop backdoor spending and authorizing).
- Improve systematic oversight by congressional committees rather than constant "fire alarm" oversight, always focusing on the latest major problem.

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A Commitment to Integrity and Transparency: The City of Ottawa's Accountability Framework

Robert Marleau, Integrity Commissioner
City of Ottawa

At the commencement of its current Term of Council, members of Council for the City of Ottawa endorsed Mayor Jim Watson's initiative to develop a comprehensive **Accountability Framework** which represents its multi-faceted commitment to integrity, accountability, and transparency. The Framework includes the appointment of an Integrity Commissioner, the development of a Lobbyist Registry, a public registry of gifts and the regular, mandatory disclosure of office expenses.

In January 2011, Members of Council implemented the first piece of the Framework by disclosing their monthly office expenses. Expense reports for the Mayor, all 23 City Councillors, as well as for the five members of the City's Executive Committee, are posted online on the **Accountability Framework web site**.

Members of Council approved the next components of the Framework over the course of two meetings in July and August 2012 in which they:

- Approved the responsibilities and selection process for the position of Integrity Commissioner;
- Confirmed that the Commissioner would also be the **City's Meetings Investigator and Lobbyist Registrar** and announced my appointment to the position; and
- Passed the By-law establishing both the Lobbyist Registry, and the position and duties of the Lobbyist Registrar.



City of Ottawa Skyline
Photo Courtesy: Roger Lalonde, City of Ottawa

Ottawa's Accountability Framework (Continued from page 5)

Staff proceeded to develop and launch the Registry in September, 2012. Guy Giorno, Member of the COGEL Steering Committee and leading expert on lobbying legislation and lobbyist registration law, acknowledged this achievement in *Capital Perspectives Newsletter*: “Civic officials made history by achieving successful implementation—including a functioning registry—within only nine weeks. Canadian governments (e.g. City of Toronto) typically take a full year to launch lobbyist registries. Of 10 broad-based lobbying laws in the country, only one was implemented more swiftly than Ottawa’s.”

Several features of the City of Ottawa’s Lobbyist Registry set it apart from other municipal, provincial, and federal registries. First, Ottawa’s Registry requires that every individual employee of a company file his or her own reports of lobbying activity. In contrast, under Canadian federal law, a company CEO files one lobbying report for all employees who undertake lobbying activity. Second, a lobbyist must report any and all activity, as the City of Ottawa’s legislation contains no minimum threshold for lobbying disclosure. In some Canadian jurisdictions, lobbying is only reported when the combined volume of employees’ lobbying exceeds a certain number of hours per year, or a percentage of the employment time of one individual. Additionally, users of the City of Ottawa’s Registry are not required to complete any registration material in hard copy, as is required when registering as a lobbyist with the Province of Ontario. A first-time user of the City of Ottawa’s Lobbyist Registry can register online in a matter of minutes, and an individual need only register once.

Members of Council put the last two pieces of the Framework in place last year. On July 1, 2013, Council enacted a Code of Conduct for Members of Council, Council Expense Policy and a Community, Fundraising and Special Events Policy. Finally, in October 2013, Council undertook its first proactive disclosure of gifts and tickets received by Members of Council. In my role as Integrity Commissioner, I provide regular advice on inquiries I receive from Members of Council and their staff, a significant portion of which have been related to the rules around the acceptance of tickets and the Gifts Registry.

The City of Ottawa’s Accountability Framework is unique in several respects. First, Council opted not only to proactively invoke discretionary tools regarding accountability and transparency set out in the *Municipal Act, 2001*, (“the Act”) but it has done so in a timely manner and in the absence of a scandal. Second, Ottawa is first municipality in Ontario to integrate roles of three integrity officials provided for in the Act. Further, Ottawa is the second Canadian municipality to establish a formal lobbyist registry and the first to do so voluntarily. This accomplishment was realized both in record time, and by re-purposing existing database resources.

With all pieces of the Accountability Framework now in place, an important part of my focus for 2014 is on education, outreach, and encouraging greater compliance on the part of lobbyists with the Lobbyist Registry By-law. I have held training sessions with City staff in order to help them recognize lobbying when it occurs, and know what to do when they are lobbied. I have also reached out stakeholders to raise awareness of the aims and provisions of the Lobbyist Registry. In addition, a member of my staff is conducting a compliance audit of lobbyist registry profiles and communicating with lobbyists to correct incomplete or inaccurate file information.

I expect to receive increased volume of inquiries and requests for advice as we approach the municipal election date of October 27, 2014, and transition to a new Term of Council. As I wrote in my 2013 Annual Report, however, few organizations go through such significant transformations as that undergone at the City of Ottawa since December 2010 with such rigour and steadfastness, while avoiding turmoil and internal strife. I believe that Ottawa City Council has created a strong Framework that will enable it to conduct business in a more open and transparent manner throughout the remainder of the current Term of Council, and in the years ahead.

Robert Marleau is the Integrity Commissioner for the City of Ottawa, Ontario. He can be reached at Robert.Marleau@ottawa.ca or integrity@ottawa.ca.

2013 Québec Conference Evaluations and Planning for 2014 Conference

Melanie Martin-Griem
Manager, Chief Electoral Office, Elections Ontario



Québec City, Jean-François Bergeron
Courtesy Québec City Tourism

Thank you to everyone involved with making the Québec Conference such a success! From our gracious Host Committee to the Program Committee who worked tirelessly under Darrin Lim and Nola Western's leadership to our moderators, panelists and conference attendees – together we created a conference to remember and our session evaluations prove it!

The Program Committee takes the feedback from the session and conference evaluations seriously. From February 28 – March 1, the Program Committee for the 2014 Pittsburgh conference met to begin the planning process. The first item of business was to review and discuss the evaluations.

Conference attendees told us that they were very pleased with last year's conference. We received feedback forms for 37 plenary and breakout sessions. The average overall rating provided for the sessions was approximately 4.5 out of 5 with eleven sessions receiving an overall rating of 4.7 or higher.

Here are some select comments that are reflective of the feedback received:

- *Great comments and discussion. More examples of past experiences than in years past, which is essential*
- *Very well organized. The session was run in a positive manner – very efficient*
- *Informative, constructive, current. Appreciated the experiences and insights and audience comments as well*
- *Very good and on point content. Useful insight that I can apply in the workplace*
- *This was an excellent panel. I enjoyed the presentation style, the in-depth subject matter and the expertise of the moderator and the panelists.*
- *Excellent – materials shared by presenters were practical*
- *Very good discussion. Enjoyed the number of different perspectives on this issue*

The Program Committee will also be using the constructive feedback to help improve the caliber of the programming offered in Pittsburgh. For example, we're planning on developing even more interactive sessions and encouraging moderators and panelists to provide concrete take-aways for participants.

We'll also be bringing back the popular COGEL track to make it as easy as possible for participants to decide which session to attend.

Keep visiting the COGEL website for conference information. We'll have a "first look" available shortly with a preview of some of the sessions we're developing. After that, watch for updates in June when the Program-at-a-Glance for the conference will be released! The Committee members are looking forward to seeing you in Pittsburgh December 7 to 10!

Melanie Martin-Griem is the Manager, Chief Electoral Office, Elections Ontario. She can be reached at melanie.martin-griem@elections.on.ca.

Québec City, Pittsburgh, Boston . . . and Then?

The COGEL Steering Committee is seeking suggestions for locations to host future COGEL Conferences. The 2014 Conference will be in Pittsburgh at a wonderful venue, and 2015 will be in the always exciting Boston, but we have no locations yet for 2016 and 2017.

COGEL's excellent executive directors manage most of the conference nuts and bolts. Also, if there are several member agencies in your jurisdiction, you can split the host committee activities among them.

If you would like to host a future conference, or have a suggestion for a city that would be a great conference site, please send your suggestions to director@cogel.org.



U.S. Supreme Court Strikes Down Aggregate Limits on Contributions in *McCutcheon et al. v. FEC*

Jennifer Hardin
Senior Attorney, Ohio Ethics Commission

On April 2, 2014, the Supreme Court struck down the biennial aggregate limits on individual contributions to federal candidates, parties, and political actions committees. In *McCutcheon v. FEC*, the Court ruled that the aggregate limits set in the Federal Elections Campaign Act, as amended by the Bipartisan Campaign Reform Act, violate the First Amendment.

The Act limits the amounts that individuals may contribute to federal candidates and political committees. Under the Act, the maximum contributions an individual can make are: (1) \$2,500 per election to federal candidates; (2) \$30,800 per calendar year to a national party committee; and (3) \$5,000 per calendar year to any non-party political committee.

There are also overall limits, which are adjusted for inflation, on the aggregate amounts individuals may contribute in a two-year period. The aggregate amounts for the 2011-2 biennium, which was the subject of the lawsuit, was \$46,200 to all federal candidates and \$70,800 to federal political action committees and political party committees.

The plaintiffs in the lawsuit, Alabama resident Shaun McCutcheon and the Republican National Committee, argued that both the aggregate limit on candidate contributions and the aggregate limit on other contributions violate the First Amendment. They also argued that contribution limits are effectively limitations on expenditures, and therefore subject to strict scrutiny.

Based on the Supreme Court's 1976 holding in *Buckley v. Valeo*, the District Court dismissed the case, concluding that contribution limits are subject to lower scrutiny because they "primarily implicate" the First Amendment right of association rather than expression. The District Court concluded that "the difference between contributions and expenditures is the difference between giving money to an entity and spending that money directly on advocacy." The Court concluded that the limits on contributions are permissible provided that they are closely drawn to meet the important governmental interest in preventing corruption or the appearance of corruption, or as a means of preventing circumvention of contribution limits imposed to further the government's anti-corruption interest. As such, the court held that aggregate limits do not regulate money spent to influence the national political discourse. The plaintiffs appealed the District Court's decision to the U.S. Supreme Court.

McCutcheon v. FEC
(Continued from page 8)



In a 5-4 decision, the Supreme Court concluded that the aggregate limits on contributions in the Act do not further the “only governmental interest this Court accepted as legitimate,” which is protecting against corruption or the appearance of corruption. For the majority, Chief Justice Roberts wrote that there is “no right more basic in our democracy than the right to participate in electing our political leaders.” The Court concluded that the aggregate limits “intrude without justification on a citizen’s ability to exercise ‘the most fundamental First Amendment activities.’” Chief Justice Roberts wrote:

The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Our cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption.

Congress may target only . . . ‘quid pro quo’ corruption . . . Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder’s official duties, does not give rise to quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner ‘influence over or access to’ elected officials or political parties.

Justice Stephen G. Breyer, who read his dissent from the bench, said the ruling “overturns key precedent, creates serious loopholes in the law and undermines, perhaps devastates, what remains of campaign finance reform.” The dissent, in which Breyer was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan, noted that “Where enough money calls the tune, the general public will not be heard . . . And a cynical public can lose interest in political participation altogether.”

Sen. John McCain, who cosponsored the Bipartisan Campaign Reform Act, said he was “disappointed” by the Supreme Court’s decision in *McCutcheon*. “While I have advocated for increasing the aggregate limits on individual contributions to candidates and party committees, I am concerned that today’s ruling may represent the latest step in an effort by a majority of the Court to dismantle entirely the longstanding structure of campaign finance law erected to limit the undue influence of special interests on American politics. I predict that as a result of recent Court decisions, there will be scandals involving corrupt public officials and unlimited, anonymous campaign contributions that will force the system to be reformed once again.”

The *McCutcheon* decision has already had an effect in at least one COGEL member jurisdiction. In May, the Wisconsin Government Accountability Board settled a lawsuit over a state law limiting the amount donors can give to candidates in that state. Kevin J. Kennedy, the Board’s director and general counsel, said that the court’s order in the lawsuit “definitively states what we have anticipated since the U.S. Supreme Court’s *McCutcheon* decision—Wisconsin’s \$110,000 annual aggregate limit on individual campaign contributions is unconstitutional. The Government Accountability Board will no longer enforce the aggregate annual limit on how much money an individual may give to all candidates and political committees. Statutory limits on contributions to individual candidate campaigns are still in place, but there are no longer any limits on how much an individual may give to political action committees and political parties.”

Jennifer Hardin can be reached at jenniferhardinesq@gmail.com.

Letter from Jane Feldman

Dear COGEL community,

It was with regret that I resigned as President of COGEL in March. I had been looking forward to serving as President, but I left my job as Executive Director of the Colorado Independent Ethics Commission so was no longer eligible. I joined COGEL on my own, however, and I am continuing to serve on the Program and Steering Committees and I will see you all in Pittsburgh in December. The Program Committee has come up with many great ideas for the conference. Patricia Young, the new President, has a long and distinguished involvement in COGEL, so the organization is in great hands for the remainder of the year.

Thanks for all your support,

Jane Feldman

*For news,
follow COGEL President Patricia Young on Twitter: @cogelpresident*

CALL FOR ARTICLES, BOOK REVIEWS, AND UPDATES:

Make sure your COGEL colleagues know what you and your agency are doing—submit articles, book reviews, or agency updates for publication in *The Guardian*. Deadline for submissions for the next issue is **July 31, 2014**. Articles should be submitted in Microsoft Word format to COGEL at director@cogel.org. COGEL reserves the right to edit any submission for length, style, content, and format. Each submission should include the name of the author and a contact telephone number and email address.